

MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF HAYS, KANSAS
HELD ON SEPTEMBER 11, 2008

1. CALL TO ORDER BY CHAIRMAN: The Governing Body of the City of Hays, Kansas met in regular session on Thursday, September 11, 2008 at 7:30 p.m.

Roll Call: Present: Barbara Wasinger
Ron Mellick
Christopher Channell
Allan Lytton
Troy Hickman

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

2. MINUTES: There were no corrections or additions to the minutes of the regular meeting held on August 28, 2008; the minutes stand approved as presented.

3. CITIZEN COMMENTS: There were no comments.

4. CONSENT AGENDA: Ron Mellick moved, Allan Lytton seconded, that the following Cereal Malt Beverage Licenses be approved:

Chin-Ya LLC	3505 Vine Street
Oktoberfest	Municipal Park

Chairperson Wasinger presented her proposed appointment of Stacey Smith to the Hays Convention and Visitors Bureau Advisory Committee. The appointment will be presented for approval at the September 25, 2008 Commission meeting.

UNFINISHED BUSINESS

5. AIRPORT CHARTER ORDINANCE: (Tabled from August 28, 2008 Commission meeting). It has become increasingly difficult for the City to issue its

standard \$100,000 in bonded debt each year for airport improvement. The City does this to build cash reserves for larger projects anticipated in future years. Part of the difficulty stems from new Internal Revenue Service rulings that require the City to specifically identify what projects the debt is funding. That is not always possible from year to year. Therefore it would be more beneficial if the amount allowed for larger airport improvement projects could be handled through a resolution authorized by charter ordinance. The proposed charter ordinance repeals Charter Ordinance No. 13 and requires that any improvements to be undertaken and the funding thereof be specifically authorized by a resolution adopted by the Governing Body of the City of Hays.

Barbara Wasinger moved, Troy Hickman seconded, to lift this item from the table.

Vote: Ayes: Barbara Wasinger

Ron Mellick

Christopher Channell

Allan Lytton

Troy Hickman

Troy Hickman moved, Ron Mellick seconded, that Charter Ordinance No. 25, being a Charter Ordinance exempting the City of Hays, Kansas, from K.S.A. 3-113, and providing substitute and additional provisions of the same subject; relating to the acquisition of land and general improvement of airport property, borrowing money and the issuance of bonds therefore; and repealing Charter Ordinance No. 13, be approved.

Vote: Ayes: Barbara Wasinger

Ron Mellick

Christopher Channell

Allan Lytton

Troy Hickman

NEW BUSINESS

PROCLAMATION: Chairperson Wasinger read two proclamations in observance of World Alzheimer's Day and National Assisted Living Week.

6. HEARTLAND COMMUNITY FOUNDATION REQUEST: The Heartland Community Foundation (HCF) is a collection of funds designed to link donors with charitable causes. HCF is a public charity serving the west central Kansas area. Gina Riedel, community volunteer, and Bob Muirhead, board member of Heartland Community Foundation, appeared before the Commission at the September 4, 2008 work session to request a \$5,000 donation for the founder's campaign.

Troy Hickman moved, Barbara Wasinger seconded, that a donation in the amount of \$5,000 be given to the Heartland Community Foundation.

Vote: Ayes: Barbara Wasinger

Ron Mellick

Christopher Channell

Allan Lytton

Troy Hickman

7. RESOLUTION AUTHORIZING CALLING OF SPECIAL QUESTION ELECTION – SPORTS COMPLEX:

The Sports Complex Committee has collected enough signatures to place a question on the November ballot for the purpose of submitting to the electors of the City a question relating to the imposition of a special purpose citywide retailers' sales tax for a sports complex.

Allan Lytton moved, Barbara Wasinger seconded, that Resolution No. 2008-018, being a resolution authorizing and providing for the calling of a special question election in the City of Hays, Kansas, for the purpose of submitting to the electors of the City a question relating to the imposition of a special purpose citywide retailers' sales tax for a sports complex and also authorizing the financing of the sports complex by the issuance of general obligation sales tax bonds of the City, be approved.

Vote: Ayes: Barbara Wasinger
Ron Mellick
Christopher Channell
Allan Lytton
Troy Hickman

8. 2007 AUDIT: As required by Kansas Statute, the City of Hays hires an outside firm to conduct an annual audit of City finances. Ken Beran and Melissa Romme of Adams, Brown, Beran and Ball reviewed the 2007 Audit with the Commissioners.

Troy Hickman moved, Barbara Wasinger seconded, that the 2007 Audit be accepted.

Vote: Ayes: Barbara Wasinger
Ron Mellick
Christopher Channell
Allan Lytton
Troy Hickman

9. HAYS AQUATIC PARK WOOD STRUCTURE SEALING: An amount of \$20,000 is budgeted in the 2008 Budget for sealing and staining of the wood structures at the Hays Aquatic Park. The only bid received was from Dale Schmidt in the amount of \$21,600 or \$1,600 over budget. An amount of \$3,000 is available in the pool budget to cover this overage. Mr. Schmidt requested payment of 1/3 prior to starting the project, 1/3 when 50% complete, and 1/3 upon completion of the project.

Ron Mellick moved, Allan Lytton seconded, that the bid submitted by Dale Schmidt in the amount of \$21,600 for sealing and staining of the wood structures at the Hays Aquatic Park be approved.

Vote: Ayes: Barbara Wasinger
Ron Mellick
Christopher Channell
Allan Lytton
Troy Hickman

10. CONDEMNATION OF SMOKYHILL WELLFIELD – ORDINANCE: For three years the City of Hays has been making preparations to expand the Smoky Hill Wellfield. As part of this expansion, it will be necessary for the City to acquire certain properties to place water wells upon. The City has entered into negotiations with the property owners in the affected area in order to obtain the necessary property at a fair market value. At this time, these negotiations have not resulted in the City being able to obtain the property; therefore, staff is recommending the City Commission continue with the condemnation process for acquisition of the needed properties by approving Ordinance No. 3754

City Attorney John Bird stated that approval of Ordinance No. 3754 is a necessary step in the process of eminent domain should negotiations with the property owners fail. If that should happen, it will then become necessary for the City to file a petition in Ellis County District Court.

The City Attorney reviewed the process he used to negotiate payments for the property. Michel Werth, representing his father Larry Werth, addressed the Commissioners at the August 28, 2008 Commission meeting; he is opposed to using the eminent domain process. His family is requesting \$148,000 for the approximately eight acres needed by the City for well placement.

Mr. Bird stated he does not like to negotiate publicly; however, the Werth family has decided they want to do it this way. The pipeline that goes into the property would be buried below plow depth; he acknowledged that the pipeline is an intrusive activity and the City has to pay just compensation. The water rights on that land belong to the City of Hays and the claim that the City should pay as if the City was acquiring new water rights is not fiscally responsible or legally supportable. What the City is taking from the property is access; the right to come onto their property and do things the City does not otherwise have the right to do. The City is requesting a permanent easement with an up front payment. If the City ever ceases to use the property for the water well, then it would revert to the owner. Other concessions will be made for any damages to the property caused by the City, with a minimum of \$500.

Barbara Wasinger moved, Allan Lytton seconded, that Ordinance No. 3754, being an ordinance authorizing and providing for the acquisition of real estate and interests therein by eminent domain proceedings pursuant to K.S.A. 26-201, et seq. and K.S.A. 26-501, et seq. be approved.

Michel Werth, representing his father Larry Werth, requested the Commissioners reconsider what the City is offering the property owners. He feels it is unfair to use comparison properties instead of income capitalization to determine a fair value. He stated that property owners suffer damages each year because of the City wells and during drought years property owners have had to haul water for their livestock because the City wells have sucked all the water out from under their property.

Chairperson Wasinger asked Mr. Werth what their entire property is worth.

Larry Werth replied that the house and 400 acres would be worth about \$200,000.

The City Attorney stated it would be hard to justify to the taxpayers paying \$148,000 for less than eight acres.

Michel Werth acknowledged that the City of Hays owns the water rights; those water rights are worth millions of dollars. The expense of the eight acres is miniscule compared to what the City gets free off of the land. The City needs those eight acres to harvest the water, which is what gives that land its value.

Chairperson Wasinger encouraged Mr. Werth, as well as all of the other landowners, to negotiate privately with the City Attorney; this is not the time or place to be negotiating. If negotiations are completed in a timely fashion, then it will not be necessary to use the eminent domain process.

Michel Werth stated that state statutes allow for property value to be determined two ways. The City Attorney is comparing the eight acres to farmland; the other method is income capitalization, which he refuses to do.

The City Attorney stated he cannot, in good conscience, recommend the Commission pay \$148,000 for a tiny part of a piece of property.

Vote: Ayes: Barbara Wasinger

Ron Mellick

Christopher Channell

Allan Lytton

Troy Hickman

11. DANGEROUS STRUCTURE ABATEMENT: The owner of property located at 113 East 5th Street has made no attempt to rehabilitate or demolish the dilapidated and deteriorated garage at 113 East 5th Street. Staff has gone through all the proper procedures to abate the problem.

Troy Hickman moved, Allan Lytton seconded, that Resolution No. 2008-019, being a resolution authorizing the City of Hays or its designated agent to abate the dangerous structure (detached garage) located on the property at 113 East 5th Street, Hays, Kansas, be approved.

Vote: Ayes: Barbara Wasinger

Ron Mellick

Christopher Channell

Allan Lytton

Troy Hickman

12. REVISIONS TO SETBACK REGULATIONS FOR DISTRICTS ZONED RESIDENTIAL: Current regulations for setbacks in residential zoned districts require a side yard setback of 10% of the width of the lot. This works well for regular shaped lots, however, when trying to apply the same regulations to pie shaped lots typical in cul-de-sacs and curvilinear streets, the regulations are difficult to enforce. There is difficulty trying to determine the setback for an accessory structure on the same type of lot. The Planning Commission has recommended accessory structures be allowed to have the same setback as the principal building.

Barbara Wasinger moved, Ron Mellick seconded, that Ordinance No. 3755, being an ordinance amending Chapter 71 of the City of Hays, Kansas, Municipal Code, by modifying Article II, Division 3, Section 71-97, Subsection (B), Division 4, Section 71-133, Subsection (B), Division 5, Section 71-160,

Subsection (B), Division 6, Section 71-199, Subsection (B) and Division 9, Section 71-295, Subsection (B) regarding side yard regulations, be approved.

Vote: Ayes: Barbara Wasinger

Ron Mellick

Christopher Channell

Allan Lytton

Troy Hickman

13. PRE-ANNEXATION AGREEMENT: The owner of property located on East Highway 40 between Canterbury Drive and Commerce Parkway has requested a pre-annexation agreement that would allow the property to be connected to the City water and sewer system. City water and sanitary sewer mains run adjacent to the property along Highway 40 which would allow for tie in of a single structure to the City's water and sewer system. Typically, it has been past practice that the City requires the annexation of property that wishes to tie into both utilities. However, the Development Policy states that when connection is made to both utilities, the City will consider annexing the property. In this case, there seems to be no benefit or apparent good reason to annex the property at this time.

Ron Mellick moved, Allan Lytton seconded, that the Pre-Annexation Agreement and Provision for Water and Sanitary Sewer Services for a tract of property located along East Highway 40, be approved.

Vote: Ayes: Barbara Wasinger

Ron Mellick

Christopher Channell

Allan Lytton

Troy Hickman

14. PROPOSAL TO RESTRIPE 27TH STREET TO THREE LANES FROM PLUM TO HALL: City staff was requested to look at the issues related to restriping 27th Street from Plum to Hall from a two-lane to a three-lane configuration. Traffic counts, accident data, and public input was gathered and presented to the Commission for consideration. The 2004 City Wide Traffic

Study recommended the proposed changes as well. The estimated cost to re-stripe is \$20,108.

Ron Mellick moved, Allan Lytton seconded, that funds be authorized to re-stripe 27th Street to a three-lane configuration from Plum to Hall Street.

Commissioner Channell stated he saw no need to re-stripe that section of 27th Street.

Chairperson Wasinger stated that after driving the area, she does not think the street should be re-striped. The houses in that area that face 27th Street do not have any parking on one side of the street already. She does not want to take away the other side too. She does not see a problem that needs fixing.

Commissioner Mellick cited other areas of town where people have lost their parking and in some cases, property, in order to make traffic flow better and be consistent with the rest of the town. The 2nd busiest street in Hays should be consistent and have a three-lane configuration. Plum to Hall is the only section of 27th that is two-lane.

Dominic Pianalto, 330 West 27th Street, stated that not everyone in that area has access to a side street for parking; therefore, it is often necessary to park in front of other homes inconveniencing those homeowners. A realtor has informed him that if street parking is taken away, the value of his property would be significantly reduced. He requested the street not be re-striped to a three-lane configuration.

Donna Hansen, 322 West 27th Street, is concerned that if parking in front of her home is removed, it would be harder to back out of her driveway. Also a three-lane street would put pedestrians closer to traffic.

Gary Simon, 324 West 27th Street, stated that the area only experiences high traffic flows for just a few minutes two times a day, at 8:00 a.m. and 5:00 p.m. He does not feel it is justified to change to a three-lane configuration because there is not a problem any other time of the day. There are several cars in his family and he would have no other place to park the vehicles.

Vote: Ayes: Ron Mellick

Allan Lytton

No: Barbara Wasinger

Christopher Channell

Troy Hickman

15. USE OF FORMER ARMY RESERVE CENTER: At the September 4, 2008 work session, the Commission discussed the concept of soliciting proposals for the use of the former Army Reserve Center. At that time, staff was directed to develop a list of conditions that each proposal must contain.

City Manager Toby Dougherty reviewed a list of conditions that must be met before consideration. He stated he will notify the press, as well as groups that have already contacted him, about the solicitation of proposals.

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

17. COMMISSION INQUIRIES AND COMMENTS: There were no additional inquiries or comments.

The meeting was adjourned.

Submitted by: _____

City Clerk

