

MINUTES OF A MEETING OF  
THE GOVERNING BODY OF  
THE CITY OF HAYS, KANSAS  
HELD ON  
SEPTEMBER 23, 2004

**1. CALL TO ORDER BY CHAIRMAN:** The Governing Body of the City of Hays, Kansas met in regular session on Thursday, September 23, 2004 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 meeting held on September 9, 2004; they stand approved as written.

**3. FINANCIAL STATEMENT:** City Manager Randy Gustafson stated that sales tax revenue is 5.5% higher than for the same period last year.

Troy Hickman moved, Wayne Billinger seconded, that the Financial Statement for the month of August 2004, be approved.

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

**4. CITIZEN COMMENTS:** Guy Windholz, 2214 Henry Drive, complimented the City of Hays on the wonderful job being done by the City and its employees at the compost site. He also thanked the Commission for the Tree Rebate Program.

**5. CONSENT AGENDA:** Henry Schwaller IV moved, Wayne Billinger seconded, that a Cereal Malt Beverage License be approved for the Volga German Society Oktoberfest.

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

### **UNFINISHED BUSINESS**

**6. NEW SISTER CITY:** Carol Solko and Francis Schippers, members of the Sister City advisory board, requested the Commission approve a resolution supporting Xinzheng, China as a new Sister City. It will not cost any additional money to add another Sister City.

Wayne Billinger moved, Henry Schwaller IV seconded, that Resolution No. 485, being a resolution of the Commissioners of the City of Hays, Kansas, USA, extending an invitation to the City of Xinzheng, China to participate in the Sister City program, be approved.

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

**7. GLASSMAN BALL FIELD BUILDING COSTS:** The overage costs for the construction of the building at Dusty Glassman Park have been paid by the Hays Recreation Commission. No action was necessary on the Commission's part.

**8. ROTARY CLUB FUNDING REQUEST:** The Hays Rotary Club is requesting matching funds from the Special Park and Recreation Budget for an amount of \$9,100 to be used for the construction of a shelter house in North Frontier Park. The 2005 Budget has \$20,000 set aside for this project; however, the Rotary

Club is requesting additional funding to assist in covering the estimated project cost of \$68,131. There is \$10,000 available in the Special Park and Recreation Budget. Park Director Jeff Boyle recommended approval of this request.

Mr. Boyle discussed the process for disbursing these funds which are generated through the alcohol tax. Part of these funds are specifically set aside to be matched by funds from local civic groups for park projects.

The consensus of the Commission was to develop a different process which would involve more Commission input for disbursement of the funds.

Patty Stull, Rotary Club President, stated this project is their Rotary Centennial Project to celebrate Rotary's 100<sup>th</sup> birthday in 2005.

Wayne Billinger moved, Troy Hickman seconded, that the request from Rotary Club for \$9,100 for partial funding of a shelter house in North Frontier Park be approved.

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

**9. BIDS FOR IRRIGATION AT MASSEY PARK:** The Park Department is requesting the installation of an irrigation system at Massey Park. In the 2004 Budget, \$60,000 has been allocated for installation of an irrigation system and seeding the park. The seeding will be done by Park Department employees next spring.

Park Director Jeff Boyle recommended the bid from Earthcare in the amount of \$45,500 be accepted.

Discussion was held about the type of grass to be planted at the park.

Mr. Boyle stated that fescue grass would be a better choice because there will be practice soccer fields located at the park; bermuda grass would not hold up as well.

City Manager Gustafson suggested the Commission approve the irrigation system bid this evening and determine prior to next spring whether to plant fescue or bermuda grass.

Commissioner Steward stated he felt this was a waste of money and a really bad message to be sending the community. Planting fescue grass will require more water. He is very opposed to spending money to irrigate the park.

Commissioner Schwaller stated he is not against spending money on this park for irrigation. Massey Park has been neglected and the neighborhood needs a nice park. Water conservation is important and he wouldn't mind a blending of the two grasses in different areas of the park, but it is important that this park look good.

Commissioner Steward stated many improvements have been made to the park, but he doesn't think fescue grass is necessary.

Troy Hickman moved, Henry Schwaller IV seconded, that the bid from Earthcare in the amount of \$45,500 be approved.

Vote: Ayes: Sunell Koerner

Wayne Billinger

Henry Schwaller IV

Troy Hickman

No: Kent Steward

**10. CONSTRUCTION BIDS FOR VARIABLE FREQUENCY DRIVE:** The Variable Frequency Drives (VFD's) will help control pressure on the water distribution system, and allow the one-million gallon water tower to be taken out of service in 2005 for cleaning, painting and making necessary repairs to the inside of the water tank. A distribution study done by Bartlett and West indicated this would be the most efficient means in controlling pressure on the distribution system without causing any disruption on our distribution system and our water customers. Proposals were received from two vendors, with the low bid received from Don's Electric & Rewind, Inc. in the amount of \$120,617.04. Funds are budgeted for this purpose.

Wayne Billinger moved, Kent Steward seconded, that the bid from Don's Electric & Rewind, Inc. in the amount of \$120,617.04 be accepted. Commissioner Schwaller was out of the Commission Chambers when the vote was taken.

Vote: Ayes: Sunell Koerner

Kent Steward

Wayne Billinger

Troy Hickman

Not Voting: Henry Schwaller IV

**11. WATER DISTRIBUTION STUDY SUPPLEMENTAL AGREEMENT:** In 2002, the City contracted with Bartlett and West Engineers to perform a Water Distribution Study. In the course of the study, Bartlett and West constructed a computer model of the City's Water Distribution System. It is necessary to establish a contract for services and a charge out rate for services provided by Bartlett and West to periodically update the computer model and run scenarios at the request of City staff.

City Manager Gustafson recommended approval of a Supplemental Agreement with Bartlett and West not to exceed \$4,000 annually.

Troy Hickman moved, Wayne Billinger seconded, that the Supplemental Agreement with Bartlett and West for services related to the City's Water Distribution Model at an amount not to exceed \$4,000 annually be approved

City Manager Gustafson stated there is a computer program that could be purchased to do this same modeling, however, it would cost more than \$4,000 to train staff and keep the software upgraded. There will be some years where the full \$4,000 of services will be used and some years it won't be used at all, depending on the growth of the city. The Commission approves the budget each year, so the contract is not an open ended contract.

Vote: Ayes: Sunell Koerner

Kent Steward

Wayne Billinger

Troy Hickman

No: Henry Schwaller IV

**12. ANNEXATION:** The owners of three tracts of land located east of Hays on East 8<sup>th</sup> Street have requested by petition and consent in writing to have said land annexed into the city limits of Hays. The Ellis County Commission has signed a resolution stating that the annexation will not hinder the proper growth and development of the area. The City Commission is being asked to approve an ordinance for final acceptance of the annexation.

Wayne Billinger moved, Kent Steward seconded, that Ordinance No. 3657, being an ordinance annexing land to the City of Hays, Kansas be approved.

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

**13. PUBLIC HEARING:** Chairperson Koerner opened the public hearing for the establishment of a Transportation Development District (TDD).

Chairperson Koerner read a letter from Mary Ann Watson, 306 West 39<sup>th</sup> Street. Mrs. Watson is opposed to the District charging an additional .75% sales tax on sales in the District.

City Manager Gustafson stated he received a letter from a developer who is working with the Lowe's Corporation who requested his letter be made part of the record:

*September 23, 2004*

*Dear Commissioners:*

*My name is Bob Woltemath and I am President of Woltemath-Otis Development Inc., a real estate development company based in*

*Omaha, Nebraska. Please have this letter read in the record for tonight's City Commission meeting.*

*I have an agreement with Lowe's to sell them a 13.3 acre parcel of land located just north of the existing Wal-Mart SuperCenter (between 45<sup>th</sup> and 48<sup>th</sup> Streets and west of the new Roth Avenue) for the construction of a new Lowe's Home Improvement Store. I am also working on developing the 4 lots in front of the Lowe's parcel (between Roth Avenue and Highway 183). Typically these lots would be developed with restaurants. I have had discussions with other specific retailers that are very interested in locating close to a new Lowe's store in Hays. Further, I am aware that a developer from Los Angeles has been working to bring additional retail to the property located north of 48<sup>th</sup> Street.*

*With regard to the incentive package to the Home Depot anchored development, I ask that you consider the following issue on behalf of the City. I believe that the premise of the \$3.6 Million package for that project is based upon a 7 store development that includes a big box retailer in addition to Home Depot. On July 23, 2004, the article in the Hays Daily News (which, I assume, was based on the coverage of the Commission meeting) states "Those bonds will be repaid by a portion of the City's existing sales tax, as well as the City's share of the property taxes from the whole development that includes Home Depot, as well as another big-box retailer such as Target, and other restaurants and retail shops." This article also states that sales for this development are projected to be \$44.4 Million by the third year of operation. Further, the September 1, 2004 issue of the Hays Daily News states "Lowe's is seeking incentives of \$1.5 Million in sales and property tax refunds. Though this incentive is lower than the Home Depot/D. J. Christie incentive*

*package totaling \$3.2 Million, Lowe's will only bring one store to the area where Home Depot is to be part of a seven-store development."*

*Both Home Depot and Lowe's are first class corporations and excellent operators. But based on the above, shouldn't proof of commitments from the six additional retailers (including a second big-box retailer) be required? Otherwise, isn't the City committing money to something that may not occur? In the event that the additional development doesn't take place, how will the projected \$44.4 Million in sales occur? On the other hand, Lowe's is not asking for incentive money for anything that they can't deliver-which is themselves.*

*I am confident that any retailer that is interested in locating in Hays because of the presence of a new Home Depot will also locate in Hays because of the presence of a new Lowe's. The bottom line is that the City will end up with the same amount of additional retail with a new Lowe's store, but at less than half the cost. If nothing else, perhaps a 30 day layover would be in order to answer the above question.*

*Thank you for your thoughtful consideration.*

*Sincerely,*

*Bob Woltemath*

Elaine Adams asked if there would be problem waiting 30 days before the Commission made a decision to approve an ordinance creating the TDD as suggested by Mr. Woltemath.

City Manager Gustafson stated the Commission may consider that; however there is a schedule that the Commission is trying to follow in regard to this whole project. The project has been going on for 16 months and this is the culmination of it.

There being no further comments, Henry Schwaller IV moved, Wayne Billinger seconded, that the public hearing be closed.

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

Wayne Billinger moved, Troy Hickman seconded, that Ordinance No. 3656, being an ordinance authorizing the creation of a Transportation Development District in the City of Hays, Kansas; authorizing the making of certain Transportation Project improvements relating thereto; approving the estimated costs of such Transportation Project improvements; providing for the method of financing; authorizing the imposition of a Transportation District sales tax within a Transportation Development District in the City of Hays, Kansas; establishing a method of collection of such sales tax; and providing for the segregation of such sales tax revenues for the payment of the costs of certain Transportation Projects within such Transportation Development District, be approved.

Commissioner Schwaller stated he could wait 30 days before approving the ordinance, however, the Lowe's people were told 30 days ago to file their application and pay the fee and they have not done so. The Commission will consider their application once it is returned with the filing fee. Passage of the ordinance tonight for the Home Depot project does not in any way jeopardize their application.

Commissioner Hickman commented that the D. J. Christie Inc. people have done everything the Commission has requested them to do. He would not

want to delay the Home Depot project just because it has been requested to do so by a competitor.

Chase Simmons, representing Home Depot, stated the TDD Bonds are not guaranteed by either Home Depot or the City of Hays. Bonds will be issued and the risk will be taken by the bond holders. One of the reasons is because Home Depot is guaranteeing Economic Development Bonds that are driven by the same revenue stream which is the sales.

Commissioner Steward stated that when the Memorandum of Agreement was approved by the City on July 22, 2004, the cost to the City was going to be \$3.2 million and the TDD sales tax would be .50%. Now, the TDD sales tax would be .75% and the City cost would be even higher than \$3.2 million.

Mr. Simmons stated that since July, the improvements to be constructed with the TDD funds have expanded. In order to pay for that expansion, it will be necessary to raise more funds via the sales tax.

City Manager Gustafson stated there will be a Phase I and a Phase II in this project. Phase I are the roads, water and sewer lines, traffic signals, etc. that has previously been mentioned. Phase II, once Phase I pays down, is another series of roads tying onto those that don't directly connect to this project; that are in essence roads that will be built in the general vicinity and will be paid for by the continuation of the TDD sales tax. Phase II is estimated to be slightly over \$2 million. It is expected that Phase I will pay out in 13 years. As the development adds more stores, the payout will accelerate and would enable the City to go to Phase II at an earlier time.

Commissioner Schwaller commented that the City asked for the Phase II improvements, not the developer.

City Manager Gustafson stated Phase II will enable the City to get more infrastructure from the TDD than was necessary for the District to just get traffic to its location. It was an attempt to negotiate on behalf of the City for future benefits that will occur as a result of having the District created.

Commissioner Steward stated he felt it was exorbitant to have a .75% sales tax in the District and he doesn't like the way it was raised since the Memorandum of Agreement was signed in July.

City Manager Gustafson stated this increase came about as a result of the development people looking at what they needed in order to do the development in the proper way. This was a part of their financial process.

Jim Gryce, representing D. J. Christie Inc., commented that it is their hope that this project could be perceived as an enhancement to the City's revenue source to allow the City to better deal with other problems in the City that do not have the ability to create additional revenue. D. J. Christie engineers have worked with City staff to work on transportation issues as well as storm water issues. Mr. Christie is very concerned about creating good partnerships with communities.

City Manager Gustafson stated that the detention facility for storm water for this project is overbuilt by 50% for the 47 acres.

Commissioner Hickman called for the vote.

Vote: Ayes: Wayne Billinger

Henry Schwaller IV

Troy Hickman

No: Sunell Koerner

Kent Steward

**14. FINAL PLAT:** The developer of a tract of land on 41<sup>st</sup> Street north of I-70 has brought forth a new plat called the Home Depot Addition that has been approved by the Hays-Ellis County Planning Commission. Staff requested the Commission approve a resolution accepting the Planning Commission's recommendation to approve the final plat.

Troy Hickman moved, Henry Schwaller IV seconded, that Resolution No. 486, being a Resolution accepting the Final Plat of the Home Depot Addition to the City of Hays, Kansas, be approved.

Vote: Ayes: Sunell Koerner

Kent Steward

Wayne Billinger  
Henry Schwaller IV  
Troy Hickman

**15. DEVELOPMENT AGREEMENT – HOME DEPOT:** The Development Agreement details the total agreement between parties with regard to the D. J. Christie/Home Depot development. The Agreement generally follows the Memorandum of Understanding that was previously approved by the parties.

Wayne Billinger moved, Troy Hickman seconded, that the Development Agreement with D. J. Christie Inc. for Home Depot be approved.

The Agreement was discussed by the Commissioners, the City Manager, and the City Attorney.

Dave Christie stated he has been involved in numerous Home Depot projects; he has been developing shopping centers for 25 years. He will have money invested in this project; his primary business is shopping center development in secondary markets. He develops for Walgreens, Kroger, Home Depot, Albertson, Target, and Kohls. If everything works well, bids will go out next week for the TDD improvements. It is planned the Home Depot store will open in May of 2005 and that he will have commitments for more retail stores and restaurants to fill up the District.

Vote: Ayes: Wayne Billinger  
Henry Schwaller IV  
Troy Hickman  
No: Sunell Koerner  
Kent Steward

**16. CONVENTION AND VISITORS BUREAU:** The City has closed on the property at 27<sup>th</sup> & Vine Street that will be used to construct a new Convention & Visitors Bureau office building. The City needs to select an architect to design the new building. A standard contract of agreement with Stecklein and Brungardt p.a. Architects has been reviewed by the City Attorney. A request for proposals has not been done because Alan Stecklein did a preliminary plan at the time the City was considering buying the property in order to see what size of building

would fit on the lot. The Commission may decide to get proposals before proceeding if they so desire.

Wayne Billinger moved, Henry Schwaller IV seconded, that a Request for Proposal be issued for the architectural design of the Convention & Visitors Bureau office building.

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

**17. ANIMAL SHELTER CONTRACT:** The City of Hays issued a Request for Proposal for animal control and animal shelter for 2005. The Hays Police Department and Hillside Veterinary Clinic submitted proposals before the deadline date. A shelter proposal was received from the Humane Society of the High Plains; however it was received after the deadline date. Staff recommended the Commission accept the proposal from Hillside Veterinary Clinic.

Henry Schwaller IV moved, Troy Hickman seconded, that the 2005 contract in the amount of \$39,000 for animal shelter services be awarded to the Humane Society of the High Plains.

Commissioner Schwaller commented that there have been significant changes in the Humane Society's organization. They want this contract, they have the facility to do it, they have the staff that can do it, and he believes they are the most qualified in this community to provide shelter services. Even though they did not meet the deadline, in this case, it is important that they receive the contract in order to keep their doors open.

Eileen Jackson, president of the Board of the Humane Society, stated that if they receive the shelter contract they will not close their doors. The Board has implemented more cost savings along with Board members operating the shelter on weekends. The Humane Society must have this contract in order to stay open.

Commissioner Billinger stated it is unfortunate that the Humane Society bid was late due to the transition of staff; however, he felt the Commission must honor the bidding process.

Commissioner Steward agreed with Commissioner Billinger. He stated this comes down to following proper procedure. He does not want to abandon an essential institution but it would be a terrible mistake to accept a bid that was seven weeks late that is just barely under the competitor's bid.

Commissioner Schwaller stated this is a community organization and the Humane Society represents the community. Hillside represents a corporation. This organization was built for the community, by the community and it serves a function. If we neglect it today, it will not be here tomorrow and the City will be worse off. If we do not award the contract to the Humane Society, he suggested they be awarded a contract in a similar amount for the long term care of the animals after the adoption process time limit has run out.

Chairperson Koerner stated she felt the Commission should follow the standard process and not make any exceptions. She does agree with Commissioner Schwaller about a long term care contract with the Humane Society.

Commissioner Hickman stated that he agrees that procedure should be followed in order to be fair but sometimes you have to vote on what you feel is right.

Commissioner Billinger called for the vote.

Vote: Ayes: Henry Schwaller IV

Troy Hickman

No: Sunell Koerner

Kent Steward

Wayne Billinger

Wayne Billinger moved, Kent Steward seconded, that the 2005 contract for animal shelter services in the amount of \$40,000 be awarded to Hillside Veterinary Clinic.

Vote: Ayes: Sunell Koerner

Kent Steward

Wayne Billinger

No: Henry Schwaller IV

Troy Hickman

By Commission consensus, it was decided to direct staff to develop a flat amount to pay for long term care of animals at the Humane Society in 2005.

**18. INTERGOVERNMENTAL AGREEMENT:** The purpose of the Intergovernmental Agreement is to establish the terms and conditions under which the Department of Revenue will administer, collect and enforce the City's previously adopted retailers' sales tax at the total rate of 1% and the .75% retailers' sales tax adopted for purposes of funding the General Fund and eliminating the City's property tax for the General Fund.

Troy Hickman moved, Henry Schwaller IV seconded, that the Intergovernmental Agreement with the Department of Revenue in reference to the collection of sales tax be approved.

Vote: Ayes: Sunell Koerner

Kent Steward

Wayne Billinger

Henry Schwaller IV

Troy Hickman

**19. REPORT OF THE CITY MANAGER:** The City Manager stated the City Attorney has requested an executive session for 15 minutes for the purpose of discussing attorney/client privileged information.

Troy Hickman moved, Sunell Koerner seconded, that the Governing Body recess to executive session at 10:10 p.m. for 15 minutes for the purpose of discussing attorney/client information. The executive session is to include the Commissioners, the City Manager, and the City Attorney.

Vote: Ayes: Sunell Koerner

Kent Steward

Wayne Billinger

Henry Schwaller IV

Troy Hickman

Chairperson Koerner called the meeting back to order at 10:25 p.m. She stated that no action was taken during executive session.

City Attorney John Bird stated that City staff has entered into a proposed agreement with the State of Kansas in regard to releasing water from the Cedar Bluff Reservoir. The agreement helps the City of Hays, the City of Russell and the State of Kansas coordinate its water resources in the most efficient way possible so that Cedar Bluff Reservoir can be used in a lawful manner in a way that does not waste water.

Troy Hickman moved, Kent Steward seconded, that the Cedar Bluff Reservoir Artificial Recharge Pool Operations Agreement with the State of Kansas be approved.

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

**20. COMMISSION INQUIRIES AND COMMENTS:** Commissioner Schwaller requested staff review the City policy concerning City employees using City vehicles for personal reasons and that the City Manager examine if there is misuse occurring. The City Manager reminded the Commission that he does have the authority to assign vehicles and approve the employee's use of these vehicles.

Thereupon the Governing Body adjourned.

Submitted by: \_\_\_\_\_

Clerk of the Board

