

MINUTES OF A MEETING OF
THE GOVERNING BODY OF
THE CITY OF HAYS, KANSAS
HELD ON JANUARY 22, 2004

1. CALL TO ORDER BY CHAIRMAN: The Governing Body of the City of Hays, Kansas met in regular session on Thursday, January 22, 2004, at 7:30 p.m.

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

Chairperson Hickman stated that a quorum was present and called the meeting to order.

2. MINUTES: There were no corrections to the minutes, they stand approved as written.

3. FINANCIAL STATEMENT: Sunell Koerner moved, Troy Hickman seconded, that the Financial Statement for December, 2003, be approved.

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

4. CITIZEN COMMENTS: Dr. Richard Rajewski, M.D., presented a Resolution passed by the Hays Medical Center medical staff in support of the clean air ordinance. Several citizens spoke in favor of a clean air ordinance.

5. CONSENT ITEMS: Henry Schwaller moved, Kent Steward seconded, that the list of Municipal Court fines totaling \$11,868.50, be declared as non-collectible.

Commissioner Schwaller noted that these non-collectibles are quite old and many of the people do not live in Hays anymore.

Vote: Ayes: Troy Hickman
Sunell Koerner
Kent Steward

Wayne Billinger
Henry Schwaller IV

NEW BUSINESS

6. LOPA TECHNOLOGIES: City Manager Gustafson said the Commission approved the purchase of an ESP Unit from LOPA Technologies with the caveat that a money-back-guarantee would be included in the contract. LOPA Technologies claimed that an ESP Unit would provide necessary treatment of the effluent water that would in turn provide better growing conditions for turf at the golf course. LOPA Technologies agreed to offer a money-back guarantee on the unit, if the City followed the direction given by REP Consultants and LOPA Technologies.

City Attorney John Bird said he drafted a contract that he believed protected the City's interest. The contract provides that the City would establish a system to install the unit and have a control in place to see how the greens did with and without the treatment and also using the existing effluent water. The contract provides at the vendor's request that the recommendations of LOPA's consultant would be followed. In addition, an independent review of the greens would be conducted as a safeguard. At the conclusion of the test period, if the equipment worked as promised, LOPA Technologies would receive the balance of the money, if not LOPA Technologies would take their equipment back. The Company chose not to accept those terms. A decision needs to be made whether or not this issue should be pursued further.

Commissioner Schwaller said it was his understanding that all the greens need is good water and good drainage. It was discovered after this process was started that there was not good drainage on the greens; the drainage problem needs to be addressed. The City Manager said staff's recommendation would be to fix the drainage problem on the greens and see what effect that has on the greens, then deal with the effluent water issue later.

Wayne Billinger moved, Sunell Koerner seconded, that the purchase of the ESP Unit should not be pursued any further.

Park Director Jeff Boyle said City staff would study the greens issue further and come back to the Commission with a recommendation as to how to proceed.

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

7. RESOLUTION INITIATING PROCEEDINGS FOR CONSTRUCTION OF REVERSE

ACCESS ROADS (45TH STREET TO 55TH STREET): A Resolution initiating proceedings for construction of reverse access roads from 45th Street to 55th Street, the construction of 48th Street from Vine to General Hays Road, the construction of an access road leading to High Plains Roofing, and the construction of General Hays Road from 22nd Street to Cody Avenue was presented for consideration.

This Resolution authorizes the project and allows the City to reimbursement itself for any costs incurred prior to the issuance of temporary notes to fund the project.

Wayne Billinger moved, Sunell Koerner seconded, that Resolution No. 456, being a Resolution initiating proceedings by the Governing Body for Improvement of a portion of Roth Avenue and General Hays Road and 48th Street, be approved.

Commissioner Schwaller said he would not be voting due to a conflict of interest.

Vote: Ayes: Troy Hickman
Sunell Koerner
Kent Steward
Wayne Billinger

Abstain: Henry Schwaller IV

8. RESOLUTION INITIATING PROCEEDINGS FOR VINE STREET IMPROVEMENTS

(13TH TO 27TH STREET): A Resolution initiating proceedings for the mill and overlay of a portion of Vine Street from 13th Street to 27th Street was presented for consideration. This Resolution authorizes the project and allows the City to reimburse itself for any costs incurred prior to the issuance of temporary notes to fund the project.

Wayne Billinger moved, Sunell Koerner seconded, that Resolution No. 457, being a Resolution initiating proceedings by the Governing Body for improvement of a portion of Vine Street from 13th Street to 27th Street.

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

9. 2003 BOUNDARY RESOLUTION: Each year cities are required to declare by Resolution the entire boundary of the City. This Resolution includes any territory annexed in 2003.

Kent Steward moved, Wayne Billinger seconded that Resolution No. 458, being a Resolution re-defining the boundary of the City of Hays, Kansas, be approved.

The City Manager noted that the City is comprised of a total of 7.784 square miles.

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

10. SEWER RATE ORDINANCE: In reviewing the water rate ordinances during the rate study, it was discovered that an ordinance was in place which required multiple housing units feed by one water meter to pay a separate minimum for each unit. This ordinance was not being enforced. The City Manager suggested that the Ordinance be enforced or repealed. It was the desire of the Commission to enforce the Ordinance.

It was the consensus of the Commission at the last work session to handle sewer rates in the same manner as the water rates, that being a separate sewer minimum for multi-unit residences. An ordinance was drafted providing for a sewer minimum for multi-unit residences.

Commissioner Steward said he had some second thoughts about charging individual minimums for multi-units. He visited with one landlord of a multi-unit complex and he had estimated a 30 percent increase in his bills. He is concerned about the

financial impact this will have on landlords. If the landlords passed the increase on to their tenants, they are probably passing the cost to people who can least afford the increase in their cost of living

Commissioner Billinger suggested a three-year step approach to ease the financial impact. The City Manager said it would be possible to use a step approach. The City Attorney said an ordinance could be drafted to provide for one-third of the sewer minimum implemented the first year, and two-thirds of the minimum will be the second year and the full sewer minimum implemented the third year.

Wayne Billinger moved, Kent Steward seconded, that Ordinance No. 3636, being an ordinance providing for sewer minimums for multi-dwellings receiving water service from a single meter to be calculated by the number of additional units, beyond the first unit, multiplied by one-third of the sewer minimum for 2004, two-thirds of the sewer minimum in 2005, and the full sewer minimum in 2006 and thereafter.

Vote: Ayes: Troy Hickman
Sunell Koerner
Kent Steward
Wayne Billinger

Abstain: Henry Schwaller IV

11. ECONOMIC DEVELOPMENT INCENTIVES: The City Manager said City staff needs direction from the Commission whether or not to pursue negotiations with D. J. Christie on behalf of Home Depot.

Commissioner Schwaller said he has received various comments from the community regarding the location of a Home Depot. There appears to be a perception among community members that the City Commission wants to keep Home Depot from locating in Hays. He believes every Commissioner wants to create new development in Hays. However, the developer representing Home Depot has told the Commission that in order to start this process, the City must reimburse Home Depot for their costs through special incentives. In order to consider granting incentives, the developer must give the Commission a specific request in writing for the incentives and a specific description of what will be built with the incentives.

Commissioner Schwaller said it appears in order to move forward, the City is going to have to start the negotiations. He asked the Commission to authorize the City Manager and staff to negotiate an appropriate incentive package with the developer. If the motion passes, he said he would want a short executive session so the Commission can establish perimeters for negotiations. This would be done in accordance with the Kansas Open Meetings Act. After the City Manager has negotiated an incentive package with the developer, the Commission will determine if granting these incentives will benefit the citizens of Hays more than it would cost them. Only then would the Commission consider a Resolution granting these incentive.

Chairperson Hickman said he would be in favor of such a motion. It is worth entering into negotiations before making a decision.

Troy Hickman moved, Wayne Billinger seconded, that City staff begin negotiations with the developer D.J. Christie to develop a plan and official request of incentives based on the negotiations.

Commissioner Steward said this is a tough issue, there is merit on both sides of the issue. He pointed out that the motion on the floor will pass with a 3-2 vote, however, we need to be mindful that in accordance with Kansas Statutes approval of an incentive package would require four yes votes. It would be helpful to determine tonight whether or not we have four votes, otherwise, City staff will be wasting a great amount of time and money.

Commissioner Steward said the first question that needs to be addressed is whether we want Home Depot to locate in Hays. Speaking for himself, he would be in favor of it, but would caution that the benefits have been overstated. For example, Home Depot projects \$25 million in revenue for the Hays store. It is important to remember it would not be all new revenue, much of it would come from existing businesses. In spite of that, he does believe that Home Depot would increase retail for Hays. He hoped that Home Depot would decide to build a store in Hays.

Commissioner Steward said the next question is whether or not to give Home Depot incentives. If the City does gives an incentive, the City should get a full return on the investment. If the City decides to move forward, there should be an independent analysis of the cost and benefits. It would also be appropriate to require guarantees.

Commissioner Steward said he would oppose any incentive package that would be greater than the expected return on the City's investment.

Commissioner Steward said the City has a draft of a City Policy on economic development. Section Three states "No tax exemption or other incentive shall be granted if the incentive would create, in the judgement of the governing body, an unfair advantage for one business over another Hays business that competes for the same consumer market within the City". He believes that is a wise policy, and there is no question that Home Depot violates that provision. Commissioner Steward said it is wholly inappropriate for government to take money from the public treasury and give it to one business so it can have an unfair advantage over another business.

Commissioner Steward said the Home Depot developer has asked for Tax Increment Financing Bonds (TIF) and Transportation Development District Bonds (TDD). This puts City government in an inappropriate role of collecting taxes for a private business so that it can have an advantage over another business. His suggestion would be for Home Depot to charge a little more for their product.

Commissioner Steward said he is not against progress, he hopes that Home Depot or a similar company will decide to build a store here without incentives. He would not do anything to stop them from locating in Hays.

Commissioner Billinger said he believes most residents of Hays want the competition in Hays to lower prices, on the other hand, businesses feel the City is not protecting them. We need to realize that especially in view of the announcement of the closing of two businesses in Hays, the City learned a lesson in the mid 80's when the City relied on agriculture, oil and one industry in Hays. The economy hit a low and Hays was hurting, but the City learned to diversify. He believes the City owes it to the businesses of Hays to make efforts to attract new residents.

Commissioner Billinger said under a TDD District, a business could charge anywhere from one-fourth cent to one cent. He thinks the City should demand one cent to recoup the City's investment sooner. Another thing to consider would be if Home Depot goes over the projected \$25 million in sales, the City's commitment should be paid down from the overage. He mentioned that utility abatements are also an option.

Commissioner Koerner believes it is important to increase retail sales in Hays. She has had people tell her that the City should give Home Depot whatever they want to get them to locate in Hays. She does not believe the City should do that. Sykes is a perfect example; we gave them everything they wanted and after a very short time they are leaving and anyone who pays taxes is left “holding the bag”.

Commissioner Koerner said under the Transportation District, additional sales tax is added and she agrees with Commissioner Billinger that holding them to an additional one cent is a good idea. She wondered if Home Depot could even qualify for the TIF District because the area has to be declared as a blighted area; that area is not blighted. She said we have to remember how many businesses will be affected; Home Depot sells more than just lumber. It is not only our community, but the surrounding communities will be affected as well. We need to be good neighbors to other communities. She said she is not opposed to more businesses locating in Hays, but the City needs to work this out to where it is best for the entire community of Hays.

Commissioner Schwaller said he wants Home Depot and other businesses to locate in Hays. He has some definite ideas for negotiation that cannot be revealed at this time. An executive session will need to be held to give the City Manager some direction and attempt to strike a balance.

The Chairman called for the vote.

Vote: Ayes: Troy Hickman

Sunell Koerner

Wayne Billinger

Henry Schwaller IV

No: Kent Stewart

12. REPORT OF THE CITY MANAGER : City Manager Gustafson mentioned that the Park Department took bids for replacing bricks in Union Pacific Park. These bids came in ranging from \$14,900 - \$22,800. Upon reviewing the exorbitant bid amounts, the Park Director made alternate arrangements for the Parks Department, in conjunction with the Public Works Department, to complete this task in-house. This resulted in a significant savings to the City. Those employees need to be commended for their work.

13. COMMISSION INQUIRIES AND COMMENTS: Commissioner Schwaller made several comments regarding the proposed non-smoking ordinance. He is opposed to smoking, but would like to reach some middle ground and have a phase-in of a non-smoking ordinance and revisit the issue in another year. He is in favor of allowing smoking if the business meets the food sales requirement, that being 70 percent of revenue would have to be derived from alcohol, not food, or if a business can construct a smoking area that is blocked off with proper ventilation.

Commissioner Billinger said he would like to initiate some discussion of some simple measures that can be implemented to help with the storm water drainage problems within the City.

Commissioner Steward would like an agenda item for discussion of the by-laws regarding conflict of interest. He would like to amend the by-laws to allow Commissioners who have a conflict of interest to state what that conflict is, but still be able to share their expertise with the Commission. He does not believe that he could be swayed just by hearing information from a Commissioner who has a conflict of interest.

14. EXECUTIVE SESSION (IF REQUIRED): Troy Hickman moved, Wayne Billinger seconded, that the Commission recess to executive session to discuss land negotiations and personnel for 30 minutes. The City Commission, the City Manager, the City Attorney, the Assistant City Manager shall be included in parts of the executive session.

It was noted that the Hays Daily News objects to the executive session.

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

Chairperson Hickman called the meeting back to order within the allotted time. He said no action was taken during the executive session.

Thereupon the Governing Body adjourned.

Submitted by: _____

Clerk of the Board