

MINUTES OF A MEETING OF
THE GOVERNING BODY OF
THE CITY OF HAYS, KANSAS
HELD ON JULY 8, 1999

1. CALL TO ORDER BY CHAIRMAN: The Governing Body of the City of Hays, Kansas met in regular session, Thursday, July 8, 1999, at 7:30 p.m.

Roll Call: Present: Wayne Billinger
Troy Hickman
Henry Schwaller IV
Larry Schmidt
Howard Rome

Mayor Billinger declared that a quorum was present and called the meeting to order.

2. MINUTES: Troy Hickman moved, Howard Rome seconded, that the minutes of the regular meeting held on June 24, 1999, be approved.

Vote: Ayes: Wayne Billinger
Troy Hickman
Henry Schwaller IV
Larry Schmidt
Howard Rome

3. CITIZEN COMMENTS: There were no comments.

4. COMMISSION INFORMATIONAL MEMORANDUM: City Manager Hannes Zacharias reminded the Commissioners of the budget review sessions to be held on July 12-13, 1999, at 7:00 p.m., at the Hays Municipal Airport.

5. CONSENT ITEMS: Henry Schwaller IV moved, Troy Hickman seconded, that Item A and Item B be considered separately.

Vote: Ayes: Wayne Billinger
Troy Hickman
Henry Schwaller IV
Larry Schmidt

Howard Rome

ITEM A. Mayor Billinger read the proposed mayoral appointments to the City Building Inspection Ordinances and Policies Study Group. They are as follows:

Troy Hickman	Ken Augustine	Bill Wilson
Howard Rome	Bill Auman	Bruce Goetz
Wayne Schwartz		

Commissioner Schwaller said since he was responsible for the formation of this group, he felt he should be a member of the study group. Commissioner Hickman stated all City Commissioners are invited to attend the study group.

Commissioner Hickman moved that the mayoral appointments to the City Building Inspection Ordinances and Policies Study Group be approved. The motion died for lack of a second.

Commissioner Rome offered to let Commissioner Schwaller replace him on the study group.

Commissioner Hickman moved that Commissioner Schwaller replace Commissioner Rome and the other mayoral appointments as stated previously, be appointed to the City Building Inspection Ordinances and Policies Study Group. The motion died for a lack of a second.

Commissioner Schmidt stated he didn't feel Wayne Schwartz, Director of the Fire and Inspection Department, should be a part of the study group. City Attorney John Bird would better represent the City. Commissioner Schwaller agreed with Commissioner Schmidt. The ordinances are not clear and the study group will need legal counsel.

Mayor Billinger stated Mr. Schwartz, as enforcer of these ordinances, should have some ownership in the process.

Larry Schmidt moved, Henry Schwaller IV seconded, that John Bird replace Wayne Schwartz on the study group.

Vote: Ayes: Henry Schwaller IV

Larry Schmidt

No: Wayne Billinger
Troy Hickman
Howard Rome

Troy Hickman moved, Wayne Billinger seconded, that the mayoral appointments to the City Building Inspection Ordinances and Policies Study group, be approved as originally presented, with the exception of Henry Schwaller IV replacing Howard Rome.

Vote: Ayes: Wayne Billinger
Troy Hickman
Howard Rome

No: Henry Schwaller IV
Larry Schmidt

ITEM B. Troy Hickman moved, Larry Schmidt seconded, that the lease with High Plains Street Machines for the use of the Municipal Park on July 17, 1999 be approved.

Vote: Ayes: Wayne Billinger
Troy Hickman
Henry Schwaller IV
Larry Schmidt
Howard Rome

6. TALLGRASS SPECIAL ASSESSMENTS: Mayor Billinger opened a public hearing regarding the special assessments for the grading, paving, curbing and guttering improvements, the installation of water lines, sewer lines, and storm sewer lines that serve Lots 1-13, Block E; Lots 22-34, Block D; and Lot 45, Block A, Tallgrass Addition.

Being there were no comments, Troy Hickman moved, Henry Schwaller IV seconded, that the public hearing be closed.

Vote: Ayes: Wayne Billinger
Troy Hickman
Henry Schwaller IV
Larry Schmidt

Howard Rome

Troy Hickman moved, Howard Rome seconded, that Ordinance No. 3467, being an ordinance levying assessments on lots, pieces and parcels of land in the City of Hays, Kansas, for the purpose of paying all of the costs for improvements consisting of the grading, paving, curbing and guttering, the installation of water lines, sewer lines, and storm sewer lines to serve a portion of Wheatland Ave, lots on Copper Creek Court, and lots on East 17th Street. The improvement district to be assessed for the cost of the improvements includes Lots 1 through 13, Block E; Lots 22 through 34, Block D; and Lot 45, Block A, Tallgrass Addition to Hays, Ellis County, Kansas; and further providing for the payment of said assessments and for the certification of unpaid assessments to the County Clerk of Ellis County, Kansas.

Vote: Ayes: Wayne Billinger

Troy Hickman

Henry Schwaller IV

Larry Schmidt

Howard Rome

7. CENTENNIAL TOWERS REVENUE BONDS: Commissioner Schwaller stated he would abstain from voting on this issue. He was part of the selling party to the current owners of Centennial Towers.

Troy Hickman moved, Howard Rome seconded, that Ordinance No. 3466, being an ordinance authorizing the issuance of not to exceed \$2,200,000 aggregate principal amount of multi-family housing revenue bonds, Series 1999, CT Residences, L.C. for the purpose of providing funds to acquire, purchase, construct, furnish and equip a low income housing facility; prescribing the form and authorizing execution of a trust indenture by and between the City and The Trust Company of Kansas, as trustee; prescribing the form and authorizing the execution of a lease by and between the City and CT Residences, L.C.; authorizing the execution of a bond purchase agreement by and between the City, CT Residences, L.C. and American Bank, Wichita, Kansas, as purchaser of the Series 1999 bonds; authorizing the execution of a pledge agreement by and

between the City, CT Residences, L.C. and The Trust Company of Kansas; and authorizing the execution of a subordination agreement by and between the City and The Trust Company of Kansas, be approved.

Vote: Ayes: Wayne Billinger

Troy Hickman

Larry Schmidt

Howard Rome

Abstain: Henry Schwaller IV

8. BIG CREEK/ PRAIRE ACRES SEWER DISTRICTS LITIGATION: City Attorney John Bird stated he has researched the issue of Commissioner Schmidt's possible conflict of interest regarding the Big Creek Sewer District (BCSD) and Prairie Acres litigation. His researched concluded that a Commissioner who is an employee of the Improvement Districts, being governmental subdivisions, may, in the capacity as City Commissioner, vote on and take action on issues regarding the Districts, without being in violation of K.S.A. 75-4301 et seq. Mr. Bird stated statutes that allow governing bodies to enter into executive session do not allow the consultation with any attorneys, other than their own.

Commissioner Hickman stated that even though legally there may not be a conflict of interest, he would like to request that Commissioner Schmidt consider abstaining from discussion in executive session. Commissioner Schmidt stated he would not consider that. He was elected to represent the people whenever the Commission meets, and he will represent the people who voted for him in executive session.

Troy Hickman moved, Larry Schmidt seconded, that the Governing Body adjourn to executive session for twenty minutes at 8:02 p.m. to discuss Big Creek/Prairie Acres Sewer Districts litigation, returning at 8:22 p.m. The executive session will include the City Commissioners, the City Manager, the Assistant City Manager, and the City Attorneys.

Vote: Ayes: Wayne Billinger

Troy Hickman

Henry Schwaller IV

Larry Schmidt

Howard Rome

Mayor Billinger called the meeting back to order at 8:22 p.m. The consensus of the Commission was to allow representatives from the City and the sewer districts to address the Commission regarding this litigation.

Randy Rathbun, attorney representing the two sewer districts, addressed the Commission. Mr. Rathbun stated that to get the true picture, it is necessary to look at collection costs and well as treatment costs. Residents in these areas are already paying assessments for sewer improvements and pay more than the residents of Hays to have their wastewater treated and get only about 2/3 of the service. Anytime federal funds are used for sewer treatment projects, there must be proportionality in collecting fees. The City cannot discriminate between residents who live in other areas. Recently, Region VII issued an opinion saying you have to treat fees proportional for operation, maintenance, and replacement, but huge distinctions can be made due to debt service. Prior to 1997, debt service is not applicable in this case. Over the last two years, if that is the case, this makes those statutes an absolute nullity. If you can charge disproportionately for debt service, there is no reason to have that in the statute.

Mr. Rathbun stated that if the sewer districts lose this lawsuit they will be bankrupt, there will be no money to pay a judgement. In order to protect the people living in these districts, steps have been taken to start the permitting process for the installation of lagoons.

David Traster, attorney from Foulston & Siefkin, representing the City of Hays, presented information on the City's behalf. Mr. Traster stated federal statutes were amended in 1972 that allow for provisions for proportionality with respect to three components of waste water treatment charges, operation, maintenance and replacement. To cover those three areas of cost, a system must be in place to proportionally collect from industry, residences and various classes of users. Federal statute was clear in 1972 and is clear today. The Environmental Protection Agency was consulted, city ordinances were studied

by the EPA and after receiving additional information from Region VII, a memo was issued. This memo stated the city ordinance governing sewer rates is proportional with respect to operation, maintenance and replacement.

The sewer districts entered into a contract with the City of Hays in 1983. Service has been provided as listed in the contract, bills have been sent, and the contract is enforceable. The EPA has stated that the contract between the City and the sewer districts is not illegal. This Governing Body will need to make some decisions on how it wants to deal with the arrearage and future charges.

City Attorney John Bird told the Commission that the City filed the lawsuit as a last resort. The sewer districts failed to sign two earlier agreements, which were advantageous to the districts. Mr. Bird stated that if the Commission allows the two districts to pay less than what they owe under the contract, other similar customers would request to be treated in the same manner. This would have a major financial impact. There is a liquidated amount that can be established and anything that is compromised comes out of the City of Hays taxpayer's pockets.

City Commissioner Schwaller asked the people in attendance at the meeting how many were told their rates would triple if they did not attend tonight's meeting. Commissioner Schwaller said earlier in the day, two people informed Commissioner Schwaller that they were contacted by Big Creek Sewer District individuals and told the Commission would be voting on tripling their rates at tonight's meeting, this is not true. As a Commissioner, he has no intention of bankrupting the people who live in the two districts.

Commissioner Schwaller stated he contacted the EPA and talked to Haig Farmer. Mr. Farmer indicated the sewer districts do not have a case. Mr. Rathbun commented that the EPA has changed their opinion on this several times and it depends on which day you talk to them. Commissioner Schwaller said he was told by Mr. Farmer that the City and the sewer districts should get together and resolve this issue. Commissioner Schwaller stated the City is being portrayed as being very nasty in this issue and from information he has received, the Big Creek Sewer District is just as nasty, if not more so, than the City of Hays.

Mr. Rathbun stated the EPA will not decide this issue, a local judge will. The statute's intent is to treat people fairly.

City Manager Zacharias stated that city residents also pay special assessments for sewer line improvements. The sewer rates that are being paid by Big Creek Sewer District right now are less than the rates being paid by residents in the city limits. Commissioner Schmidt stated the City is billing BCSD as one large residential customer, not individually. City Manager Zacharias stated that is why we tried to compromise in 1996 and 1997 to advocate having the districts pay the outside city limit commercial rate. The districts have chosen not to take that compromise.

City Attorney Bird stated we sued on the contract that was entered into with the sewer districts in 1983. That contract probably should have been at a commercial rate rather than a residential rate, due to the evolution of our rate structure. The City has not been unreasonable in this matter. Despite the fact that the districts are clearly in arrears, their service has not been cut off. BCSW dictated to us their own rates.

Mr. Rathbun stated that there never was an agreement that the sewer districts backed out of. Mr. Bird stated the sewer districts' attorney told him that the proposals made by the City were accepted, they just needed signatures, however, the district never signed the agreement. The City made a significant compromise to settle this matter.

Commissioner Schwaller asked Mr. Rathbun if his clients were interested in settling this out of court. Mr. Rathbun replied that from day one, they have been interested in resolving this matter. The first thing to agree on is a rate that is acceptable. The sewer districts understand the need to pay more than the residents of Hays do.

Commissioner Schwaller suggested Mr. Rathbun work together with the city attorneys to resolve this matter out of court. City Manager Zacharias stated he is willing to work out a compromise. City Attorney Bird suggested that Mr. Rathbun confer with his clients, then approach city staff with a specific proposal. The City Manager would then make a recommendation to the Commission. Mr.

Traster stated that there are a number of ways to solve this issue. It may be necessary to get a mediator involved, if the two sides cannot come to an agreement.

Commissioner Schwaller moved, Troy Hickman seconded, that the Commission recess for ten minutes, reconvening at 9:21 p.m.

Vote: Ayes: Wayne Billinger
Troy Hickman
Henry Schwaller IV
Larry Schmidt
Howard Rome

Mayor Billinger called the meeting back to order at 9:21 p.m.

9. PAY PLAN STUDY: Tom Haller of Lee and Burgess Associates of Colorado, presented the results of the City's Pay Plan Study completed by his firm. Mr. Haller detailed the methodology used to determine the steps and levels within the Plan. The findings indicate the City of Hays ranges on average were about 2.5% below the market and employee benefits were competitive. Mr. Haller recommended ranges be developed to ensure competitiveness with 1999 market levels, modify some positions to reflect the market, and allow the City Manager flexibility to make adjustments to maintain internal equity or meet City needs.

Commissioner Schmidt commented that the study did not have a comparison to local wages.

Troy Hickman moved, Howard Rome seconded, that the City Pay Plan Study completed by Lee and Burgess Associates of Colorado, be accepted.

Vote: Ayes: Wayne Billinger
Troy Hickman
Henry Schwaller IV
Larry Schmidt
Howard Rome

10. PWWSD #15 REPORT: Lavern Squier, President of PWWSD #15, presented a report concerning Smoky Hill River Supply Development. The District is seeking to develop surface and ground water resources along the

Smoky Hill River in eastern Russell County to fulfill the short to intermediate term water needs of Hays and Russell. The transport of these waters shall be through common connections of either new or existing pipelines. Infrastructure systems and improvements and the financing of the project will be implemented by PWWSD #15.

11. 8TH STREET REPAIR: The bid submitted by Allied to repair 8th Street, that was included with the ADA curb cuts bid, was rejected by the Commission. Staff was directed to solicit new bids for minimal repair to 8th Street. City Manager Zacharias stated no bids were received for this project. Staff recommends that this project be packaged with a future project.

John Youll, engineer with Bucher, Willis and Ratliff stated Allied was asked if they were interested in doing the project for the same dollar amount as their original bid. They indicated they would, but couldn't guarantee the timing, but would probably be able to do the repairs by late fall.

City Manager Zacharias suggested staff verbally contact the initial bidders to see if they are interested in doing the work. If there is no response, the City could negotiate with Allied to do the work.

Henry Schwaller IV moved, Troy Hickman seconded, that City staff contract previous bidders on the 8th Street pothole repair to solicit verbal bids. If no bids are submitted verbally, staff is to contact Allied, Inc. and negotiate a bid.

Vote: Ayes: Wayne Billinger

Troy Hickman

Henry Schwaller IV

Larry Schmidt

Howard Rome

12. SERVICE DEPARTMENT PROPOSALS: H. D. Woods of Woods & Starr Associates, stated he contacted Commercial Builders to see if they would consider accepting the Service Department Buildings Project based on two buildings, the Public Works expansion and the sludge/truck shed, with the deletion of the sign shed and the generator shed. Commercial Builders replied the four separate projects were combined in an effort to reduce administrative

costs and gain advantages afforded by economy of scale. Administrative costs for the contract remain essentially the same, even with the deletion of two buildings. Therefore, Commercial Builders submitted a revised proposal that is \$12,300 higher for the Public Works building expansion and the sludge/truck shed. Mr. Woods recommended the Commission accept Commercial Builders revised bid.

Commissioner Hickman asked if the City would have been charged these additional costs if the sign shed building bid would have been accepted. Mr. Woods stated the generator shed was an alternate to the proposal and could have been deleted, without affecting the bids on the other three buildings.

Henry Schwaller IV moved, Larry Schmidt seconded, that the contractual amount to Commercial Builders be increased in the amount of \$12,300 to expand the existing Public Works Building and construct the sludge/truck shed at the Wastewater Treatment Plant.

Vote: Ayes: Wayne Billinger

Troy Hickman

Henry Schwaller IV

Larry Schmidt

Howard Rome

13. GENERATOR BIDS SPECIFICATION: Public Works Director Elden Hammerschmidt asked the Commissioners to review the specifications for the Water Plant Generator. Mr. Hammerschmidt discussed the specifications so that when this project is rebid, it will be according to the intent of the Commission. It was recommended to state in the bid proposal that the generator must be operational, running, and accepted by December 15, 1999.

Henry Schwaller IV moved, Howard Rome seconded, that City staff solicit bids to purchase a 500KW generator at the Water Treatment Plant.

Vote: Ayes: Wayne Billinger

Troy Hickman

Henry Schwaller IV

Larry Schmidt

Howard Rome

14. VINE STREET ENHANCEMENT PROJECT APPLICATION: This application process is a result of the passage of the Comprehensive Transportation Program passed during the 1999 Kansas legislative session. The application process will outline projects to be performed throughout the next ten years. This application will be the only opportunity to submit projects for consideration. Staff is requesting Commission approval to prepare a grant application to improve Vine Street north of I-70 to the Fairground Road. Estimates indicate the cost of the project to be around \$3,645,000. Competitive grant applications usually require a 20 percent match, which in this case would be around \$730,000.

Mayor Billinger suggested several projects be submitted, since this will be the only opportunity to do so for ten years. The consensus of the Commission was to submit four ideas for traffic improvement projects to the state for funding. They are the Vine Street north of I-70 project, the improvement of the entire Vine Street corridor from south of the city to the north, the realignment of 32nd and 33rd Street at Vine Street, and a four-lane route from Hays to LaCrosse, then to Great Bend.

The Commission instructed Public Works Director Elden Hammerschmidt to find out if it would be better to submit one large, prioritized proposal or four separate proposals. Mr. Hammerschmidt is to report back to the Commission at the next meeting.

15. DIVERSION PROGRAM: Police Chief Lawrence Younger addressed the Commission regarding the City's Traffic Diversion Program. The City Prosecutor has a diversion program that he uses sparingly and uses his discretion on deciding whether or not somebody should be on diversion. This program would have definite guidelines to determine if someone would qualify for diversion.

Commissioner Schwaller stated the purpose of this diversion program is to allow good drivers to keep tickets off their record, keep their insurance rate low, and would also be a source of income for the City. This program is completely legal and many counties in Kansas use a diversion program.

Mayor Billinger stepped out of the meeting.

Henry Schwaller IV moved, Howard Rome seconded, that the City endorse the Traffic Diversion Program, with two amendments. The first amendment would increase the amount of diversion fee to a minimum of \$50 and also to include that applicants will not be eligible if they are speeding in a school zone.

Vote: Ayes: Troy Hickman
Henry Schwaller IV
Larry Schmidt
Howard Rome

Absent: Wayne Billinger

16. EXECUTIVE SESSION: Larry Schmidt moved, Henry Schwaller IV seconded, that the Governing Body adjourn to executive session at 11:50 p.m. for 25 minutes to discuss pending litigation, returning at 12:15 a.m. The executive session will include the City Commissioners, City Manager, Assistant City Manager, the City Attorneys, and the Airport Manager.

Vote: Ayes: Wayne Billinger
Troy Hickman
Henry Schwaller IV
Larry Schmidt
Howard Rome

Mayor Billinger called the meeting back to order at 12:15 a.m. He stated no action was taken.

Troy Hickman moved, Henry Schwaller IV seconded that the Commission enter into another executive session to continue discussion for an additional 30 minutes, reconvening at 12:45 a.m. This session will include the same people as were in the first session.

Vote: Ayes: Wayne Billinger
Troy Hickman
Henry Schwaller IV
Absent: Larry Schmidt
Howard Rome

Mayor Billinger called the meeting back to order at 12:45 a.m. He stated no action was taken.

17. ADD-ON ITEMS: Commissioner Schwaller request City staff investigate the possibility of adding to next year's budget a City wide clean up day. He would like to have an analysis of the cost and what user fee may need to be passed on.

Thereupon the Governing Body adjourned.

Submitted by: _____

Clerk of the Board