

Minutes

BASEHOR CITY COUNCIL

September 15, 2008

6:00 p.m.

Basehor City Hall

Official Presiding: Mayor Chris Garcia

**Members Present: Pres. Iris Dysart, Terry Hill, Roger McDowell, Keith Sifford,
Jim Washington**

Members Absent: None

**Staff Present: Carl Slaugh, Lloyd Martley, Mary Mogle, Gene Myracle
David Lutgen, Patrick Reavey**

Newspaper: Lara Hastings, *Basehor Sentinel*

WORK SESSION - 6:00 p.m.

Mayor Garcia called the work session to order at 6:07 p.m. with all members present. The city attorney was not in attendance at this time.

Discussion of agenda items

a. Bond issue for Basehor Town Center

(Patrick Reavey arrived at 6:08 p.m.)

Greg Vahrenberg, Piper Jaffray, reported the temporary notes for 155th Street Project and Basehor Boulevard have been finalized. On the day of closing proceeds would be delivered to the City on September 30th at which time the City could start paying construction costs. The total Purchase Price would be \$3,780,366.66 with an annual rate of interest at 4% and a yield rate of 2.75%. The maturity date was set at September 1, 2010. He explained how the creation of special assessments would work noting the actual cost of construction plus interest on the temporary notes and reduced by earnings (Interest paid) would be used for the General Obligation Bond issuance.

b. Consider waiving building permit fees for the USD 458 building construction projects.

At the September 4th city council meeting Council directed the city administrator to research how other cities handle building permit fees for school districts. Mr. Slaugh reported he found that smaller cities typically waive building permit fees; however, larger cities treat a school district as any other enterprise. He explained the City has waived excise tax and building permits fees in the past in some cases. He questioned if the Council chose to waive inspection fees, should the City perform inspections in conjunction with school district inspectors.

City Attorney Patrick Reavey reported there were no legal impediments with charging the school district building permit and excise tax fees.

Councilmember Washington stated he spoke with the deputy superintendent from Olathe USD #233 and their position was that they were a government entity and not liable for the excise tax; however, they made a conscious decision that they would pay all fees as any other development. After his discussion, he felt the City should take the same stance, but supported waiving excise tax.

Mayor Garcia stated the purpose of the excise tax was to improve major streets. The school would create additional traffic on roads.

President Dysart stated she was in favor of waiving the excise tax since the school district was contributing to the benefit districts to improve 155th Street and construction of Basehor Boulevard.

Councilmember Washington stated the deputy superintendent informed him the school district did pay their portion of the benefit district and building permit fees, but do not pay excise tax..

c. Consider approval of Authorization No. 3 for professional engineering services (resident observer) to Burns & McDonnell Engineering Company, Inc.

Mr. Slaugh reported normally an inspector would be under the jurisdiction of the engineering firm; however, he had a problem with the Burns & McDonnell contract since the amount was considerably higher than the other two bids. The city administrator reported Rod Geisler, KDHE, informed him the City had the authority to contract separate; however, with a project our size he did not recommend having a separate resident observer. Mr. Slaugh reported he changed the amount from \$204,700 to \$190,666 based on an email he received from engineer Jeff Keller.

Councilmember Washington asked why the matter was brought back up on the agenda. Mr. Slaugh reported the initial time was a proposal and this time the Council is taking action on the formal agreement. Councilmember Washington referenced Section 22 of the Code of Procedure which states motions to reconsider was prohibited and motions and substantive motions are ok. Mr. Reavey stated he spoke with legal counsel at League of Kansas Municipalities and a separate motion could be made and the original motion would stand on its own. Under Roberts Rules of Order, a member of the opposing side

could bring back up the original motion. Councilmember Washington stated he spoke with the Attorney General's Office as well and felt the City should adopt a charter ordinance prohibiting Council to bring motions up time after time.

Councilmember Sifford did not feel this item was not a "reconsideration". Mr. Slaugh reiterated the agenda item was to take "formal" action on the agreement.

Councilmember Hill stated he voted no the last time because he wanted to look at the other two options that were less money than the one adopted.

President Dysart read the original motion from August 4, 2008. She stated in the past when a Council voted to approve something, it would not come back up for a vote.

Mayor Garcia asked the city attorney if he had already researched Councilmember Washington's request to draft an ordinance addressing how motions were to be handled. Mr. Reavey stated it is his understanding that he does not work on items that was not directed by the Governing Body as a whole; therefore, no work had been done regarding the issue.

Councilmember Hill felt that there should be an option that would allow Council to reconsider motions if presented in a different format.

Councilmember Washington read his email that he sent to the city attorney that in essence if circumstances change, a new motion may be presented at a later date.

Councilmember Sifford said he did agree with Councilmember's Washington and Hill that an item should be able to be brought back up if there was question about the original motion. He felt the taxpayers of the community would want the City to take another vote to reduce a contract by \$60,000.

John Mitchell, Burns & McDonnell, reported the issue of construction inspector was a risk management issue. The reason for a resident inspector (RPR) would be to protect the City's interest during construction. From a risk management point of view, the design engineer would be the one to help reduce liability of a project because they would be familiar with the plans. Their proposal for the resident inspector included time for their engineers to assist the resident inspector on items they may not be familiar with. The RPR works with the engineer to make sure that change orders are limited. He explained the other bid for \$142,950 does not include engineering costs. Burns & McDonnell would not be responsible for the RPR's actions. Mr. Slaugh pointed out the fee would be \$190,666 since it already includes 80 hours for administrative assistance services. If the RPR is not under contract with Burns & McDonnell, they would not be able to certify the project to KDHE.

Patrick Reavey asked if the contract had limitations for damages for the RPR. Mr. Mitchell stated he thought it was contract value but would have to look at the contract for

make sure. Mr. Reavey stated the law would view the RPR as an independent contractor and Burns & McDonnell would not have the right to tell them how to do their job.

Councilmember Washington stated KDHE was the City's banker and since Rod Geisler with KDHE supported using Burns & McDonnell, the City should as well.

Councilmember Sifford informed Mr. Mitchell that Council would not be discussing the issue again if the price would have been closer to the other bids.

Councilmember McDowell asked the city attorney if he wanted to table the matter for additional research. Mr. Reavey said he would like to obtain a copy of Burns & McDonnell's insurance package to see what items were covered.

Five – minute break 7:10 p.m.

REGULAR MEETING – 7:15 p.m.

(Tape 1, Side B)

ROLL CALL BY MAYOR CHRIS GARCIA AND PLEDGE OF ALLEGIANCE

All members present including the city attorney.

CONSENT AGENDA

(Consent Agenda Items will be acted upon by one motion unless a Council Member requests an item be removed for discussion and separate action.)

- a. Approve Minutes
 1. August 18, 2008 Work Session & Regular Meeting
 2. September 4, 2008 Work Session & Regular Meeting (No minutes – meeting not held due to lack of Quorum)
- b. Approve Treasurer's Report & Vendor Payments
- c. Approve investment recommendations
- d. Approve calendar of events

A motion was made by Councilmember Sifford and seconded by Councilmember Hill to approve the Consent Agenda as submitted. The city administrator explained the payment to Pursell Construction went over \$68.00 due to increase in fuel costs. President Dysart felt the City would have paid less for grinding work if they would have went with Kerry and asked if Purcell estimated four hours to perform the work. The city superintendent responded yes. She also did not feel the City should pay the fuel costs since it was not listed on their original contract. She pointed out the other contractor had a larger grinder than the one that performed the work. A show of hands was taken with all members voting in favor with the exception of President Dysart. Motion carried 4-1. Dysart

CALL TO PUBLIC

Members of the public are welcome to use this time to comment about any matter relating to City business that is listed on this Agenda. The comments that are discussed under "Call to Public" may or may not be acted upon by the Council during this meeting. There is a five-minute time limit. (Please wait to be recognized by the mayor then proceed to the podium; state your name and address).

None – Public portion of the meeting closed.

SCHEDULED DISCUSSION ITEMS

None

BUSINESS

- a. Consider a resolution authorizing and directing the issuance, sale and delivery of \$3,760,000 principal amount of general obligation temporary notes, series 2008, of the city of Basehor, Kansas; providing for the levy and collection of an annual tax, if necessary, for the purpose of paying the principal of and interest on said notes as they become due; making certain covenants and agreements to provide for the payment and security thereof; and authorizing certain other documents and actions connected therewith.*

A motion was made by Councilmember Washington and seconded by Councilmember Sifford to approve the resolution authorizing and directing the issuance, sale and delivery of \$3,760,000 principal amount of general obligation temporary notes, series 2008, of the city of Basehor, Kansas; providing for the levy and collection of an annual tax, if necessary, for the purpose of paying the principal of and interest on said notes as they become due; making certain covenants and agreements to provide for the payment and security thereof; and authorizing certain other documents and actions connected therewith. A show of hands was taken with all members voting in favor. Motion passed 5-0.

- RES 2008-13. A resolution authorizing and directing the issuance, sale and delivery of \$3,760,000 principal amount of general obligation temporary notes, Series 2008, of the city of Basehor, Kansas; providing for the levy and collection of an annual tax, if necessary, for the purpose of paying the principal of and interest on said notes as they become due; making certain covenants and agreements to provide for the payment and security thereof; and authorizing certain other documents and actions connected therewith.*

- b. Consider waiving building permit fees for the USD 458 building construction projects.*

Dr. Albers, USD #458 Superintendent, requested City waive excise tax and building permit fees excluding the plan review fees since the work had already been performed.

The benefit district would pay for improvements to 155th Street, Basehor Boulevard, sewer, and water. Buses would not increase traffic since routes would not be increased and the number of students would not increase as well. The school district will contract with private inspectors required by Kansas School Board and the City would not incur additional expenses for a building inspector since he was already on the payroll. Dr. Albers reported most cities our size waive permit fees and requested Basehor do the same.

Councilmember Washington stated he understood the school district would be included in the benefit district; however, fees go with the cost of doing business. He supported charging all the fees with the exception of excise tax.

Mayor Garcia stated a developer has to build his own roads plus pay all the building permit fees and did not support waiving excise tax.

Councilmember Sifford cautioned Council that whatever they did at this point, they would set precedent for future projects. He supported the school pay for building permit fees and excise tax.

Councilmember McDowell asked if fees had been waived in the past. President Dysart stated excise tax had been waived for Fairmount Township, Holy Angels Church, First Baptist Church, and Wolf Creek Junction excise tax was paid by original developer. She went over the incentive package offered to Wolf Creek Junction by the City of Basehor.

Councilmember Hill stated the church was an expansion project. He felt it was an issue of principal.

Councilmember Washington stated Basehor Baptist had never been platted and since the church had not been platted, that triggered the excise tax charge. The City waived excise tax in lieu of the church platting.

Councilmember McDowell asked why these costs were not included in the bond issue. Dr. Albers stated projects that he had been involved in the past had not been anticipated that the fees would be so high.

A motion was made by Councilmember Sifford to require USD #458 pay all building permit fees and excise tax. Motion died for lack of second.

A motion was made by President Dysart to waive excise tax \$43,128 and charge 50% of building permit fees. Motion died for lack of second.

No action taken on request.

c. Consider approval of Authorization No. 3 for professional engineering services (resident observer) to Burns & McDonnell Engineering Company, Inc.

A motion was made by Councilmember Sifford and seconded by Councilmember Hill to table action for further legal counsel review. A show of hands was taken with all members voting in favor with the exception of Councilmember Washington. Motion passed 4-1.

Mr. Reavey noted the contract that was on the agenda did not include insurance information and that he would like to make sure the parent contract has the necessary information pertaining to the resident inspector.

d. Consider accepting the low bid for the wastewater treatment plant project, pending KDHE approval.

Mr. Slaugh reported bids for the WWTP were opened on the 8th of September with seven companies bidding. CAS Construction was low bidder at \$4,933,000. Engineers estimate was \$4,500,000. Normally if the engineer's bid is lower, the project would be rebid; however, in this particular case a city of the Third Class was not required to rebid. If the project was rebid, there would be a possibility that the scope of the project could be in jeopardy.

John Mitchell, Burns & McDonnell, stated he felt part of the increase was due to increase in construction costs. Materials increased 30 to 70% since the project started a year ago. The EIMCO bid was pre-bid in the spring and locked in the prices. If the bid was to be re-opened, he felt the costs would be even higher.

Mayor Garcia asked how that would affect the budget. Mr. Slaugh stated that was the next agenda item. The City could increase the term of the loan in order to reduce payments.

Councilmember Washington asked for information regarding CAS Construction. Mr. Mitchell stated Burns & McDonnell has worked with CAS for twenty years and on about fifteen projects. Bonding capacity was adequate and safety record was very good.

The owner of CAS Construction explained that his company had been in business twenty-four years, performed work in Kansas, Nebraska, Iowa, and Missouri, and had a worth exceeding twenty-five million dollars. He noted his company works in water and wastewater only.

A motion was made by Councilmember Washington and seconded by Councilmember Sifford to award the bid for the construction of the wastewater treatment plant expansion to CAS Construction, LLC in the amount of \$4,933,000 contingent on loan approval from KDHE. A show of hands was taken with all members voting in favor. Motion passed 5-0.

e. Consider approval of the revolving loan (KWPCRF) Agreement with KDHE for Wastewater Treatment Plant Expansion.

Mr. Slaugh asked to defer this item until October 6th and requested feedback from Council. He explained costs are higher than originally anticipated. Options were to increase years of loan or draw from reserve funds. The first payment comes due one year after the project was complete.

Loan Options (provided by KDHE)

- Increase loan amount to \$7.6 million
- Repayment term
- Options for reduction

The new loan would have an interest rate of 2.82%. The two loans combined would exceed over one million dollars.

President Dysart referred to a report provided by Burns & McDonnell that showed payments were going to be around \$407,000 and the payments shown by the city administrator was \$639,045.

Mr. Slaugh reported a user charge study and growth study was performed, KDHE performed a study as well. Combined payments from both loans would be over \$1.0 million per year from year 2010 to 2022. President Dysart was unsure how the payment escalated from original amount.

Mayor Garcia stated the City should not count on more than fifty building permits being issued per year.

Councilmember Washington suggested tabling action and bring back information showing a 20-year payback schedule along with adjusting some of the line items such as line rehabilitation and Administrative Fees. Council agreed.

A motion was made by Councilmember Washington and seconded by Councilmember Sifford to table action until the October 6th meeting. A show of hands was taken with all members voting in favor. Motion passed 5-0.

f. Consider renewal of FundBalance annual maintenance contract.

A motion was made by Councilmember Sifford and seconded by President Dysart to approve renew the annual maintenance contract in the amount of \$3,188.00. A show of hands was taken with all members voting in favor. Motion passed 5-0.

g. Consider the first phase of a street maintenance plan prepared by McAfee Henderson Solutions, Inc. for the City of Basehor.

President Dysart questioned what fund would be used for the project and when phase II would start. Mr. Slaugh stated the Consolidate Highway Fund (01-000-771) would be used for repairs and that phase II would start next year. He explained the project was set

up in two phases because of the unsurety in weather. The Elm & 155th Street was set as a priority because of the pooling water by the post office. The PCI (pavement condition index) did not include a traffic study.

President Dysart asked if Iron Creek was included in the plan. Mr. Slaugh answered no. Project engineer Dave Lutgen stated MSH Solutions inspected ten miles of streets. Based on those inspections, a database was created encompassing street, pavement and curb and gutter conditions.

A motion was made by Councilmember Sifford and seconded by Councilmember Washington to approve the 2008 Street Maintenance projects totaling \$139,900. A show of hands was taken with all members voting in favor. Motion passed 5-0.

h. Consider appointment of Park Advisory Board member.

A motion was made by Councilmember Sifford and seconded by Councilmember McDowell to approve the appointment of Patricia Massingill to the Park Advisory Board. A show of hands was taken with all members voting in favor. Motion passed 5-0.

[Mrs. Massingill will fill the vacant term of Mary Ohler.]

i. Consider purchase of remote cellular monitoring devices for lift stations.

A motion was made by Councilmember Dysart and seconded by Councilmember Sifford to approve the purchase of remote cellular monitoring devices for lift stations. A show of hands was taken with all members voting in favor. Motion passed 5-0.

The city superintendent questioned which bid Council approved.

A motion was made by Councilmember Washington and seconded by President Dysart to approve the purchase of remote cellular monitoring devices from Mission Communications in the amount of \$6,345.60 with a monthly charge for monitoring of \$25.00 as stipulated in the packet provided by the city superintendent. A show of hands was taken with all members voting in favor. Motion passed 5-0.

j. Consider appointment of (2) voting delegates for Annual League of Kansas Municipalities Conference, October 14, 2008.

A motion was made by Roger McDowell and seconded by Councilmember Washington to appoint city administrator Carl Slaugh as voting delegate. A show of hands was taken with all members voting in favor. Motion passed 5-0.

k. Consider transfer of \$244,000 from Sewer Fund to Bond & Interest Fund for State Revolving Loan payment.

A motion was made by Councilmember Sifford and seconded by President Dysart to approve the transfer of \$244,000 from the Sewer Fund to the Bond & Interest Fund for the State Revolving Loan payment. A show of hands was taken with all members voting in favor. Motion passed 5-0.

CITY ADMINISTRATOR REPORT

- Buffalo Bill bike ride – 9/28/08 which would require minimal support from the City.
- Jerry Younger, KDOT , has scheduled a follow up meeting on 9/17/08 to discuss the 150th Street intersection. KDOT has agreed to have in-house engineers do the design work.
- Library Gala – 9/18/08 at the Legends. Tickets are available at the library.
- League of Kansas Municipalities Conference will be held in Wichita, Kasnas from October 14-19
- Legislative Discussion – City Manager’s from Leavenworth County are inviting council members to attend a meeting to discuss issues that affect cities within the County. The breakfast meeting is scheduled for December 2 at Lansing City Hall (7:30 a.m.)
- KDOT Agreement on Corridor Funds have been finalized and reviewed by the city attorney. The only caveat is that there should be some language in the agreement that requires the developer to stipulate when the project would start or be completed. KDOT would like a start date by July 1, 2009. Mr. Slaugh explained KDOT did not want to be tied in on legal action for right-in/right-out access. Council discussed issues the possibility of losing the Corridor funding for Wolf Creek Junction. Councilmember Washington stated he met with Mr. McIntosh to assure him he was not opposed to his project and sent a letter to legislative representatives. Mr. Slaugh informed the Council that he provided a letter of support to Benchmark Management regarding the incentive package.

Mr. Slaugh reminded Council that he discussed the corridor management projects at the last council meeting and expressed a desire to have some type of wording in the agreement that would require action by a certain date. The council agreed in principal, but expressed concern; first that the funding would not be withdrawn; second, that the city would have an option of selecting another suitable project eligible for corridor funding, and third that the option of extending the funding deadline might be considered based on a vote of the city council.

- ZIP CODE Issue – The postal service has agreed to put to make changes in their computer system allowing residents in Basehor to use an address of Basehor with a 66012 Zip Code; however, they have refused to change the 66012 Zip Code unless

Bonner Springs agreed. It does not appear that Bonner Springs would agreed to the change.

- KCK Community College – Mr. Slaugh reported he was contacted by Kansas City Kansas Community College regarding the possibility of allowing ten student to canvas the town to see if there was support for a curbside recycling program. Council thought it was a good idea; however, they wanted to make sure there was ample publicity notifying residents.

EXECUTIVE SESSION

The city attorney explained he needed to leave early and requested an Executive Session at this time.

A motion was made by Councilmember Washington and seconded by President Dysart to convene into Executive Session for up to forty-five minutes to discuss attorney-client privileged matters and consider real estate right-of-way acquisition and invite the city administrator to participate in the session. A show of hands was taken with all members voting in favor. Motion passed 5-0. (8:42 p.m.) Note: Digital recording showed “Error Card at this time. Mr. Reavey left the session at 9:15 p.m.

The mayor called the regular meeting back to order at 9:25 p.m. announcing that no action had been taken in Executive Session.

OTHER BUSINESS

The city administrator reported he would be gone next week for ICMA Conference and two days of vacation. Pictures of Pin Oak Subdivision street repairs were provide.

MAYOR’S REPORT

Citizen Forum – 9/25/08 from 6:00 to 8:00 p.m.

COUNCIL MEMBER REPORTS

Iris Dysart

President Dysart asked if he had a good turn out at the forum. Mayor Garcia reported they were not consistent.

Jim Washington

- Councilmember Washington stated he had an issue with MHS Solutions acting as the engineer of record for the school district, Sewer District No. 3 (County) and City. He took exception and thought the Council should address possible problems and

suggested Mr. McAfee appear before them to discuss the matter. Mr. Lutgen stated Sewer Dist 3 was a county project and would be run by the county and paid by the county.

- Mr. Taylor, Prairie Garden resident, appeared at a meeting in August concerning the utility company digging up his property without notice. It was the consent of the Council that legislation be in acted requiring written notice to affected property owners. After Mr. Taylor appeared, he received a code enforcement violation that he had not obtained a permit for his sprinkler system. Councilmember Washington felt it was in retaliation for Mr. Taylor appearing at the Council meeting. Councilmember Washington requested Mr. Lee to provide him with all the information and email transmission regarding this matter.

Mayor Garcia reported it was under his direction that Mr. Lee send the letter because Mr. Taylor stated at the meeting that he did not get a permit for his sprinkler system. He felt there was a duty to look into the situation. Councilmember Hill stated his water district requires him to have his backflow sprinkler system tested every year. Councilmember Washington said Mr. Taylor was not the individual responsible for obtaining the permit since his builder applied for the permit.

EXECUTIVE SESSION – Discussions prior to acquisition of real estate: Easement and Right-of-Way acquisition for 150th Street. (Discussed in aforementioned Executive Session)

ADJOURNMENT

There being no further business to discuss, a motion was made by Councilmember Sifford and seconded by President Dysart to adjourn the meeting. A show of hands was taken with all members in favor of adjourning. Meeting adjourned at 9:40 p.m.

Submitted for Council approval with/without corrections or additions this 6th day of October, 2008.

Mayor Chris Garcia

Attest:



Mary A. Mogle, CMC, City Clerk