

Minutes

BASEHOR CITY COUNCIL

December 1, 2008

6:00 p.m.

Basehor City Hall

Official Presiding: Mayor Chris Garcia

Council Present: Pres. Iris Dysart, Terry Hill, Roger McDowell, Keith Sifford, and Jim Washington

Council Absent: none

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

Newspaper: Joshua Roberts, *Basehor Sentinel*

WORK SESSION - 6:00 p.m.

The work session was called to order at with all members present with the exception of council members Hill and McDowell. The city attorney was in attendance.

Discussion of agenda items

- a. Consider agreements and applications required for Wolf Creek Junction and Benchmark Management as part of the work for Wolf Creek Parkway and 150th Intersection project, including setting a public hearing to amend the Transportation Development District agreement.***

The city administrator reported it was necessary to revise several documents concerning the Wolf Creek Junction development. This evening the council will address an amendment to the Transportation Development District to include the 150th Street intersection improvement. *(Councilmember Hill arrived at 6:04 p.m.)* A public hearing needs to be held before changes can be made to the ordinance. The city attorney has not had an opportunity to review the agreement. The existing Economic Development Agreement allows for incremental sales tax to go toward the grocery store in the event there was a shortfall in revenue. Mr. Slaugh cautioned that the sales tax could not go to two different places. KDOT funding agreements were delivered on Wednesday and forwarded to the city attorney. Mr. Slaugh requested Council defer action until the city attorney had an opportunity to review the documents in detail. *(Councilmember McDowell arrived at 6:07 p.m.)* Councilmember Washington noted there were numerous documents that needed to be

reviewed prior to taking action and thought staff needed to “deconflict” all documents to make sure they were not in conflict with each other. Mr. McIntosh stated he could move forward on his own and then the City could “clean up the mess” at a later date. He explained the project had not changed other than modify the location of 150th Street intersection which was part of the project and took out 153rd St because that was the deal with KDOT. That money would shift from 153rd St. to 150th Street. The project would have a maximum cost of \$3.7 million as originally negotiated.

City attorney Patrick Reavey stated at the last meeting the majority of the governing body was comfortable with moving forward on the project without an analysis of Mr. McIntosh’s finances. Also Mr. McIntosh’s lawyer was not comfortable with disclosing Mr. McIntosh’s finances. At the last meeting Mr. McIntosh informed Council that if the grocery store goes “belly up” he did not have assets to cover the shortfall. Councilmember Washington stated he wanted the City’s financial advisor to go over the package and the impact on the City and its borrowing capacity and bond rating which was separate from financial disclosure. Mr. McIntosh reported his attorney, city attorney, Gilmore & Bell, and KDOT reviewed the TDD documents which cost Benchmark Management \$36,000 to have the legal documents prepared.

Councilmember Hill commented if the City did not want to move forward with this opportunity, they would end up “picking up the tab for fixing 150th Street in the future”. Councilmember Washington stated he was not opposed to the project; he just wanted to make sure all the documents were legal and everything was in order so that there were no holes in project and what the impact would be on the City’s revenues. Mr. McIntosh stated that should have been done four years ago when the development first went in.

Councilmember Washington asked the city attorney if a retail corporation could qualify for a tax rebate. Mr. Reavey stated the documents have a caveat that allowed the City to withdraw any incentive that was not allowed by Kansas law. He reported he would have the city’s bond counsel look at the documents as well. Councilmember Washington stated there was a “disconnect” between the Development Agreement and Subdivision Agreement and should be reviewed prior to moving forward.

Councilmember Hill stated the only thing the Council should address was restructuring the TDD. Councilmember McDowell noted if the city attorney and financial counsel approve the documents, the City should move forward. Councilmember Sifford said he was ready to move on once reviewed by legal counsel. President Dysart requested the TDD figures be broken down to clarify what would be paid by KDOT, TDD funds, and City participation. Mr. Slauch stated he would work with the financial advisor to prepare a breakdown. The actual funding mechanism would have to come with the KDOT loan paperwork along with an amortization schedule.

b. Consider memorandum of agreement with USD 458 concerning a temporary construction road.

The city superintendent reported the school district has requested an agreement be adopted addressing the temporary road from Parallel to the wastewater treatment plant. In the spring, the City will remove part of the road and install two gravel handicap parking spots on the school's property.

Councilmember Sifford asked about the section of the agreement that addresses removing a portion of the road. Mr. Myracle noted the north end of the project where it turns west would be removed and that would be where the two parking spots would be constructed. Mr. Slaugh noted there was some uncertainty when the road would be removed, it may be a year or two, and would be at the City's expense.

i. Consider reimbursement payment to Leavenworth County for northbound turn lane at 158th Street and Highway 24-40, project completed in 2004.

Mr. Slaugh reported he was in possession of an agreement dated June 28, 2004 between the City and Leavenworth County for fund participation in a turn lane at the intersection of County Road 2 and 24-40 Highway. During a KDOT audit, it was discovered that the project had not been closed out and Basehor owed \$79,743.98 for the completed project.

President Dysart drew attention to the last line of page 1 where it stated "The right turn lane construction will be paid out of the Pinehurst Benefit District that already had budgeted for the construction of this turn lane." and wanted to know if the staff researched to see if the City legally owed it or if Pinehurst Benefit District owed it. Mr. Slaugh stated the documents he had did not tie it to the Pinehurst Benefit District. President Dysart read from a letter from the MHS Engineering where it stated the Pinehurst Benefit District had budgeted the money for the turn lane. She referenced the minutes of June 28, 2004 stating the funds would come out of the Pinehurst Benefit District. She requested the check be extracted from the vendor list approval.

Seven minute break (6:53 p.m.)

REGULAR MEETING – 7:00 p.m.

ROLL CALL BY MAYOR CHRIS GARCIA AND PLEDGE OF ALLEGIANCE

The regular meeting was called to order at 7:00 p.m. with all members present. The city attorney was in attendance.

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. November 10, 2008 Work Session

2. November 17, 2008 Work Session & Regular Meeting
 - b. Approve Treasurer's Report & Vendor Payments
 - c. Approve investment recommendations
 - d. Approve calendar of events

A motion was made by President Dysart and seconded by Councilmember Washington to approve the Consent Agenda with exception of removing check to Leavenworth County in the amount of \$79,743.98 until resolved. A show of hands was taken with all members voting in favor with the exception of Councilmember Hill. Motion passed 4-1.

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).

Twila Heinen (3303 N. 154th Terr.) addressed item "a" on the Business agenda. She was under the impression the item would not be placed on the December 1 agenda and expressed her disappointment when she found out that Council had voted on the issue without it being listed on the published agenda. She still opposes the agreement and expressed concern that the taxpayers would end up paying. Mrs. Heinen noted Mr. McIntosh's financial status had not been scrutinized enough and thought the Council should make sure they would receive KDOT funding.

Mayor Garcia stated any council member may vote to add an agenda and if approved by the majority, the item was added to the agenda. The City was not giving Mr. McIntosh a road since the road would be a city road. The developer across the street did not provide financial statements even though the city administrator suggested all developments provide financial statements. Mrs. Heinen questioned why the City would give Mr. McIntosh 2 ½ acres of ground. Mayor Garcia did not understand her question. She noted KDOT did not see the necessity to straighten out 150th Street several years ago when they improved 24-40 Hwy and did not see why the City of Basehor should do so now. President Dysart stated Gilmore & Bell and Piper Jaffray were present at previous meetings to comment on the financial position of Basehor Town Center and were confident with their financial status. She also heard rumors that Miles Excavating was going to give a right-of-way if the City constructed turn lanes and pointed out her concerns with the project.

Ed McIntosh (15395 Briar Rd) reminded Council he started with KDOT two years ago therefore this was not a new project. In order to save time, he requested Council set a special meeting date of December 18th for the hearing because he would like to have the road open when he opened the grocery store.

Councilmember Washington stated he had a conversation with the city administrator during break and was advised that the public hearing notice would be published the week of Christmas and the property owner mailing would be done December 22nd. Mr. McIntosh stated his attorney set the schedule in accordance with the City's meeting schedule. Mr. McIntosh stated he felt a special meeting would be necessary in order to clarify any questions that may be pending.

Dennis Mertz (2910 N. 155th St.) agreed with Mr. McIntosh that time was of the essence; however, the citizens need to be reassured that the project has been done in a legal manner. He questioned who would pay KDOT back if the grocery store closes and who would be liable for the 1% TDD rate of interest (ROI). Councilmember Washington stated if the loan was made to the City, the City would be liable for repayment and TDD funds would pay off the interest. Mr. Mertz did not feel it was ethical that this item was voted on at the November 17th meeting without being listed on a published agenda.

Business Item "i". Mr. Mertz asked if the payment would come out of [24-40 Hwy] Corridor Funds. Councilmember Washington noted it should have been paid from the Pinehurst Benefit District.

Councilmember Hill noted the motion he made at the last meeting to add an agenda item was not unethical and took exception to Mr. Mertz's comment. The only thing his motion did was move the item to the December 1 agenda.

Mr. Mertz stated he thought it was a responsibility to the citizens at large to be reactive not proactive because there was nothing in the packet for citizen review. Mayor Garcia stated any item can be added and has been done numerous times in the past.

Sandra Grimes (15402 Crimson) noted the Council has scrutinized the Wolf Creek item to death in past meetings. The city attorney would review the paperwork and report back at the next meeting. She felt if Mr. Mertz and Mrs. Heinen would have been present at the work session they may have understood the project more because it helped her to listen to the earlier discussion.

Bob Moore (2636 157th Street) reported he spoke with the planning director and was informed of the proper location of 150th Street would be about 150 ft. east of its current location. Mr. McIntosh explained the road would move approximately 50 ft. east of the existing barn. Mr. Moore was not in favor of giving Mr. McIntosh the 2 ½ acres. Mr. McIntosh stated KDOT gave him the corner property in lieu of 153rd Street access. Mr. Moore felt it was a good deal for the City if the road goes through where it is proposed rather than where the planning director indicated.

Twila Heinen commented she was in favor of the grocery store and felt the City should do more scrutinizing of the financial records just in case there was a foreclosure.

Closed public portion of meeting.

SCHEDULED DISCUSSION ITEMS

a. Payment processing for Wastewater Treatment Plant and other similar projects.

Mr. Slaugh put this item on the agenda to make sure the Council was okay with processing payments for the wastewater treatment plant and other projects. He explained how the Basehor Town Center and wastewater treatment plant would work.

Councilmember Washington thought the Basehor Town Center processing was adequate and suggested formally approving change orders in excess of \$10,000 on the wastewater treatment plant project; otherwise the city administrator would have the authority to approve change orders less than \$10,000. Mr. Slaugh asked that Council formally vote if they wish to increase the amount and noted he would add the item to a future agenda.

BUSINESS

a. Consider agreements and applications required for Wolf Creek Junction and Benchmark Management as part of the work for Wolf Creek Parkway and 150th Intersection project, including setting a public hearing to amend the Transportation Development District agreement.

A motion was made by Councilmember Washington and seconded by President Dysart to table action until the December 15th meeting pending the city attorney's review with the objective that a public hearing date of January 5th be set if enacted on the 15th of December. A show of hands was taken with all members voting in favor. Motion passed 5-0.

b. Consider memorandum of agreement with USD 458 concerning a temporary construction road.

A motion was made by Councilmember Washington and seconded by Councilmember Sifford to approve the memorandum of agreement with USD #458 concerning a temporary construction road. A show of hands was taken with all members voting in favor. Motion passed 5-0.

c. Consider a resolution setting a public hearing date for the proposed annexation of the Cedar Lake Estates subdivision.

Mr. Reavey noted there was another resolution that should be addressed prior to taking action on this resolution. The resolution adopts the annexation service plan and immortalizes Council's authority to move forward on setting a public hearing.

A motion was made by Councilmember Washington and seconded by Councilmember Hill to amend the agenda placing agenda item "c-1" resolution accepting the service plan report move agenda item "c" to "c-2" to consider the resolution as written. A show of hands was taken with all members voting in favor. Motion passed 5-0.

C-1 A motion was made by Councilmember Washington and seconded by Councilmember Sifford to approve the resolution adopting the Cedar Lake Estates annexation service plan as presented. A show of hands was taken with all members voting in favor. Motion passed 5-0.

RES. 2008-15 A RESOLUTION OF THE CITY OF BASEHOR, KANSAS, APPROVING PLAN FOR EXTENSION OF SERVICES FOR ANNEXATION OF CEDAR LAKE ESTATES SUBDIVISION

C-2 A motion was made by Councilmember Sifford and seconded by Councilmember Hill to approve the resolution setting the public hearing date of February 9, 2009 to consider annexation of Cedar Lake Estates subdivision. A show of hands was taken with all members voting in favor. Motion passed 5-0.

RES. 2008-16 A RESOLUTION OF THE CITY OF BASEHOR, KANSAS REGARDING A PUBLIC HEARING TO CONSIDER ANNEXATION OF THE CEDAR LAKE ESTATES SUBDIVISION.

d. Consider resolution requiring repair or demolition of the structure at 2805 N. 155th.

Jeral Cooper (19701 178th St.) commended the governing body for all the work they do for the City of Basehor. He suggested at the present time he has no definite plans or decisions for his property at 2805 N. 155th St. He would like to wait and see what transpires along the 24-40 Corridor and the east and south of his property so he could make an intelligent decision of what to do with the property. In the meantime, he would like to use the house for storage. Possibly in the spring he may wish to build a commercial building or community center.

Mr. Reavey noted he assisted the building inspector with preparation of the resolution. The owner challenged the city's assessment that the structure was unsafe. Based on Mr. Cooper's earlier comments, the City hired a structural engineer that deemed the property as an unsafe structure. The resolution allowed Mr. Cooper 30 days to submit plans to make the structure safe and apply for building permit. At that point he would have 180 days to commence repairs or the City would proceed with removing the structure. If the City removes the structure, Mr. Cooper would have 30 days to pay the bill or the costs would be placed on Mr. Cooper's property taxes. If Mr. Cooper decided not to submit plans, he would have until December 31 to remove the structure.

Mayor Garcia reported the City has dealt with this issue for well over a year and did not feel the City should grant any further extensions since Mr. Cooper had been given ample time to comply and chose to do nothing.

Councilmember Hill asked if the building permit needed to address all the deficiencies of the building. Mr. Reavey said Mr. Cooper would have to fix all deficiencies and would be fine to insert in a separate document if Council preferred.

Mr. Cooper reported the home was 122-123 years old and could have some problems; however, he had four structural licensed engineers look at it and felt the home would stand longer than most. He commented some things have been done to the structure to weaken it; however, it was his opinion that they could be fixed. No one was living in the home and did not understand why it should be removed.

Mr. Reavey reported the engineer's report noted the structure could collapse under a heavy snow or wind.

Mayor Garcia reiterated nothing has been done to date and the City should move forward.

Councilmember Hill asked that the resolution be amended to include in Section a "...Resolutions for *improvements to make the premises safe...*".

Councilmember Sifford noted in the conclusion portion of the engineer's report it indicates the structure should be rebuilt from ground up. Mr. Reavey noted the owner has been given ample time to make the structure safe and it was the City's job to make the structure was safe for habitation.

A motion was made by Councilmember Washington and seconded by Councilmember Sifford to approve the resolution with the revisions as stated. A show of hands was taken with all members voting in favor. Motion passed 5-0.

e. Consider renewal of Cereal Malt Beverage License for Casey's General Stores

f. Consider renewal of retail liquor license for Shorty's Liquor (Kathy & Jim Breuer)

g. Consider renewal of Drinking Establishment license for Kelley's Bar & Grill (D & B Associates)

Mr. Slauch reported inspections were made by the building inspector and fire department inspector. The business owners have been notified and given two weeks to resolve issues.

A motion was made by Councilmember Washington and seconded by Councilmember Sifford to table Business Item "e", "f", and "g" to December 15th. A show of hands was taken with all members voting in favor. Motion passed 5-0.

h. Consider ordinance setting guidelines for utility easements.

Mr. Reavey reported he researched this item and it was his conclusion the City would need to have excavation into the public right-of-way, particularly with the statues concerning telecommunications. Cities have very little authority exempting utility companies from using city streets and right-of-way for use of their equipment. The only hook is public right-of-way. He prepared an ordinance which would amend ordinance 477, the city superintendent can impose a requirement for notification.

A motion was made by Councilmember Sifford and seconded by Councilmember Hill to approve the ordinance as presented. A show of hands was taken with all members voting in favor. Motion passed 5-0.

i. Consider reimbursement payment to Leavenworth County for northbound turn lane at 158th Street and Highway 24-40, project completed in 2004.

A motion was made by Councilmember Washington and seconded by Councilmember McDowell to table action until December 15th. A show of hands was taken with all members voting in favor. Motion passed 5-0.

j. Set budget hearing date for amendment of the Cedar Lakes Maintenance Fund.

Mr. Myracle explained due to the age of the grinder pumps, he fears there would be more pumps fail in the near future. The fund has been increased by \$2,000 to cover expenses through the end of the year.

President Dysart asked the age of the pumps. Mr. Myracle stated most pumps are approximately 10-12 years old.

A motion was made by Councilmember Sifford and seconded by President Dysart to approve the amendment setting the public hearing on December 15 at 7:00 p.m. A show of hands was taken with all members voting in favor. Motion passed 5-0.

k. Consider employee wage and COLA increase for 2009

Councilmember Washington reminded council of discussion on August 2007 where the Council approved a pay plan and adjust the matrix on a bi-annual basis. He would like to know what the budget was at the end of the year prior to taking action on increases. The City also absorbed a 27% medical insurance increase in July. He felt the only level the City was not competitive was within the police department and would like to see the full 5% go toward the police officer in an effort to maintain good officers. Mayor Garcia stated if that was the case, adjustments should not take place until year 2010 for all employees.

Mr. Slaugh showed a spreadsheet that looks at the minimum and maximum of jobs from other cities. He noted the spreadsheet does not take into consideration the longevity of an employee and their specific duties. He pointed out city of Springhill had a wage study performed and compared it to Basehor's current wages and positions. The city treasurer also listed the four neighboring cities, Eudora, DeSoto, Tonganoxie, and Lansing.

Councilmember Hill noted as he recalled the city set a two-year span so that staff did not spend time collecting data and comparing wages. Mr. Slaugh reported Council approved using the Kansas City COLA information. Councilmember Sifford stated he thought at budget time, the Council did address a matrix by including 5% into the budget. He did

not support granting the police department an increase without including the other employees that needed to be adjusted. Mr. Slauch explained the City could approve the 5% increase across the board and review the other positions after the first of the year.

Councilmember McDowell asked if the police department should be considered for a higher increase. Councilmember Washington asked Chief Martley how many police officers they have lost over the last year. Chief Martley noted he lost five employees last year.

Chief Martley said he agreed that 5% was fair across the board and that step increases have helped. He would like to see the police clerk increased because she was grossly underpaid for the position. Some cities are giving a \$1,500 bonus for certified officers. Council member's Washington and Hill felt that was a doable benefit.

Mayor Garcia stated he was thankful the Council has adopted a wage plan and should keep on track. He also supported a 5% increase and recommended a review of the other positions after the first of the year.

Mr. Slauch clarified that the employees receive 5% and raise police clerk to \$12.00/hr.

A motion was made by Councilmember Hill and seconded by Councilmember Sifford to approve the 2009 wage increase as presented. President Dysart stated the city administrator should be removed since he was a contract employee. A show of hands was taken with all members voting in favor with the exception of council member's Dysart and Washington. Motion passed 3-2.

CITY ADMINISTRATOR REPORT

- 12/05/08 - LCDC annual meeting at St. Mary College.
- 12/06/08 - City Holiday Appreciation Party at VFW Hall
- 12/09/08 - Legislative Breakfast at Lansing Community Center
- 12/12/08 - LCDC VIP Dinner at Carnegie Center
- Update Revenue & Expenditures – The city treasurer provided Council with a revenue and expenditure report. Overall the General Fund revenues were setting at 91%. No funds exceeded expenditures amounts. Sales tax revenue was up 3.9% from 2007 to 2008.
- Industrial Site Selection - Mr. Slauch reported he was waiting on a decision from the Port Authority and considering an engineering site analysis. Once they decide on a site, they would come back to city with a review.

MAYOR'S REPORT

Mayor Garcia wished everyone a belated Happy Thanksgiving and reminded citizens that he has an open door policy if they wish to talk to him regarding City issues. He noted he does not respond to emails but welcomes telephone calls or visits. His next Mayor's Forum would be held on December 18th.

COUNCIL MEMBER REPORTS

None

EXECUTIVE SESSION

None

ADJOURNMENT

A motion was made by Councilmember McDowell and seconded by President Dysart to adjourn the December 1, 2008 regular meeting. A show of hands was taken with all members voting in favor. Motion passed 5-0. (8:47 p.m.)

Submitted for Council approval with/without corrections or additions this 15th day of December, 2008.



Chris Garcia

Chris Garcia, Mayor

Attest:

Mary A. Mogle

Mary A. Mogle, CMC, City Clerk