

SCANNED

**Minutes**

**BASEHOR CITY COUNCIL**

**April 20, 2009**

**6:00 p.m.**

**Basehor City Hall**

2010-01-21

Official Presiding: Chris Garcia and Mayor-Elect Terry Hill

Members Present: Iris Dysart, Roger McDowell, Keith Sifford, Jim Washington  
David Breuer and Dennis Mertz, Council-Elect

Staff Members: Carl Slaugh, Mary Mogle, Lloyd Martley, Gene Myracle, Dustin Smith,  
Joe McAfee, Patrick Reavey

Newspaper: Kaitlyn Syring, *Basehor Sentinel* (regular meeting only)

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**WORK SESSION - 6:00 p.m.**

The work session was called to order by Mayor Garcia with all members present. The city attorney was in attendance.

**Discussion of agenda items**

***Scheduled Discussion Item - KDOT TRF Loan Options***

Mr. Slaugh reported the KDOT TRF loan had been approved by KDOT on April 7<sup>th</sup>. The loan was in two parts 1) Wolf Creek Parkway; and 2) 150<sup>th</sup> Street intersection improvements. Mr. Slaugh gave a history of the loan origination explaining in the short term, revenues would not be ample to pay off the loan so he researched other options. Additional sales taxes from the grocery store could be used toward the payment or place KDOT money in an escrow account to make the payments. The council also needed to address when they want the first payment to come due (8/01/2009, 2/1/2010, 8/1/2010, 2/1/2011). If the council chose to wait until 2011, the City would have to pay more interest. He also requested direction from Council as to what fund they want the first payments to come from.

President Dysart noted the Council passed an ordinance allocating sales tax to be used for Wolf Creek Parkway for a period of five years and asked how the City could promise the sales tax in two different places. Councilmember Washington said he felt the City should

table the issue until the new council members are sworn in and talk about it in Executive Session. Mr. Slaugh reported this was a discussion item only to address when payments should start.

Councilmember Hill asked council-elect David Breuer if he had an opinion when it was best to start making payments. Mr. Breuer said it should be based on the City's cash flow. Mr. Slaugh said a decision could be deferred until an amortization schedule was provided by KDOT.

Councilmember Washington asked what the shortfall would be? Mr. Slaugh said he thought it would be less than \$1 million, but could not give him an exact figure. Mr. McIntosh felt if the \$500,000 were placed in an escrow fund, the interest would pay five years of payments.

Cedar Lake Estates resident John Flower pointed out the city would gross \$210,000 per year in TDD money and thought the City would have to come up with about \$3,000 from the General Fund. He reminded Council that other businesses in Wolf Creek Junction development would also contribute to the TDD Fund. John Lovelace, financial advisor for Benchmark Management, explained if the City waited until 2011 to make the first payment there would be enough money in the escrow account to possibly make payments on the TDD loan.

***a. Benefit District petition for Southside Village, submitted by Ed McIntosh***

Mr. Slaugh reported the petitioner has yet to provide the necessary signatures for the petition and suggested the item be tabled. President Dysart referred to the March 16<sup>th</sup> minutes where it stated a lift station might be added. Mr. McAfee stated originally it was discussed about locating a lift station near the Pinehurst lift station. He thought there was a natural gravity point that would eliminate the need for a lift station but without knowing what area was going to be included in the benefit district, it was difficult to give a final answer.

Mr. Reavey said if the developer did not have at least 51% of the landowner's signatures, the benefit district could be protested. If the petitioner held more than 51% of the land, the benefit district could be forced. Mr. McAfee noted the other property owners were not annexed and could not be forced into a benefit district. Mr. Reavey stated there would be a different required percentage. Mr. McIntosh stated he thought some of the property owners would be present tonight to voice their pros and cons about the project and possible annexation. He hoped the City would move forward at this meeting. Mr. Reavey asked if Mr. McIntosh was proposing the cost be spread over the property owners. Mr. McIntosh stated interested property owners were yet to be decided. Discussion took place regarding language of the petition. President Dysart stated she wanted to see the 400 ft. of open ditch road improved since that would be required of other developers. Mr. McIntosh stated he did not have a problem with the creation of two benefit districts. Mr. McAfee noted if Mr. McIntosh wanted to do a benefit district, he should be required to have an engineering study performed before a determination could

be done. David Breuer said bid it as a benefit district as two options 1) Mr. McIntosh develop his own property; and 2) include other properties in the benefit district.

Mr. Himpel said he was interested in becoming part of the benefit district; however, he would like to see costs for both sewers and street improvements prior to making a commitment.

***b. Wolf Creek Junction Excise Tax***

Mr. Slauch reported based on recent feedback, there were several variations of the excise tax calculations for Wolf Creek Junction Phase II . The planning director explained the process he went through to calculate the amount of excise tax due. President Dysart felt the acreage should be more. Mr. Mertz provided a report that showed options and calculations. Mr. Mertz asked the city attorney whom the check would be issued to since part of the property was located in Phase I and paid by the previous owner. Mr. Reavey said it would be paid to the current property owner. Mr. McIntosh said it had been past practice to waive excise fees for land that was not developable. Councilmember Sifford concurred. Mr. McAfee noted Phase I did not have retention ponds so there was no need to waive excise taxes.

**REGULAR MEETING – 7:00 p.m.**

**ROLL CALL BY MAYOR CHRIS GARCIA AND PLEDGE OF ALLEGIANCE**

The meeting was called to order 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. April 6, 2009 Regular Meeting
  2. April 13, 2009 Volunteer Recognition
- b. Approve Treasurer's Report & Vendor Payments
- c. Approve investment recommendations
- d. Approve calendar of events
- e. Consider Proclamation proclaiming May 1, 2009 as Loyalty Day

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

**RECOGNITION OF OUTGOING MAYOR & COUNCIL MEMBERS**

Mayor-Elect Terry Hill presented plaques and memory books to outgoing Governing

Body members Roger McDowell, Keith Sifford, and Mayor Chris Garcia.

### **OATH OF OFFICE ADMINISTERED TO NEWLY ELECTED MAYOR & COUNCIL**

City Clerk Mary Mogle administered Oath of Office to newly elected council members David Breuer, Dennis Mertz, and Mayor Terry Hill.

### **APPOINTMENT OF COUNCIL MEMBER TO FILL VACANT POSITION**

Mayor Hill named the appointment of William Moyer to fill his vacant council position. Mr. Moyer introduced himself and wife Sonya then gave a brief summary of his background.

Joseph Ruskowitz (15748 Pine Ct.) spoke in favor of Mr. Moyer's appointment.

Ruth Hobbs (15715 Pine Circle, Bonner Springs) spoke in favor of Mr. Moyer's appointment.

A motion was made by Councilmember Washington and seconded by President Dysart to approve the appointment of William "Bill" Moyer to fill the vacation position of Councilmember Hill. Motion passed 4-0.

Councilmember Moyer received Oath of Office and took his seat at the bench.

### **ELECTION OF COUNCIL PRESIDENT**

A motion was made by Councilmember Washington to nominate President Dysart to a second term as council president. President Dysart respectfully declined.

A motion was made by President Dysart and seconded by Councilmember Mertz to nominate Councilmember Washington as council president. Motion passed 5-0.

### **RECEPTION**

A reception was held for outgoing members.

The regular meeting was called back to order by Mayor Hill.

A motion was made by President Washington and seconded by Councilmember Dysart to go into Executive Session not to exceed twenty-minutes to discuss attorney-client privileged matter and include only the governing body and city attorney. A show of hands was taken with all members voting in favor. Motion passed 5-0. (7:45 p.m.)

At 8:08 p.m. the regular meeting was called to order.

**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).

No public comments. The public portion of the meeting was closed.

**SCHEDULED DISCUSSION ITEMS****a. KDOT TRF Loan Options**

Mr. Slaugh said he thought he had enough feedback unless Council wished to provide additional comments. If not, he would place it on the next available agenda.

President Washington stated based on the cash flow delay the payments as long as possible and extend to August 2011 if possible. Mr. Slaugh stated he would have KDOT prepare an amortization scheduled for Council review.

**BUSINESS****a. *Benefit district petition for Southside Village submitted by Ed McIntosh***

A motion was made by President Washington and seconded by Councilmember Dysart to table action until Mr. McIntosh provided engineering plans and submitted necessary signatures for the benefit district. Councilmember Breuer asked if there was any reason not to proceed with Mr. McIntosh's portion of the development. Mr. Slaugh stated the City could not take formal action until all signatures of the interested property owners were provided. Mr. McAfee stated there would not be any reason why engineering fees paid out of pocket by Mr. McIntosh could not be included the benefit district fees.

Mr. McIntosh said he was not going to be out money for engineering fees until Council authorized the fees to be reimbursed to him from benefit district funds. Mr. Reavey stated the City create a benefit district with just Mr. McIntosh's property. Mr. McIntosh stated it would be more beneficial to the city and him if more property owners were included. Mr. Breuer said it would be beneficial to the developer to spread the cost over more properties. Mr. McAfee pointed out the only way improvements to Briar Rd would happen was if the City shared in the cost and did not feel that would happen in the near future.

Councilmember Breuer called for the vote. Discussion continued. Mr. McAfee commented that Mr. McIntosh was merely requesting council formally show their support for the creation of a benefit district. President Washington stated it has been the

intent of the Council to follow the guidelines set out in the Comprehensive Plan and this proposal met those guidelines. Motion passed 5-0.

***b. Wolf Creek Junction Excise Tax***

Mr. Smith suggested deferring action on collection of unpaid excise tax in the amount of \$15,446 until Mr. McIntosh replats the remainder of his property. Councilmember Mertz said he would prefer to handle each item as individual properties. Councilmember Breuer pointed out if the alignment changes; that would cause more property to be exempt from the excise tax. Councilmember Dysart felt the excise tax should be paid on the current property and then address the property splits at the time they occur. Mr. Reavey stated in the event a motion was made to not collect the excise tax on the two detention basins but deed them to the city; they should consider granting the landowner an appeal. He also suggested amending the ordinance to not charge excise tax on land deeded to the City. The only reason there was a difference between commercial and residential excise tax payment, it gave the commercial developer an opportunity to pass the cost onto the next property owner. He noted it made sense to not charge excise tax on detention ponds. Mr. Slauch noted the excise tax amount was calculated using the same rate; however, property subject to the rate varied. Commercial was collected at the time of platting and residential was collected when a building permit was issued.

Mr. Smith reported Prairie Lake Estates received an exemption for their detention pond. Mr. Reavey said if council approved the exemption as requested, a second motion should be made to direct staff to change the ordinance in order to gain consistency. Mr. Smith explained how the excise tax was calculated within a subdivision.

Council discussed the excise tax figures and what figures should be used. Mr. Smith said according to his calculations if the Council chose to exempt Tract A and B, Mr. McIntosh would owe around \$504.74 instead of the proposed \$15,446.46.

Councilmember Moyer said he heard earlier that the City had not been consistent in the past and asked if the City was going to be consistent now with this developer. Councilmember Dysart stated she felt the City had been consistent in the past. Mayor Hill stated if the Council had the intent to revise the ordinance in the future, then Mr. McIntosh should receive the waiver. If not, then collect the full amount. Councilmember Breuer pointed out federal regulations have changed since the ordinance was passed which required developers to purchase more ground that could not be used and thought the ordinance would have to be revisited anyway. Councilmember Dysart stated Basehor Plaza asked for an exemption and was denied. Councilmember Breuer stated Phase I did not have a detention pond. She disagreed.

Councilmember Mertz stated the property was under two different owners and should not be combined. Mr. McIntosh said he asked for a waiver for the Cole's property and Council granted the exemption and felt he should be granted an exemption as well. Councilmember Dysart felt the City would be changing the ordinance just to

accommodate a developer and continued to support her theory that Mr. McIntosh still owed \$7,000 more than originally billed.

Mayor Hill called for a motion. No motion made; therefore, no action taken at this time.

Mr. Slaugh suggested having the city engineer review how the excise tax was calculated and report at the next meeting and come to a consensus on the computations. Councilmember Moyer commented that he would like to see what the figure would be if the City exempted the detention ponds. The city engineer was directed to review the calculations with and without detention ponds. Mr. McAfee noted the new alignment of the 150<sup>th</sup> Street intersection [triangle] could not be included in the calculations at this time.

Joe Raevie Zarda (*amended 5/04/09*), Blacktop Paving, stated he could not go to work without signed contracts and expressed concerns that the opening of the grocery store would be held up because the road was not ready.

A motion was made by President Washington and seconded by Councilmember Breuer to add item “f” to the Business [agenda] to consider ratifying the action of staff in response to the motion of March 6<sup>th</sup>. Motion passed 5-0.

Mr. McAfee stated once the alignment was definite, it would be necessary to replat Phase II. Excise tax on the last 400 ft. of the road would be revisited in the future. He thought he could have calculations for Phase II and the triangle in about sixty days.

The original staff directive was rescinded and staff was directed to provide calculations once Phase II was replated.

***c. Consider authorization for VFW to perform WWII re-enactment on May 16, proclaimed as Loyalty Day.***

A motion was made by President Washington and seconded by Councilmember Moyer to approve the VFW to discharge of fireworks for the purpose of performing a WWII re-enactment on May 16<sup>th</sup> as long as safety precautions are taken. Motion passed 5-0.

***d. Consider Temporary Conditional Use Permit for operation of a circus, April 27, planned location at 155<sup>th</sup> and Wolf Creek Parkway, north of Casey's.***

A motion was made by Councilmember Mertz and seconded by President Dysart to approve a temporary Conditional Use Permit for operation – approve on condition that the circus has a current business license and sales tax number in the appropriate slot and authorize a Condition Use Permit. Washington seconded. Mr. McIntosh asked to waive the business license. No action to waive. 5-0

***e. Consider recommendations from the Planning Commission to amend Chapter IV, Article 8 of the Basehor Municipal Code and adopt the proposed Sign Regulations.***

***(Review and return to Planning Commission for revisions recommended by city attorney.)***

Mr. Smith asked that this item be sent back to the Planning Commission based on the city attorney's recommendation.

A motion was made by President Washington and seconded by Councilmember Mertz to return this item back to the Planning Commission for review based on attorney's recommendation. Motion passed 6-0. (Note: Mayor casts a vote regarding planning issues.)

**f. Ratify Staff's Actions Regarding the Wolf Creek Parkway bid.**

Mayor Hill explained there was staff confusion regarding the letting of bids for Wolf Creek Parkway and was not ready to bid. Mr. ~~Raevie Zarda~~ *(amended 5/4/09)* Blacktop Paving said he bid on an approved set of plans and bid per unit. Mayor Hill asked if his bid was an assumption that if road changed, it would be necessary to submit a change order. Mr. ~~Raevie Zarda~~ *(amended 5/4/09)* said it would be matter of submitting a change order with council approval. Mayor Hill stated it may be to the city's advantage that it was bid at a per unit price. Mr. McAfee stated MHS was not aware of the staff and council's issues. When MHS looked at the two differences of what the engineer had, it was extremely marginal and felt they had all the line items covered and the line items would be minimal. It was his understanding that Council approved Wolf Creek Parkway bid to move forward and not wait on KDOT approval. Mayor Hill stated when Councilmember Washington made his motion his intent was to wait for KDOT approval. The Council was operating under the assumption that the bidder knew that the alignment was going to change. Mr. ~~Raevie Zarda~~ *(amended 5/4/09)* stated there was no confusion on his part and felt it was minor details for his company to have a change order.

Mr. McAfee stated all bidders were given the exact same information and he was comfortable with the process.

A motion was made by Councilmember Breuer and seconded by Councilmember Mertz to ratify staff's action and confirm the bid. Motion passed 3-2 with Washington and Dysart casting a no vote.

Mr. McAfee asked if funding was in place and when could they move forward. Mr. Slauch stated the motion approved on the 6<sup>th</sup> of April was to award the bid based on approval by KDOT. KDOT approved the loan on April 7<sup>th</sup>. Council has yet to approve the loan and anticipated bringing it to Council for final approval on May 4<sup>th</sup>. Mr. Reavey stated he was comfortable with moving forward since KDOT has approved the loan and felt it would meet the Cash Basis law. Mr. Slauch was information by the KDOT loan officer, Evelyn Fitzpatrick, that the City would be reimbursed for any expenses paid out on the project prior to finalizing the loan. Blacktop Paving provided his contract and maintenance bonds to the city attorney for review.

Councilmember Breuer asked when the money would be in the bank and asked when Mr. ~~Raevie~~ *Zarda (amended 5/04/09)* when Blacktop Paving would start work. Mr. ~~Raevie~~ *Zarda (amended 5/04/09)* stated he did not think a pay estimate would be submitted until May 15<sup>th</sup> and estimated it would run around \$50,000 or less.

## **CITY ADMINISTRATOR REPORT**

- a. *Governing Body Institute*** – May 8 & 9, Capitol Plaza Hotel, Topeka
- b. *2010 Budget Review Schedule*** – anticipate figures not to increase from 2009. There would be several opportunities to review the 2010 budget and asked for direction from staff as to what they would like to have included in the budget documents. Departments heads have already provided budgets to city treasurer.
- e. *Update on projects***
  - \*150<sup>th</sup> Street – Mar 31 Final review of plans by staff
  - Apr 6 City Council approval to let for bid
  - Apr 21 Prebid conference
  - Apr 28 Bid opening
  - May 4 City Council approve bids
  - Jun 1 Notice to Proceed
  - 130 calendar day deadline
- f.** Industrial property- requested a fifteen-minute Executive Session to discuss acquisition of real estate.
- g.** Summer intern – deferred to May 4 meeting.

A motion was made by President Washington and seconded by Councilmember Mertz to convene into Executive Session for twenty-five minutes for the purpose of discussing land acquisition and non-elected personnel to include the city attorney. A show of hands was taken with all members voting in favor. Motion passed 5-0. (9:35 p.m.)

At 9:50 p.m President Washington moved to convene back into regular session. The motion was seconded by Councilmember Moyer. Motion passed 5-0.

A motion was made by President Washington and seconded by Councilmember Dysart to add to the agenda Business item “g” to consider authorization to extend a certain amount of money to participate with Leavenworth County Port Authority for engineering study on the Miles Industrial property. Motion passed 5-0.

- g. *Consider authorization to extend a certain amount of money to participate with Leavenworth County Port Authority for an engineering study on the Miles industrial property.***

A motion was made by President Washington and seconded by Councilmember Dysart to authorize the payment of \$11,449 to participate with LCDC and the Port Authority to fund 50% of the study of the Miles Industrial property. Motion passed 5-0.

Mr. Slaugh reported it would be necessary to adopt an interlocal agreement and would present at a future meeting.

## **MAYOR'S REPORT**

Mayor Hill stated he would like to set a time for a mini strategic planning session with new council and discussion of meeting items.

## **COUNCIL MEMBER REPORTS**

### **David Breuer**

Councilmember Breuer stated there were some issues coming up with Glenwood Estates and the Middle school and would like to see those addressed as soon as possible. Mr. Slaugh stated there have been meetings with the property owners and the County was working on the loan application [with KDHE].

Mr. Breuer would also like to have a conversation to discuss ways to stimulate building permit sales. Mr. Slaugh suggested using the work session on May 11<sup>th</sup> for the strategic planning session requested by Mayor Hill as well and include this topic.

### **Jim Washington**

President Washington congratulated and welcomed the new mayor and council members.

### **Dennis Mertz**

*Update on reimbursement for purchase of the triangle [150<sup>th</sup> & Wolf Creek Parkway].* – Mr. Slaugh stated KDOT would not reimburse the money until they approved the alignment and right-of-way deeded to the city.

*Update on discussion with Basehor Athletic Association* - Mr. Slaugh reported he thought the Basehor Athletic Association (BAA) would like the City to take over and let them run it. He noted the BAA has a large debt and currently was only paying interest on their loan and nothing toward the principal. The park was also in need of maintenance; however, the BAA had been unable to do so due to their financial situation. A report would be compiled and presented at a budget work session.

## **EXECUTIVE SESSION (none)**

## **ADJOURNMENT**

There being no further discussion, a motion was made by Councilmember Dysart and seconded by Councilmember Moyer to adjourn the April 20<sup>th</sup> regular meeting. Motion passed 5-0.

Submitted for Council approval with or without corrections or additions this 4<sup>th</sup> day of May, 2009.



  
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Mayor Terry Hill

Attest:

  
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Mary A. Mogle, CMC, City Clerk