

Minutes

BASEHOR CITY COUNCIL

February 2, 2009

6:00 p.m.

Basehor City Hall

Official Presiding: Mayor Chris Garcia

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

Members Absent:

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

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

WORK SESSION - 6:00 p.m.

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

Discussion of agenda items.

- a. Consider an ordinance implementing previously approved changes in the TDD agreement for Wolf Creek Junction.***

City Administrator Carl Slaugh reported the proposed ordinance was what Council approved at a previous meeting. He explained the page numbers within the document correlated with the various exhibits and were not sequential within the document. *(Councilmember McDowell arrived 6:09 p.m.)*

Councilmember Washington stated he did not think the Council took action at a previous meeting following the public hearing. Mr. Slaugh noted this item was Business Item "a" of meeting January 5, 2009. Councilmember Washington thought legislation only extended the boundaries of the District. Mr. Slaugh agreed. The city attorney stated it was his understanding the Council approved the Development Agreement and the next step was to adopt the ordinance as presented. Council discussed a time line of events that occurred regarding this matter. Mr. Reavey stated citizen Dennis Mertz raised a question

to the city administrator regarding the amendment and the second question was funding for 150th Street alignment. Councilmember Sifford asked if there was an issue with adopting the ordinance as presented. Mr. Reavey said the developer stated improvements to 155th Street would be made if there were enough funds remaining in the Transportation Development District (TDD). Councilmember Washington asked if the Council approved the language by default with the January 5, 2009 vote. Mr. Reavey stated it was clear that the vote was approving the First Amendment which was combining the two projects. President Dysart asked why the exhibits have different ownership signatures, Benchmark Enterprise and Benchmark Management. She felt all owners should sign both documents.

McIntosh explained how the companies were structured and why certain documents had different signatures. Attorney Shannon Marcano, White Goss Law Firm, explained the Development Agreement was signed by Benchmark Management Services, Inc. which is the parent company of Basehor Properties, LLC and Benchmark Management LLC. Councilmember Washington was concerned that the City was dealing with three separate enterprises and would like the LLC, corporation, and individuals to sign the agreements.

Mrs. Marcano reported the owners of the property have a right to create a TDD and bring in owners in the TDD in accordance with State statutes. Mr. Reavey asked Mr. McIntosh if there was an issue to have all three signatures. Mr. McIntosh said it was set up to reduce the liability to the different properties included in the District; however, if one of the companies fail, the City could sue each one of the companies.

b. Notice of award to MKEC for design of Wolf Creek Junction street projects and notice to proceed.

Mr. Slauch reported the selection of MKEC followed a discussion with KDOT. MKEC was hired by Benchmark Management prior to the agreement and agreed to do the design work for \$125,000 which was agreed to by the City in KDOT Agreement 224-08. He explained that a city of the Third Class was not required to go out for bid; however, the City was required by KDOT to approve notice of award and notice to proceed.

President Dysart asked if the money was available at this time. Mr. Slauch stated KDOT informed him the agreement was signed by the Secretary of Transportation and advised him that the City could move forward with approving a notice of award and notice to proceed. President Dysart asked if the city engineer would have any input. Mr. Slauch said it would be handled like any other project where the city engineer would review the municipal portion. Mr. McAfee stated MHS would be doing inspections on the project within the city boundaries and KDOT would perform review and inspection on the KDOT area. Mr. McAfee said KDOT was the front runner and reviewed the documents and felt they would protect the City as well.

Mr. Reavey asked the city administrator if it was his understanding that conditioning the notice of award on the agreement should be conditional on approval by KDOT.

Mr. Slaugh explained there were three agreements with KDOT dealing with Corridor management fund, 1) Agreement 224-08, 150th Street improvements from Parallel to Craig St (signed by KDOT); 2) Agreement 331-08, 150th Street improvements (signed by KDOT), and 3) Agreement 225-08, Wolf Creek Parkway. Agreement 225-08, Wolf Creek Parkway agreement (\$500,000) has not been signed by the Secretary of Transportation because there was some concern regarding the process. KDOT informed the city administrator in order for KDOT to provide funding; the City had to pay the bill and then request reimbursement and could not be placed in an escrow fund. President Dysart pointed out KDOT would not assign an agreement and/or project number until the agreement was approved. Mr. Slaugh reported KDOT suggested including in the motion that funding was contingent on review and approval by KDOT. Mr. Slaugh noted he would still need to meet with KDOT to work out the details.

d. Consider approval of expenditure for purchase of triangle piece of property north of 150th Street and 24-40 Highway.

KDOT informed Mr. Slaugh they have approved the purchase of the property in the amount of \$122,000 plus closing cost and taxes which came in under the estimated costs. Mr. Slaugh was informed by KDOT to move forward with the purchase and that Agreements 225-08 and 331-08 were approved and signed by KDOT's legal counsel today [Feb, 02, 2009].

Councilmember Washington asked who was purchasing the property and read Section 6 of the agreement regarding acquisition of easements and right of way, etc. Mr. McIntosh said the agreement with the city was that they would buy the property and dedicate the right of way back to the City.

Councilmember Washington requested this item be discussed in executive session.

Mr. Slaugh said the purchase would most likely be handled by two different loans, one for Wolf Creek Parkway and a second agreement for the improvements to 150th Street intersection.

i. Consider priority street projects and approval to acquire easements and right of way for projects that are close to being shovel ready.

Mr. Slaugh reported some of the money from the Federal Economic Stimulus Package would go to MARC and KDOT. He felt the 155th Street & Parallel project would be the only one that would qualify for the MARC funding. He did not feel the city would receive funding since the project scored 24 and funded projects scored 80 or higher. The other city projects submitted would most likely not qualify for funding.

President Dysart asked if the application was submitted last year for the TCSP program in February 2008. Mr. Slaugh stated LCDC would be submitting the application on behalf of the city when they go to Washington later this month. Mr. Slaugh explained the

project has been submitted to MARC and TCSP funding; however, it was one of those “pork barrel” projects.

Mr. McAfee explained last February he met with the city administrator, city superintendent and president Dysart met to go over the project. MHS provided a schematic site map but would still need to perform design work and traffic study. Mr. Slaugh reported KDOT would provide 100% funding for traffic studies.

Councilmember Washington suggested the city should move forward with design and easement acquisition. He asked if it was conceivable to have the 150th Street project ready and felt this would be the kind of infrastructure the City should be including in the Economic Stimulus Package. Mr. Slaugh stated the project would most likely not meet MARC requirements for funding.

Five-minute break – 7:02 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 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. January 22, 2009 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 Hill to approve the Consent Agenda as printed. Councilmember Washington asked the city clerk if his corrections had been written into the minutes. City Clerk Mary Mogle reported she provided Council a copy of Councilmember Washington’s request to have the minutes amended and should include the amendments in the motion. President Dysart amended her motion to include the amendments as submitted. A show of hands was taken with all members voting in favor. Motion passed 5-0.

Business Item D. Paragraph 2 (amended):

~~Councilmember Washington (arrived at 8:01 p.m.) asked if Mr. Mertz still needed a CUP since it appears that his business conforms with the CP1 district zoning classification.~~

Discussion amended 2/02/09 – Councilmember Washington asked that his comments be restated as follows:

“I hold the position that the JED usage of the building in question is a conforming use. Designating it a non-conforming use is over-reading the ordinance.”

Business Item “e”. Paragraph 2 (amended):

A motion was made by Councilmember Washington and seconded by President Dysart to table ~~until they could receive a recommendation from the city attorney and that the recommendation as to what, if any, legislation was necessary be the joint recommendation of the city attorney and the city engineer (amended 2/02/09).~~ A show of hands was taken with all members voting in favor. Motion passed 5-0.

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).

Dennis Mertz (2910 155th St.) agreed that all members associated with the TDD should sign an amendment that would personally guarantee them to the TDD and asked who would provide a performance bond. Mr. McAfee stated when a contractor is selected the contractor would be required to post performance and statutory bonds.

Kevin Barkley (15395 Briar Rd) asked if all developers had been required to disclose all net worth and asked why Affinity Development did not have to do the same.

President Dysart noted Gillmore & Bell and Piper Jaffray appeared at a couple of meetings and supported the Affinity Development project.

Closed public portion of the meeting.

SCHEDULED DISCUSSION ITEMS

None

BUSINESS

- a. Consider an ordinance implementing previously approved changes in the TDD agreement for Wolf Creek Junction.***

A motion was made by Councilmember Washington and seconded by President Dysart to convene into Executive Session for up to fifteen minutes to discuss land acquisition and attorney-client privileged matter. A show of hands was taken with members Washington,

Dysart, and McDowell voting in favor with member's Sifford and Hill voting no. Motion passed 3-2. (7:24 p.m.)

A motion was made by Councilmember Sifford and seconded by Councilmember McDowell to approve an ordinance implementing previously approved changes in the TDD agreement for Wolf Creek Junction as submitted. A show of hands was taken with members Sifford, McDowell, and Hill voting in favor. President Dysart and Councilmember Washington cast no votes. Motion passed 3-2.

b. Notice of award to MKEC for design of Wolf Creek Junction street projects and notice to proceed.

A motion was made by Councilmember Sifford and seconded by Councilmember McDowell to approve the Notice of Award and Notice to Proceed to MKEC for design of Wolf Creek Junction street projects [in the amount of \$125,000]. A show of hands was taken with all members voting in favor with the exception of President Dysart. Motion passed 4-1.

c. Consider the engineering and construction management procedures to be followed by the City and Benchmark Management as part of the Wolf Creek Junction street projects.

A motion was made by Councilmember Hill and seconded by Councilmember Sifford to defer action until the issue was resolved. A show of hands was taken with all members voting in favor. Motion passed 5-0.

d. Consider approval of expenditure for purchase of triangle piece of property north of 150th Street and 24-40 Highway.

A motion was made by Councilmember Sifford and seconded by Councilmember Hill to approve the expenditure [\$135,837.38] for purchase of triangle piece of property north of 150th Street and 24-40 Highway. A show of hands was taken with members Sifford, Hill, and McDowell voting in favor. President Dysart and Councilmember Washington cast no votes. Motion passed 3-2.

e. Consider approval of pay request #3 from CAS Construction LLC for the Wastewater Treatment Plant expansion in the amount of \$323,721.59.

A motion was made by Councilmember Washington and seconded by President Dysart to approve pay request #3 from CAS Construction LLC for the Wastewater Treatment Plant expansion in the amount of \$323,721.59. Discussion. Jeff Keller, Burns & McDonnell, updated Council on the wastewater treatment plant expansion. The large basin and two small basins were currently being constructed along with piping to connect the basins. He reported most of the excavation had been completed and commended the contractor for keeping the job site clean and safety awareness.

Mr. Keller said the contractor was claiming a six day delay due to inclement weather; however, Burns & McDonnell felt that only three days were justified and was in the process of negotiating with the contractor. The contractor and city superintendent have proposed some design modifications; which would result in a significant cost savings to the city. Change orders are pending with KDHE and should show up on the next pay request. Citizen David Breuer asked Mr. Keller to explain what changed that would cause a deduction change order. Mr. Keller explained it may not be necessary to put a chemical storage tank at this time; however, a basin would be built now to handle it in the future. City superintendent Gene Myracle explained with modifications to the lift station at 163rd street, it would not be necessary to install chemical feed because it may not be a requirement for a 20 year build out. The pump station basket was having modifications to utilize the existing wet well and winches. Mr. Breuer asked who brought up the idea of these modifications. Mr. Keller reported the contractor brought up the idea of changing the pump station basket and the city superintendent suggested eliminating the chemical feed. Council and audience commended the city superintendent for his good work.

A show of hands was taken with all members voting in favor. Motion passed 5-0.

f. Consider payment to Leavenworth County Development Corporation for 2009 funding.

A motion was made by Councilmember Washington and seconded by Councilmember McDowell to approve payment to Leavenworth County Development Corporation in the amount of \$6,924 for 2009 funding. A show of hands was taken with all members voting in favor. Motion passed 5-0.

g. Consider approval of a project to add a sidewalk around the north side of City Hall and make improvements to the rear entrance.

Mr. Myracle reported the request was based on concerns from staff and customer's accessing city hall. The plan was to remove railing to the north and construct two steps leading to the sidewalk that would still allow for handicap access by using the existing sidewalk.

A motion was made by Councilmember Sifford and seconded by Councilmember McDowell to approve an additional sidewalk around the north side of City Hall and make improvements to the rear entrance as presented [\$3,976.00]. A show of hands was taken with all members voting in favor. Motion passed 5-0.

h. Consider approval of additional engineering fees to modify the design of the 150th Street project.

Mr. Slaugh reported the need for additional engineering services were based on changes to accommodate requests from affected property owners. A property located at 150th & Parallel on the east side has requested the City extend the drainage pipe further to the east

since he receive a significant amount of drainage onto his property. Design changes and surveying would cost \$3,520.

Another property has requested a second retaining wall be constructed (Items #1 & #3) to save two trees; however, Westar informed him it may be necessary to remove the

Possible design changes are as follows:

(extracted from Agenda item Information Form)

Item #1 – Request at station 30-50 to change type and location of an inlet to reduce potential of flooding the basement...negligible cost.

Item #2 – A change was considered at station 39-00 to add an additional retaining wall to possibly avoid the removal of two 18-inch diameter Pin Oak trees. The additional cost of the 85 LF wall is estimated at \$10,200, but does not ensure the life of the trees since the work would encroach on the root structure. The trees are too close to the edge of the road and approximately six feet above the proposed grade. This additional work is not recommended due to the additional cost and since the survival of the trees would be marginal.

Item #3 – Extend a storm drainage tube on the west edge of the property and most likely create a large ditch across the yard that is presently in grass. The construction cost of the additional work is \$9,000 plus an additional fee for surveying and design modifications.

President Dysart asked if it was necessary to install a 24” pipe on the George Smith property. Mr. McAfee said it would provide Mr. Smith with a better grade. She went over the project to date and inquired as to what fund would be used. Mr. Slaugh stated the money would be taken from the Consolidated Highway Fund. President Dysart asked if staff was keeping track of the excise tax fund. Mr. Slaugh stated the excise tax fund was within the Consolidated Hwy Fund and the only excise tax that would not be included would be the Falcon Lakes line item.

Mr. Slaugh projected bidding the project within 3-4 weeks and start construction around 1st of April if all easements have been acquired. President Dysart asked why 150th Street would not be considered a collector street. Mr. Smith stated the Comprehensive Plan considered it a residential street.

A motion was made by Councilmember Sifford and seconded by Councilmember Washington to approve additional engineering fees to modify the design of the 150th Street project not to exceed \$3,520. A show of hands was taken with all members voting in favor. Motion passed 5-0.

- i. Consider priority street projects and approval to acquire easements and right of way for projects that are close to being shovel ready.*

Mr. Slaugh reported this item was an effort to prepare one project that would be ready. Under economic recovery package he felt the 155th & Parallel intersection improvements would meet MARC funding requirements. The other project more likely to get funding would be approximately 2,000 ft. on 150 Street from Lakeside Drive to Craig Street which would cost \$34,150 in engineering fees. If approved, the city could move forward on easement acquisition.

Councilmember Washington asked if both projects would be eligible for future Corridor Funding. Mr. Slaugh stated at this time KDOT was not committing funding.

A motion was made by Councilmember Washington and seconded by Councilmember Hill to accept letter of agreement for land survey and engineering services from 155th Street and Parallel improvements in an amount not to exceed \$30,000. Motion passed 5-0.

CITY ADMINISTRATOR REPORT

- a. Annexation issues
 - b. Computer system audit
 - c. City council meeting date for the week of Feb. 16
- Cedar Lake Annexation public hearing will be held on February 9, 200 at 6:00 p.m. Two issues to be addressed were “not change solid waste collection provider” and “not change addresses”. Currently there was not a good resolution between the city and the county on an address system. He recommended not dealing with this matter at the annexation public hearing and take action at the next meeting.
 - President Dysart stated the city received a good rate from Deffenbaugh Disposal and felt the contract needed to be reviewed. Mr. Slaugh reported the contract allows the council to exclude certain areas. Councilmember Washington said the city currently had an ordinance requiring residents obtain a private haulers permit if they choose to haul their own trash and thought the City had to make changes to the current ordinance allowing for exceptions.
 - At the public hearing, the city would present a brief of the 16 items required by state statute. Currently there are amendments to annexation statutes being discussed in the House of Representatives this week; however, any changes would not affect the city annexing Cedar Lake Estates. Councilmember Washington asked if Mr. McAfee was going to make the presentation. Mr. McAfee stated he would be making the presentation.
 - Computer system audit was performed by Integrated System that provided information on the city’s vulnerabilities. He will be placing an action item on the agenda in March.

- Due to a holiday, the next meeting would be held on Thursday, Feb 19. There was a request to change the meeting to another day. Council agreed to move the meeting to Tuesday, Feb 17.
- Strategic Planning Session scheduled for Saturday, February, Feb 28th. Public is invited.

MAYOR'S REPORT

None

COUNCIL MEMBER REPORTS

None

EXECUTIVE SESSION

None

ADJOURNMENT

There being no further business to discuss, a motion was made by Councilmember Sifford and seconded by Councilmember Hill. A show of hands was taken with all members voting in favor. Motion passed 5-0. Meeting adjourned at 8:14 p.m.

Submitted for Council approval with/without corrections or additions this 17th day of February, 2009.



Mayor Chris Garcia



Attest:



Mary A. Mogle, City Clerk