

## Minutes

### BASEHOR CITY COUNCIL MEETING

March 5, 2007

6:00 p.m.

Basehor City Hall

Official Presiding: Mayor Chris Garcia

Members Present: Pres. John Bonee, Iris Dysart, Bill Hooker, Keith Sifford,  
and Terry Thomas

Members Absent: None

Staff Present: Carl Slaugh, Mary Mogle, Gene Myracle, Dustin Smith, John Thompson  
Dave Lutgen

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#### **WORK SESSION – 6:00 p.m.**

The Work Session was called to order with all members present including the city attorney John Thompson.

#### ***1. Discussion regarding agenda items.***

#### **3(a). Formation of Development Specifications Committee for public buildings in Basehor Town Square**

Planning Director Dustin Smith reported Mike Duncan, Affinity Development was looking for guidance for his municipal package as to what Basehor would like in way of city buildings such as city hall and police department.

Mayor Garcia asked if conceptual plans changed from the original site plan that had originally been brought before the governing body at a previous meeting. Mr. Smith stated the plans had minimal changes.

City Administrator Carl Slaugh stated Mr. Duncan's plan does not provide estimated cost of facilities and although the Council recognizes the need for expansion of city facilities, currently, there is no means of revenue at this point unless Mr. Duncan came up with some creative financing. It was his understanding Mr. Duncan was ready to move forward with building the city facilities in the near future.

Councilmember Sifford stated he did not have any problem forming the committee; however, he thought the City should be cautious when committing to funding.

President Bonee stated there should be some type of supporting tax base before committing to the plans. He thought maybe funding could come from building permit fees or another revenue source and recommended obtaining the land now so that would be in place when funds were available.

**3(b). Discussion to reconsider Benchmark Management Incentive Package Ordinance. (requested by Councilmember Hooker)**

Councilmember Hooker reported the ordinance allows for a 95% tax abatement for a period of ten years and he felt ten years was too long. From his notes from past Council discussion, they had agreed on 50% for five years as stipulated in the adopted Neighborhood Revitalization Plan and Item 7, rebate of City sales tax, he had written down two years rather than five years. He suggested all council members write down their consensus of what they felt should be awarded in the way of incentives and then come to an understanding.

Councilmember Dysart said the developers attorney (Christine Bushyhead) stated under "Home Rule" power the City had the authority to allow the proposed incentives and questioned if the City was relieved of any future liability (page 3, Section 3). City Attorney John Thompson stated page 10, Section 17, Severability clause in Ordinance 511, in conjunction with the Development Agreement allowed the City to deny any incentive that they legally did not have the authority to grant by state statute. He said the City had other options such as get an opinion from the League of Kansas Municipalities (LKM) or obtain an opinion from the Attorney General's office which would carry more weight. Councilmember Hooker asked if Mr. Thompson had contacted LKM regarding this ordinance. Mr. Thompson reported he had in fact spoke with Sandy Jacquot, executive director for LKM, and informed him this type of action was fairly new in the State of Kansas in regards to "Home Rule" power and had not been tested in a court of law.

President Bonee stated if he had been at the February 22<sup>nd</sup> meeting he would have pointed out several things such as on page 2, paragraph (b) where it stated the City would give abatement on "land" and "improvements containing the groceries". They are two different things and it's the City's choice land or improvements, not both. He wants it understood the abatement was only for improvements not land. Mr. McIntosh said it was his understanding the land and improvements were all in one; however he would accept what was proper. President Bonee explained how the Neighborhood Revitalization Plan worked noting it was based on improvements to the existing land.

Councilmember's Bonee and Thomas had an issue with the wording in Section 4 (All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed was discussed in detail.) They felt the word "repeal" should be changed to "superceded".

Mayor Garcia noted the minutes of November 6, 2006 reflected a 5-0 vote for the incentive package for the grocery store. If Council wished to place the matter back on the agenda for reconsideration, they would need to make a motion to have it placed under the Business section. President Bonee stated it was his understanding the vote they took last November was simply a support for the incentive package as discussed, not for the ordinance and Development Agreement. He explained he had no problem with what was originally discussed; he only wanted to make sure everyone understood what was being offered.

The city administrator suggested coming up with an additional economic development ordinance that states what incentives would be offered to all businesses. Ordinance 511 gives the City the authority to stipulate what incentives are to be provided to this particular business. Mr. Thompson said that was a good idea and would allow the City to focus on incentives that were "outside the norm". President Bonee disagreed noting it would be difficult to list all the incentives and they need to be considered on a case-by-case basis. Mr. Thompson said the City could list general ideas without tying the City to specific amounts. President Bonee said the City should not provide any other incentives other than what is already in place such as the Neighborhood Revitalization Plan.

Councilmember Hooker clarified that he voted nay on Ordinance 511; however, he did vote "aye" in November 2006 because it was his assumption that some of the questions that were asked would be clarified and corrected and nothing got corrected that was why he voted no at the last meeting.

Marc Russell, attorney for the developer, stated the language was typical and was specific to Benchmark Management and only meant to supercede ordinances pertaining to Benchmark Managements' agreement and ordinance. Mr. McIntosh noted the Development Agreement was attached to Ordinance 511.

Councilmember Sifford asked if the city attorney felt the language would stand up in court stated the way it currently read. Mr. Thompson recommended changing the word "repeal" to "superceded", noting if there could be a disagreement at the local level, there could be a disagreement at the court level.

**4(a). Consider authorizing staff to proceed with changes to 158<sup>th</sup> Street & 24/40 Highway Intersection per KDOT recommendation.**

City Superintendent Gene Myracle reported they met with Kansas Department of Transportation (KDOT) representatives on Monday regarding possible changes to the 158<sup>th</sup> St and 24-40 Highway intersection. The meeting was spurred by the recent fatality accident that occurred at that intersection.

Mr. Myracle explained based on their discussion, it was suggested the following changes be made:

- larger stop signs
- Flashing blinker warning people of stop light.
- Change indication sign (east bound/west bound) showing a cross intersection
- Rumble strips on 158<sup>th</sup> St. south of Highway 24-40

The city superintendent explained the double amber lights would flash constantly reading “stop ahead”, rumble strips would be located 900 ft, 1200 ft, and 1500 ft. (15-25 4” millings) back on 158<sup>th</sup> Street, south of 24/40 Highway. Leavenworth County has approved the changes. KDOT would be responsible for the rumble strips on the south side of 158<sup>th</sup> Street and the City would be responsible for installation of a 15 ft. mast light (\$10.47 per light) with double headed beacon at two locations near Prairie Gardens and Basehor Methodist Church. He was currently working on pricing for the flashing lights.

It was noted that most traffic accidents have occurred from traffic coming from the south going north on 158<sup>th</sup> Street, during inclement weather and evening hours.

Mayor Garcia announced a five minute break at this time. (6:55 p.m.)

### **REGULAR MEETING – 7:00 p.m.**

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

All members present including the city attorney John Thompson.

#### **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. February 12, 2007 Work Session**
  - 2. February 22, 2007 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 Councilmember Hooker and seconded by Councilmember Sifford to approve the Consent Agenda as presented. A roll call vote 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).

#### ***a. Citizen Comments Regarding Agenda Items***

**Ed McIntosh, Benchmark Management** introduced his partner, Kevin and Debbie Barclay noting they are looking forward to opening the grocery store.

**Jim Washington (1901 160<sup>th</sup> St.)** stated (*Tape 1, Side B*) "Words have meaning. I support what John Bonee and Terry Thomas have had to say about section 4 of the Benchmark Management agreement ordinance passed last on February 22nd. While courts do generally tend to interpret ordinances narrowly we have no guarantee that they will do so. Mr. Thompson has said here that the fact that we can have disagreement over what the provision means is an indicator that the language should be addressed. Here is a suggestion as to how we can reword Section 4:

"All ordinances or parts of ordinances in conflict with this Ordinance are hereby superceded by the provision of this Ordinance, only so far as they apply to the parties to the agreement incorporated herein as Exhibit A."

He though this language or something provided by the attorneys very similar to this would take confusion out of the ordinance and would apply only to Benchmark.

**Marc Russell, counsel for Benchmark Management** reported he was open to the amendment in Section 4, although the current language was commonly used, they would be agreeable to changing the word repeal to supercede.

Closed public portion of the meeting.

### **SCHEDULED DISCUSSION ITEMS**

#### **a. Formation of Development Specifications Committee for public buildings in Basehor Town Square**

Representative and owner of Affinity Development, Mike Duncan, explained his proposed development was to be named Basehor Town Square; however, since the shopping center at 155<sup>th</sup> & State Avenue already had that name he would probably rename his area Basehor Town Center. Mr. Duncan stated his intent was to have input

regarding the development by forming a committee consisting of city staff, council members, and interested citizens. The committee would discuss public facilities such as community center, park area, police station, and city hall. The committee members would discuss financing as well as public needs.

Mr. Duncan explained ten acres have been set aside for an elementary school and are currently working with the school district regarding their needs. Councilmember Hooker asked what would happen if the school district said they wanted a middle school rather than an elementary school. Mr. Duncan replied noting if the school decided they wanted a middle school or high school; that would have to be discussed since it would require more than ten acres and different traffic patterns. The forty-acre tract they purchased on 147<sup>th</sup> Street would be annexed into the City at a later date.

The development would consist of four elements, public facilities, active adult community, retail, and single family housing. His intent was to bring a preliminary plan to the Planning Commission in April noting his development would be market driven. The planning director noted Mr. Duncan had already missed the deadline for the April meeting; therefore, he would be scheduled for the meeting in May. He also intends for the projects to be self-funded by using revenues such as TIF (Tax Increment Financing) funding. He had used TIF in past projects and suggested using this type of funding for construction of the Active Adult Community; which in turn would help to fund municipal facilities. Councilmember Thomas questioned if that was possible to abate school taxes. Mr. Duncan said since the adult living area did not create additional children in their school, it would be the best area to use the TIF program. He also considered building the community center first, followed by other municipal buildings.

Mr. Duncan explained other developers have expressed interest in joining him in the project reporting the plan calls for over 800 units which was a sizable development. He suggested governing body members visit the City of Weston where he was instrumental in creating their downtown.

Mayor Garcia asked if Mr. Duncan had formed a committee for his other projects. He said it was a revolutionary idea. President Bonee thought Mr. Duncan was merely looking for input which would help expedite his plan. Mayor Garcia asked the city administrator if an ADHOC committee needed to be developed, or if an informal committee could be appointed. Mr. Slaugh commented since the committee would not be able to take any formal action, only make suggestions, he thought appointment of an informal committee would suffice.

Council agreed to move forward with the people selected by Mr. Duncan.

**b. Discussion to reconsider Benchmark Management Incentive Package Ordinance. (requested by Councilmember Hooker)**

Council agreed as long as the wording in Section 4 was amended per earlier discussion, changing the word “repeal” to “supercede”, it would not be necessary to add an action item in Section 4, Business of the agenda.

## **BUSINESS**

### **a. Consider authorizing staff to proceed with changes to 158<sup>th</sup> Street & 24/40 Highway Intersection per KDOT recommendation.**

A motion was made by Councilmember Thomas and seconded by Councilmember Sifford to approve plan as outlined in the work session. A roll call vote was taken with all members voting in favor. Motion passed 5-0.

## **CITY ADMINISTRATOR REPORT**

- Chief Horner was recovering and should be back to work in approximately ten days.
- Falcon Lakes Assessments – Bond counsel gave a verbal opinion that it was not proper for Council to pay developer back immediately for overpayment of assessments. Mr. Cowan felt it was proper to increase the assessments on property owners and decrease for the developer’s assessments or another option was to pay any overage back to the developer at the end of the bond term. There was legal support for the position that if the developer overpaid, he should be paid.

Mr. Slaugh stated the second question Council had was if it was proper to assess all the additional administrative costs (\$12,000) back to the developer or distribute to property owners. Mr. Cowan informed him there was no legal justification to distribute all the costs to the developer; however, the fees could be distributed to the property owners.

Mr. Slaugh reported he was waiting on written opinion from bond counsel before scheduling a public hearing..

President Bonee felt the administrative fees should not be considered administrative fees but reclassification fees.

## **MAYOR’S REPORT**

Mayor Garcia welcomed students from the Southern Leavenworth County Leadership Class.

## **COUNCIL MEMBER REPORTS**

**Keith Sifford**

Councilmember Sifford explained he along with other council members and city staff were contacted regarding the safety concerns with the 158<sup>th</sup> Street intersection. He thanked the city superintendent for his quick response and work in compiling the necessary information to help rectify some of the problems.

**EXECUTIVE SESSION**

City Attorney John Thompson reported he did not need an executive session; however, he did want to remind the governing body he would be appearing in the Kansas Appellant Court on March 6, 2007 at 1:30 p.m. in Topeka concerning the 24-40 Interceptor Taxing District law suit. He noted anyone who wished to view the proceedings were welcome to attend.

**ADJOURNMENT**

A motion was made by Councilmember Thomas and seconded by Councilmember Sifford to adjourn the March 5, 2006 meeting. A roll call vote was taken with all members voting in favor. Motion passed 5-0. Meeting adjourned at 7:42 p.m.

Submitted for Council approval with/without corrections or additions this 19<sup>th</sup> day of March, 2007.



Mayor Chris Garcia

Attest:



Mary A. Mogle, CMC, City Clerk

(1 tape)