

Minutes

BASEHOR CITY COUNCIL MEETING  
March 19, 2007  
6:00 p.m.  
Basehor City Hall

**Official Presiding:** Mayor Chris Garcia

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

**Staff Present:** Carl Slaugh, Mary Mogle, Dustin Smith

**Newspaper:** Lara Hastings, *Basehor Sentinel*

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**WORK SESSION – 6:00 p.m.**

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

**1. Discussion regarding agenda items.**

**Business (g). Consider payment to ATMOS Energy for utility relocation on 147<sup>th</sup> Street.**

City Administrator Carl Slaugh reported a gas line owned by Atmos Energy, located outside the right-of-way on 147<sup>th</sup> Street, needed to be moved. The terms of the franchise agreement requires the City of Basehor to bear the cost of the relocation of the line. He explained Atmos Energy submitted a quote for the work a year ago; however, due to increase in materials and labor, the cost of the relocation increased to \$13,117.10 from \$10,962.37. The amount must be paid before the company will agree to start the project.

Councilmember Dysart commented her notes from last year referenced that Atmos Energy would not commence the work until all easements had been obtained and felt the payment should be delayed until the last easement was acquired. Mr. Slaugh explained Atmos Energy would not even schedule the job without first receiving the money. He also reported he would ask Atmos Energy for a detailed list of materials and labor associated with the project. Mayor Garcia thought the increase in cost was due to the increase in pipe costs.

**Business (h). Consider renewal of General Liability Insurance package with EMC Insurance and Reilly Insurance as the agent.**

City Clerk Mary Mogle explained the City's general liability insurance policy will expire on April 1<sup>st</sup>. Currently Evans Insurance was the acting agent for EMC Insurance; however, as of April 1<sup>st</sup> Reilly & Sons Insurance will be the acting agent and bidding EMC Insurance and Bukaty Agency would be providing a bid from Travelers Insurance. Those bids would be considered in April.

**Business (c) & (d)**

**c. Consider Final Plat for Gorup Funeral Home, as submitted by Benchmark Management, LLC.**

Planning Director Dustin Smith explained the preliminary development plan showed what was submitted as the entire development plan; however, the preliminary development plan showed the buildings moved to the north end of the site. That action appeared to be a precursor to subdivide the property after the fact. Mr. Smith said he recommended denial since the preliminary plan was substantially different than the original plan that had been submitted. The project scope density was the same, but on less property. Mr. Smith was not sure why the owner made the change other than it would allow him to sell the remaining land at a later date.

Ed McIntosh said if the property owner wanted to do anything else in the future, they would have to bring in a site plan. He reported the Planning Commission asked them to reduce the parking and change the site plan to add a berm. Mr. Gorup reported the Planning Commission suggested he have parking in the rear so that it would look more residential and less commercial. Mr. McIntosh stated they changed the drainage to the rear of the building as well.

Councilmember Thomas said the trees should be larger than 2" diameter. In the winter, the trees would lose their leaves and provide inadequate barrier between the business and the adjoining home owners. Mr. McIntosh noted the landscape plan met City code.

Mr. McIntosh said he thought the vacant area could be used as shared parking for another business. Councilmember Thomas pointed out the location of the funeral home did not change and only eliminated two parking spaces. Councilmember Dysart noted the changes were in accordance with Council's earlier recommendations.

**d. Consider Final Development Plan for Gorup Funeral Home, as submitted by Benchmark Management, LLC.**

The planning director reported staff and the Planning Commission recommended approval of the Final Development Plan for Gorup Funeral Home. No further discussion.

**Business (f). Falcon Lakes Assessments**

The city administrator reported the opinion of bond counsel was that the City was liable for repayment of any overpayment by the developer; however, the City did not have to make the payment at this time. The developer could be paid in a lump sum at the end of the bond term or his assessments could be reduced over the balance of the bond term.

Mr. Slaugh said the second question Council had was whether it was proper to assess the property owners for additional administrative fees for work associated with the special assessments. Bond Counsel Kevin Cowan gave the opinion that fees should be born by all property owners, not the City or developer. The law allowed for a 5% administrative fee; however, the City only charged a 2% administrative fee. He was recommending an additional 1% be charged to cover future costs when other phases of Falcon Lakes were developed. Kansas Statute allows engineering fees to be added separate. He noted a typical lot would realize approximately \$100 increase per year once the lots were reassessed.

President Bonee stated he did not agree with increasing the fees. The city administrator noted the administrative fee would also cover the cost of staff to reassess future plats.

Rustom Ferzandi, Falcon Lakes developer, said he did not feel his engineer made a mistake and felt the mistake was possibly made by the bonding company. He demanded his overpayment of \$91,000 be paid to him immediately.

President Bonee said he was told the developer's engineer was the person that did the original calculations. Mr. Ferzandi reported Mr. Schlagel did the initial calculations on the property, which were correct, the error came when the bond company assessed property that should not have been assessed (i.e. lake, golf course, and club house). The exemption should include 268 acres, not 84 acres.

President Bonee said he wanted to see the cost of the original documents. Councilmember Thomas said the City should go back to the bond company and have them pay.

Mr. Ferzandi noted he asked the city clerk why Councilmember Thomas and Bonee would vote on this issue since they live in Falcon Lakes and she told him that she had talked to someone and they said it was not a conflict of interest. Councilmember Thomas said he did not feel it was a conflict of interest because they vote on mill levy issues all the time and that affects them as well. Mr. Ferzandi said he was as much in error as the City because he should have looked at the calculations after the bond company did the calculations.

Mayor Garcia announced there would be a five minute break prior to starting the regular meeting. (6:55 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 with the exception of Councilmember Sifford. The city attorney John Thompson was also 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. March 5, 2007 Work Session**
- b. Approve Treasurer's Report & Vendor Payments**
- c. Approve investment recommendations**
- d. Approve calendar of events**

Mayor Garcia announced the Treasurer's Report required a transfer of \$244,000 from the Sewer Fund to the Bond & Interest Fund for payment of the State Revolving Loan. The transfer would be added to the agenda as Business Item "j".

A motion was made by Councilmember Thomas and seconded by President Bonee to approve the Consent Agenda as presented. A roll call vote was taken with all members voting in favor. Motion passed 4-0.

**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**

**George Smith (14901 Parallel)** reported the planning commission normally required a traffic study to be done on new developments such as Wolf Creek Marketplace. He thought it would be in the best interest of the City to have the city engineer do the studies, that way all studies would be prepared alike.

Mr. Smith also had an issue with the planned residential zoning on the Gorup Funeral Home property and the way things have been done by the Planning Commission allowing less screening. He noted with the potential lot split, Planned Residential would allow

both commercial and planned residential use (R-3, apartments) which would allow for other businesses that may not be desirable.

President Bonee said a Planned Residential zoning was safer for the City because the developer must present it in their submitted plat.

Public portion of the meeting was closed.

### **SCHEDULED DISCUSSION ITEMS (none)**

#### **BUSINESS**

***a. Consider amendments to the adopted Future Land Use Map and Major Street Plan***

A motion was made by Councilmember Thomas and seconded by President Bonee to approve the amendments to the adopted Future Land Use Map and Major Street Plan as presented. A roll call vote was taken with all members voting in favor. Motion passed 4-0.

***b. Consider amendments to the adopted Comprehensive Plan relating to the Streets/Transportation Element.***

A motion was made by Councilmember Thomas and seconded by President Bonee to approve amendments to the adopted Comprehensive Plan relating to the Streets/Transportation Element as presented. A roll call vote was taken with all members voting in favor. Motion passed 4-0.

***c. Consider Final Plat for Gorup Funeral Home, as submitted by Benchmark Management, LLC.***

A motion was made by Councilmember Thomas and seconded by Councilmember Hooker to approve the Final Plat for Gorup Funeral Home as submitted by Benchmark Management, LLC. Discussion followed. Councilmember Thomas wanted to make sure the developer would plant trees large enough to provide adequate screening. Mr. Gorup stated he wanted as much screening as possible from the houses surrounding his property. President Bonee noted the development plans adopted back in 2003 should address the landscaping issues. Mr. Smith reported the plans may not be completely opaque, and did not necessarily need to be. A roll call vote was taken with all members voting in favor. Motion passed 4-0.

***d. Consider Final Development Plan for Gorup Funeral Home, as submitted by Benchmark Management, LLC.***

A motion was made by Councilmember Hooker and seconded by Councilmember Thomas to approve the Final Development Plan for Gorup Funeral Home as submitted by Benchmark Management LLC. Discussion followed. Councilmember Dysart asked if the detention area had to be fenced. The planning director stated his staff report included the requirement. Councilmember Thomas stated Item #2 referenced the fencing requirement and noted the Council could add it in their motion. She asked if the detention pond had to meet commercial guidelines. Mr. Smith stated the detention pond would meet commercial guidelines. A roll call vote was taken with all members voting in favor. Motion passed 4-0.

***e. Consider Preliminary Plat for Wolf Creek Junction, Phase II, submitted by Benchmark Management, LLC.***

A motion was made by Councilmember Thomas and seconded by Councilmember Hooker to approve the Preliminary Plat for Wolf Creek Junction, Phase II as submitted by Benchmark Management, LLC. Discussion followed. Councilmember Dysart asked were would Wolf Creek Junction's wastewater would tie in. Mr. Smith noted the development would gravity flow into the same lift station as the Miles property. A roll call vote was taken with all members voting in favor. Motion passed 4-0.

***f. Consider scheduling public hearing date for Falcon Lakes Special Assessments***

A motion was made by Councilmember Thomas and seconded by President Bonee to schedule the public hearing for Falcon Lakes Special Assessments on April 16, 2007 at 7:00 p.m. Discussion. Councilmember Thomas stated if the initial calculations provided by the developer's engineer were correct, administrative fees should not be charged. The city administrator went over the process he has recently gone through to reach this point. President Bonee said with the new information, it should be re-evaluated and the cost of assessments should be charged back to the one who made the error. The city attorney suggested getting the paperwork in order and contact the bond counsel or company that did the calculations and he would also check his paperwork associated with the assessments. Mr. Slaugh stated he had contacted previous bond counsel (Nichols and Wolfe of Topeka) and they told him they do not have any other paperwork other than what the City already has. Bond counsel Mary Carson had also reviewed the paperwork as well and concurred with Mr. Cowan.

Councilmember Hooker asked if bond counsel usually do the calculations. Mr. Slaugh replied noting bond counsel agents normally provide calculations based on what is provided by the developers engineer.

President Bonee suggested tabling the public hearing until all the information was gathered.

Mr. Slaugh said the developer pointed out errors and engineers agreed there were problems as well. Councilmember Thomas stated the public hearing should focus on the re-assessments. Mr. Slaugh stated the Council needed to agree on the additional administrative fees and engineering costs prior to scheduling the public hearing since he had to include those fees in the calculations before mailing the notice of hearing to the property owners. President Bonee asked why an additional \$12,000 engineering fees were being charged? The city administrator explained the city engineer had to prepare maps and legal descriptions and then verify all the properties and go through the review process with the County and divide the property up again. President Bonee said the \$12,000 should still be on the table, however, the question was who should pay it. He did not think the amount should be stretched out over the life of the bond and should be paid back to the developer when the City received the taxes from Leavenworth County. Mr. Slaugh commented if Council did not think the \$12,000 should be paid by the district, the City would probably have to file a lawsuit to collect the money and if the Falcon Lakes special assessment district did not pay, then city-at-large would have to pay and that would not be right either. He suggested delaying the public hearing if there were still issues, or the Council could remove the additional 1% administrative fee and address the \$12,000 at a later date.

Councilmember Thomas amended his motion to hold the public hearing on April 16, 2007 at 7:00 p.m. excluding the additional 1% to cover administrative expenses. The motion was seconded by Councilmember Hooker. Discussion followed. The city attorney noted the city needs to have a position as to how the error occurred and why the public hearing was necessary. A roll call vote was taken with all members voting in favor. Motion passed 4-0.

***g. Consider payment to ATMOS Energy for utility relocation on 147<sup>th</sup> Street.***

A motion was made by President Bonee and seconded by Councilmember Hooker to approve payment to Atmos Energy and hold payment until all property easements were obtained. Discussion followed. Councilmember Dysart asked if there was an updated agreement. Mr. Slaugh said it was the same agreement with a revised Attachment B showing a cost to the city of \$13,117.10. A roll call vote was taken with all members voting in favor. Motion passed 4-0.

***h. Consider renewal of General Liability Insurance package with EMC Insurance and Reilly Insurance as the agent.***

Mr. Slaugh explained the insurance policy renewed on April 1. The city clerk was in the process of soliciting quotes from another agency that dealt with municipal insurance. If the other quote came in lower, the City could change companies by April 30<sup>th</sup> without paying a cancellation penalty with EMC.

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A motion was made by President Bonee and seconded by Councilmember Thomas to approve renewal of General Liability Insurance package with EMC Insurance and Reilly Insurance as the agent. A roll call vote was taken with all members voting in favor. Motion passed 4-0.

***i. Consider cancelling April 9, 2007 Work Session***

Mayor Garcia recommended canceling the work session on April 9<sup>th</sup> since he would be out of town and the new council will be on board. It was suggested that the work session date be left open until information regarding the Falcon Lakes calculations were available.

A motion was made by Councilmember Thomas and seconded by President Bonee to table cancellation of the April 9<sup>th</sup> work session to April 2<sup>nd</sup> meeting. A roll call vote was taken with all members voting in favor. Motion passed 4-0.

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

A motion was made by Councilmember Thomas and seconded by Councilmember Hooker to approve the transfer of \$244,000 from the Sewer Fund to the Bond & Interest Fund for payment of the State Revolving Loan. A roll call vote was taken with all members voting in favor. Motion passed 4-0.

**CITY ADMINISTRATOR REPORT**

- Reported the City has changed to OHS Compcare for Worker's Compensation medical care. He explained the previous provider no longer wanted to provide this service to the City. OHS Compcare would also provide services for post-employment screenings (i.e. medical screenings, drug testing) if desired.
- School Board has agreed to meeting in a joint session on June 11, 2007 at 6:00 p.m. He was unsure if the meeting would take place at the school or City Hall.
- Proposed training date for new council, planning commission, board of zoning appeals. Council agreed to hold the training session on April 24, 2007 starting at 6:00 p.m.
- MARC Transportation grant application for the 155<sup>th</sup> Street project is due on March 23<sup>rd</sup>. The proposal was raised to split the project up in two sections, 1) 155<sup>th</sup> Street to day care area, 2) then drop back to two lanes and make three lanes from Parallel Rd north past the high school. This would allow the money to be used in the area which would have the most

immediate need. There would still be a one mile stretch north of Parallel that would have to be addressed at a later date (*Tape 2, Side A*) President Bonee expressed concerns with drainage issues and bike trails.

- Police Dept. working on purchase proposal for new police car.
- Sunset Ridge Apartment Reconsideration – President Bonee asked if the matter could be tabled and revisited since the developer was in the process of purchasing more land in order to meet the density requirements.

Mr. Smith noted the developer had a critical date and missed some tax credits when the project was denied by the Council

- Demo copier in house for Council's review.

### **MAYOR'S REPORT**

Mayor Garcia reported he would be holding the monthly Citizens Forum on Thursday, March 22, 2007.

### **COUNCIL MEMBER REPORTS**

#### **Bill Hooker**

Councilmember Hooker reminded the Council of the urgency in finding a new city attorney.

#### **Iris Dysart**

Councilmember Dysart stated the Hollingsworth Road project needed to move forward. Mr. Slauch reported Dave Breuer called KCC regarding the delay in utility relocation work by AT & T. AT&T guaranteed the work would be completed by April 2, 2007. Leavenworth County Public Works informed the city administrator they were ready to complete the project once the fiber optic lines were moved and the new lines connected.

Councilmember Dysart requested five minutes in executive session to discuss a personnel issue.

### **OTHER BUSINESS**

**Bob Moore** asked that another "Meet the Candidate Forum" be held. The mayor reported the forum was normally held by the Chamber of Commerce, not the City.

Councilmember Thomas stated he did not see the need for one since only a handful showed up at the last one.

**George Smith** stated he would like to see a candidate open house similar to the Mayor's Citizen Forum. Mayor Garcia stated he thought that would need to take place at another location other than City Hall.

**Chief Horner** extended thanks to the people who sent emails and came to visit him in the hospital.

He supported using OHS-Compcare; however, the company did not provide mental health testing as required by the State of Kansas. The chief wished to retain the authority to continue using his current providers to include scheduling appointments for his department.

**EXECUTIVE SESSION**

A motion was made by Councilmember Hooker and seconded by Councilmember Thomas to convene into Executive Session for five minutes to discuss personnel. A roll call vote was taken with all members voting in favor. Motion passed 4-0. (8:17 p.m.) (Note: The city attorney and city administrator were not in attendance)

At 8:24 p.m., the regular meeting was called to order.

**ADJOURNMENT**

There being no further discussion, a motion was made by Councilmember Hooker and seconded by Councilmember Thomas to adjourn the March 19, 2007 regular meeting. A roll call vote was taken with all members voting in favor. Motion passed 4-0. (8:30 p.m.)

Submitted for Council approval with/without corrections or additions this 2<sup>nd</sup> day of April, 2007.

Mayor Chris Garcia



Attest:

Mary A. Mogle, CMC, City Clerk