

MINUTES

BASEHOR CITY COUNCIL MEETING

June 23, 2003

7:00 PM

Basehor City Hall

Official Presiding: Julian Espinoza, Council President

Members Present: John Bonee, Iris Dysart, Bill Hooker, Keith Sifford

Staff Present: Mike Hooper, Joe McAfee, Mary Mogle, Gene Myracle, Baron Powell, John Thompson, Donald Wilson

In the absence of Mayor Joseph Scherer, Council President Julian Espinoza called the meeting to order. Roll call was answered with all members present. President Espinoza asked the record to reflect that city attorney John Thompson was not present at this time. Pledge was recited followed by a moment of silence.

SEWER AND SOLID WASTE DELINQUENT PUBLIC HEARING

President Espinoza called the public hearing to order at 7:02 p.m announcing the purpose of the hearing was to allow those citizens with a delinquent utility bill the opportunity to speak in opposition of the assessment being placed on their Ad Valorem Taxes.

At this time, President Espinoza asked if any resident was present who wished to speak regarding the assessment. No one came forward, therefore, the public portion of the meeting was closed.

The city clerk announced the list included in the meeting packet has been reduced by \$604.15 from payments received after the booklets were distributed.

(John Thompson arrived at 7:04 p.m)

A motion was made by B. Hooker and seconded by K. Sifford to approve the amended list and authorize the city clerk to place the delinquent utility accounts on the Ad Valorem Tax rolls for collection. All aye. Motion carried 5-0.

MINUTES

A motion was made by B. Hooker and seconded by K. Sifford to approve the June 9, 2003 minutes as written. All aye. Motion carried 5-0.

SCANNED

2-21-07 *st*

TREASURER'S REPORTS

City treasurer Baron Powell requested changes to the Accounts Payable Report. Mr. Powell explained a \$25.00 freight charge was inadvertently omitted from the OMB Supply payment and requested payment for a total payment of \$423.20. He also explained the \$790.00 to WATTS was for light bulbs. The light bulbs have been returned to the vendor resulting in the voucher being cancelled. A new bill would be submitted for payment at the next council meeting.

A motion was made by K. Sifford and seconded by B. Hooker to approve the Treasurer's Report with the aforementioned corrections. All aye. Motion carried 5-0.

STAFF REPORTS**City Clerk****Item #1. Change Dental Insurance Providers from Delta Dental to Blue Cross Blue Shield**

City Clerk Mary Mogle explained due to a rate increase from MARCIT, Delta Dental of Missouri, she went out for bid to find a lower rate. Blue Cross Blue Shield of Kansas has offered a significant savings per employee. The City of Basehor would realize a monthly savings of approximately \$79.00 and requested the change take effect September 1, 2003 since MARCIT requires a sixty (60) day written cancellation notice.

Item #2. Creation of Section 125 Cafeteria Plan

Ms. Mogle explained that by adopting an IRS 125 Cafeteria plan this would allow a reduction in taxes for both the City of Basehor and employee. She explained medical, dental, and supplemental insurance plans would be pre-taxed. Ms. Mogle stated she chose AFLAC because the company would administer the plan free of charge as long as they were able to sell three supplemental insurance policies. The city clerk wanted to make it clear she was not asking for a "flexible spending" program.

Code Administrator**Item #1. Rezoning Requests.**

Mr. Hooper reported in Action Items #3 and #4 the City Council is asked to rezone property owned by Steve Miles. The request is for the property to be rezoned from R-O Rural Residential to CP-2 General Business and I-1 Light Industrial.

Action #5 is a rezoning request from property owners, Zarda Bros. Holdings LLC. Mr. Hooper explained the planning commission denied the rezoning request; however, the property

owner has requested the City Council send the rezoning request back to the board for reconsideration. He explained Zarda Bros. Holdings LLC would like to go for a lesser zoning.

Item #2. Annexation of Lacy Property.

The code administrator reported Leavenworth County Commissioners approved the Resolution allowing the City of Basehor to annex the Lacy Property. Mr. Hooper noted the next step was to pass an ordinance in Action Item #6 authorizing the annexation of the 200-acre tract of land.

Item #3. Final Plat and Improvements Agreement for Creek Ridge Subdivision

Mr. Hooper reported in Action Item #7 he was asking the final plat and Improvements Agreement for Creek Ridge Subdivision be approved. He noted the developer has signed the agreement as presented.

City Attorney

Item #1. Charter Ordinance for Sunday Liquor Sales

City attorney John Thompson stated the charter ordinance sets out the dates and times that Sunday Liquor Sales would be authorized. He advised the City Council not to consider a charter ordinance for 3.2 % cereal malt beverage sales as this time.

Item #2. Amendment to Chapter II, Section 2-115 Vicious Dogs of the Animal Control and Regulation Ordinance

The city attorney explained the amendment to the animal control ordinance was due to a case in municipal court. Mr. Thompson reported two dogs attacked and killed a valuable miniature stallion, but since the existing ordinance only addressed vicious dogs attacking human beings, the case was lost. He recommended changing the ordinance to cover both humans and other animals.

Item #3. Amendment to Ord. 376, Chapter 1, Administration Article 1-503, Oaths and Bonds

Mr. Thompson suggested increasing the bond on all administrative positions except the municipal judge. He noted the judge has a certain degree of immunity and the existing \$1,000.00 would be ample.

OLD BUSINESS**Item #1. Charter Ordinance Allowing for Sunday Liquor Sales**

President Espinoza announced it will take two-thirds of a majority vote to pass the Charter Ordinance allowing liquor sales on Sunday.

NEW BUSINESS**Item #1. Amendment to Chapter II, Section 2-115 Vicious Dogs of the Animal Control and Regulation Ordinance**

President Espinoza questioned the city attorney as to the necessity of outlining certain breeds of dogs in the ordinance. Mr. Thompson stated it has become necessary to determine dog breeds and the definition of a vicious dog. He explained the ordinance must be written in a way as to not breach anyone's constitutional rights.

Councilman Bonee stated he wanted to see the breeds named in the ordinance. Mr. Thompson also suggested placing a high level of insurance for these breeds of animals.

Item #2. Amendment to Ord. 376, Chapter 1, Administration Article 1-503, Oaths and Bonds

There was no discussion at this time.

Item #3. Rezoning of Miles Property from R-0 Rural Residential to CP-2 General Business (NE ¼ of Sec 11, NW ¼ of Sec 12, Range 22E, Twp 11)

Councilman Hooker asked if Mr. Miles had obtained all the necessary permits. President Espinoza noted those questions could be answered under Action Items.

Item #4. Rezoning of Miles Property from R-0 Rural Residential to I-1 Light Industrial (NE ¼ of Sec 11, NW ¼ of Sec 12, Range 22E, Twp 11)

There was no discussion at this time.

Item #5. Rezoning of Zarda Property from R-0 Rural Residential to R-3 Multi-Family (Sec 24, Twp 10, Range 22E)

There was no discussion at this time.

Item #6. Annexation of Lacy Property (NW ¼ Sec 10, Twp 11, Range 22E and SW ¼ Sec 10, Range 22E)

There was no discussion at this time.

Item #7. Final Plat and Improvements Agreement for Creek Ridge Subdivision (Sec 3, Twp 11, Range 22E)

There was no discussion at this time.

Item #8. Change Dental Insurance Providers from Delta Dental to Blue Cross Blue Shield

The city clerk reiterated changing from Delta Dental to Blue Cross Blue Shield would be a savings to the City of Basehor. The effective date would be September 1, 2003.

Item #9. Authorize Staff to Research Creation of Section 125 Cafeteria Plan

The city clerk announced representatives from AFLAC were present to answer any questions the council may have. There were no questions at this time.

EXECUTIVE SESSION

A motion was made by K. Sifford and seconded by J. Bonee to recess into an executive session for up to twenty minutes to discuss legal matters. All aye. Motion carried. The code administrator was asked to attend the executive session. (7: 50 p.m.)

At 8:10 p.m. President Espinoza called the regular meeting back to order announcing that no formal action was taken in executive session.

CITIZENS AND PETITIONS

President Espinoza announced this portion of the meeting was to allow residents to speak regarding agenda items and that each presentation would be limited to five minutes each.

Martha Heimbaugh (15101 Sweetbriar Rd), thanked council for allowing her to be on the agenda. She stated she sent each council member a report via U.S. Mail regarding the spot zoning of the Miles property. Mrs. Heimbaugh presented maps depicting the proposed zoning areas of the property in question, explaining that standard zoning practices do not allow for industrial to be placed next to residential property. She explained it was not customary to increase a zoning classification by 8 to 9 steps as being proposed in this industrial park (R-0 to I-1). Mrs. Heimbaugh felt it was necessary to read the city codes for the record and gave a list of undesirable businesses that could locate in the I-1 Light Industrial zone, including an adult entertainment business.

Council discussed traffic on existing and proposed streets. Councilman Bonee stated any adult entertainment business must go through a "conditional use permit" process and that no home should be built along 24/40 Highway. Mrs. Heimbaugh disputed Mr. Bonee's comment. She also noted the property has been zoned CP-1 for many years and should remain CP-1.

President Espinoza noted that if the zoning request is approved, the property owner must go through further platting steps with the planning commission.

Code administrator Mike Hooper stated Kansas Department of Transportation is going to be requiring acceleration and deceleration lanes.

Mrs. Heimbaugh closed by stating if the city council approves the rezoning it will chase away tax dollars because it is spot zoning and not part of Leavenworth County's plan. (written comments of presenter are incorporated by reference to original minutes.)

Citizen Comments Regarding Agenda Items

President Espinoza asked if anyone presented wished to speak regarding any agenda item. He reminded the audience that presentations would be limited to five minutes.

Richard White Jr. (15059 Briarwood) asked Mr. Miles if Gus Fasone was his partner. Mr. Miles stated no, Mr. Fasone was advising on the project. Mr. White expressed concerns as to who will pay for the installation of water lines and a lift station. He stated he was opposed to the industrial zoning because it would allow for a concrete batch plant. He also expressed opposition to industrial businesses locating in flood plain areas.

Joe Nick (14600 State Ave) submitted a protest petition signed by thirty-five area residents opposing the rezoning of the Miles property. Mr. Nick read a statement expressing his concerns that the existing businesses owned by Steve Miles were currently causing air pollution from unauthorized burning and dust. Mr. Nick stated he called the police department concerning a fire on the Miles property that was emitting black smoke, but nothing was done to put the fire out.

President Espinoza presented a report from Leavenworth County stating a burn permit was issued for the fire and that according to Chief Weston, there was no black smoke when he arrived at the scene. The president also acknowledged receipt of the petition, but informed Mr. Nick it would not be considered a legal document since it was not filed in a timely manner according to state statutes.

Bill Schulte, director for Leavenworth Area Development, urged the council members to consider increasing franchise fees as another way to generate revenue. Mr. Schulte stated light industrial zoning does not allow smoke stacks and high pollution businesses. He reminded

everyone commercial and industrial businesses create jobs and taxes. Mr. Schulte reported the appearance of the property has improved since Mr. Miles purchased the ground.

Tammy Wilson Potter reported her mother lives at 150th & State Avenue. She noted her mother is ill and not able to sit outside now because of the deteriorated site of the Miles property. Mrs. Potter stated she does agree that 24/40 Highway corridor does allow for many possibilities for commercial properties but urged the City Council to leave the zoning CP-1. She suggested since the Miles property was the "front door to Basehor", the name of Wolfe Creek Industrial Park should be changed to Wolfe Creek Park. Mrs. Potter noted the bridge is not shown on the map and would like to see KDOT install a light or turning lane on 24/40 Highway and 150th Street.

Joe Brandenburg (14873 Rolling Hills) noted the council's decision would affect Basehor's future forever. He suggested placing a "Welcome to Basehor" sign across from Mr. Nick's property. Mr. Brandenburg stated the only person at the meeting to speak in favor of the project was the man who owned the ground. He would support duplexes, but not industrial zoning.

Joseph Hotujac (14816 State Avenue) stated he did not have anything more to add but did want to remind Council that their decision would last forever. Mr. Hotujac asked Mr. Miles if the zoning were approved, would the company trucks be relocated to the land below and if he could tell the area residents what businesses would be located on the property. Mr. Miles stated KDHE has approved some of the permits, however, until improvements are made, the dust and burning would continue. He also informed Mr. Hotujac that KDOT has not granted 24/40 Highway access yet and anticipates retail shops along 24/40 Highway. He plans to relocate his business office in the middle of the property so he would be cautious of the type of businesses that located in the CP-2 zoning area.

David Frey (14829 Rolling Hills Rd) expressed concerns that a "hard" business plan for this property was not available. Mr. Miles reported no one has approached him regarding a concrete batch plant. Mr. Frey stated he does not want a business there that would emit an offensive odor and also expressed concern that Mr. Miles would damage his natural gas well during excavation. He asked Mr. Miles to give him a three-year guarantee that the well would not be damaged. Mr. Miles stated he was not cutting as deep as the well and would not agree to a guarantee as requested. Mr. Frey stated the industrial site will devalue their properties and wanted to go on record as opposing the industrial zoning and favors leaving the area in the present CP-1 zoning..

Mr. Frey also suggested relocating the City wastewater treatment plant to the Miles property and thought if two police reports were filed on a dog, the dog should be considered vicious. (written comments of presenter are incorporated by reference to original minutes.)

Martha Heimbaugh asked to make more comments during this portion of the meeting. President Espinoza stated she had her presentation time. Mrs. Heimbaugh asked if the council president was denying her the right to speak. President Espinoza stated she had already received her five minutes plus an additional fifteen minutes. Mrs. Heimbaugh continued to speak stating she was upset that the council allowed Mr. Miles to speak since he is the business owner and can sell to anyone after the zoning is approved. She also stated she disagreed with Mr. Schulte noting the rezoning would decrease the tax base. There was also concern for the possibility of chemical spills in the industrial area.

Walter Heimbaugh (15102 Sweetbriar Rd) disputed the LAD director's data about the rezoning bringing in money. If quality were not there, people would not want to live in Basehor. Mr. Heimbaugh reported he is not opposed to Miles, only to the rezoning. He would like to see commercial growth, not industrial. Mr. Heimbaugh read a passage from the Constitution as presented by Thomas Jefferson concerning the Natural Law. He urged the City Council to protect the citizen's natural rights and would hold City of Basehor personally liable for not protecting those rights..

Linda Bohnzack, planner for Leavenworth County, suggested a City of Basehor representative assist Mr. Miles obtain a flood plan permit from Federal Emergency Management Association. She also reported Kansas Department of Transportation needs to approve a permit before the project could proceed. Mrs. Bohnzack commended the city staff for placing stringent requirements in place and felt the project would provide a good tax base.

George Smith (14923 Parallel) stated he currently serves on the Basehor Planning Commission and was not present to speak for or against the rezoning, but would like to clear up a few comments that were made earlier in the meeting. Mr. Smith stated the planning commission requires landscaping, curb-gutter, and faced requirements on all commercial and industrial sites. Industrial zoning does not allow for outside storage and all buildings must be approved by the City, and the Environmental Protection Agency in some instances. He went on to say that once buildings are built, the dust and burning would cease to exist.

Mr. Heimbaugh commented on the annexation of the Lacy Property. He reported the City of Basehor should stop paying for infrastructure costs for developers. Developers should pay all costs necessary to bring sewers and streets to their property and within their development.

Councilman Bonee explained the City of Basehor is planning for future growth and does not have the right to ask a developer to pay for City expansion. Mr. Heimbaugh stated the County requires the developer to pay all costs and so should the City of Basehor.

Sandra Lane (18669 150th St.) agreed with Mr. Frey stating she would like to see the Miles property remain CP-1 zoning.

Lance Scott, engineer for Steve Miles, reported he has studied the area and felt he has developed a flexible plan that would fit the area. He felt the plan took into consideration the aesthetics of the entrance to Basehor. Mr. Scott also reported he is involved in the permit process; however, it is a very lengthy and time-consuming process. KDOT is requiring a traffic study and covenants and restrictions would be put in place prior to selling lots. Drainage studies would be required as each business located in the industrial park.

There being no further comments from the public, President Espinoza closed the public portion of the meeting. President Espinoza announced there would be a brief recess. (9:42 p.m)

At 9:52 p.m. the meeting was called back to order by President Espinoza.

ACTION ITEMS

Item #1. Approve or Deny Charter Ordinance for Sunday Liquor Sales

A motion was made by B. Hooker and seconded by K. Sifford to deny the proposed Charter Ordinance allowing for Sunday Liquor Sales. All voted in favor of denial except J. Espinoza. Motion carried 4-1.

Item #2. Approve or Deny Amendment to Chapter II, Section 2-115 Vicious Dogs of the Animal Control and Regulation Ordinance

A motion was made by B. Hooker and seconded by K. Sifford to table passage of the amendment to Chapter II, Section 2-115 Vicious Dog ordinance. All aye. Motion carried 5-0.

Item #3. Approve or Deny Amendment to Ord. 376, Chapter 1, Administration Article 1-503, Oaths and Bonds

A motion was made by K. Sifford and seconded by I. Dysart to increase the Oaths and Bonds to \$50,000.00 for the positions of city clerk, assistant city clerk, police-court clerk and city treasurer. The position of municipal judge would remain at \$1,000.00. All aye. Motion carried 5-0.

ORD. 410 – ORDINANCE AMENDING CHAPTER 1, ADMINISTRATION ARTICLE 1-503 OATHS AND BONDS, OF THE CODE OF THE CITY OF BASEHOR, KS.

Item #4. Approve or Deny Rezoning of Miles Property from R-O Rural Residential to CP-2 General Business (NE ¼ of Sec 11, NW ¼ of Sec 12, Range 22E, Twp 11)

President Espinoza asked the code administrator if the “Golden Rule” applied to the rezoning request as presented. The code administrator answered “yes”. The city attorney confirmed the code administrator’s response.

A motion was made by K. Sifford and seconded by J. Bonee to approve the rezoning of the Miles Property from R-0 Rural Residential to CP-2 General Business as presented. Discussion followed.

Council discussed the possibility of changing the rezoning request from CP-2 to CP-1. The board discussed buffer zones, traffic flow, and the impact on the area residents.

President Espinoza called for the vote. All voted in favor of the rezoning from R-0 Rural Residential to CP-2 General Business as presented except I. Dysart. Motion carried 4-1.

ORD. 411 – AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF BASEHOR, KANSAS BY REZONING CERTAIN PROPERTY IN THE CITY OF BASEHOR, KANSAS FROM “R-0” RURAL RESIDENTIAL TO “CP-2” GENERAL BUSINESS.**Item #5. Approve or Deny Rezoning of Miles Property from R-0 Rural Residential to I-1 Light Industrial (NE ¼ of Sec 11, NW ¼ of Sec 12, Range 22E, Twp 11)**

President Espinoza asked the code administrator again if the “Golden Rule” applied to the rezoning request as presented. He answered “yes”.

A motion was made by K. Sifford to approve the rezoning as presented. Motion died for lack of second.

A motion was made by J. Bonee and seconded by B. Hooker to approve changing the rezoning request from R-O Rural Residential to CP-2 instead of I-1 Light Industrial. Bonee, Espinoza, Hooker-Aye. Dysart, Sifford-Nay. Motion failed 3-2.

President Espinoza noted the motion needed to pass on a two-thirds vote since it was changing the planning commissions original recommendation.

A motion was made by J. Bonee and seconded by K. Sifford to approve the planning commission’s recommendation to rezone the from R-O Rural Residential to I-1 Light Industrial as presented. Bonee, Sifford, Espinoza-Aye. Hooker, Dysart-Nay. Motion passed 3-2.

ORD. 412 – AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF BASEHOR, KANSAS BY REZONING CERTAIN PROPERTY IN THE CITY OF BASEHOR, KANSAS FROM “R-0” RURAL RESIDENTIAL TO “CP-2” GENERAL BUSINESS.

Item #6. Approve or Deny Rezoning of Zarda Property from R-0 Rural Residential to R-3 Multi-Family (Sec 24, Twp 10, Range 22E)

Code Administrator Mike Hooper stated the property owner has asked that the request be sent back to the planning commission since they would like to rezone to a lesser density level.

A motion was made by B. Hooker and seconded by J. Espinoza to accept the planning commissions recommendation to deny the rezoning request on the Zarda Property from R-0 Rural Residential to R-3 Multi-Family. All aye. Motion carried 5-0.

Item #7. Approve or Deny Annexation of Lacy Property (NW ¼ Sec 10, Twp 11, Range 22E and SW ¼ Sec 10, Range 22E)

A motion was made by B. Hooker and seconded by I. Dysart to deny the annexation request of the 200-acre tract, also known as the Lacy Property. Discussion followed.

J. Bonee stated he had a problem with the time frame incorporated in the annexation agreement. The code administrator noted the City of Basehor has no obligation to provide sewers as stipulated by the developer. J. Bonee noted it is the City's intent to annex in the direction of the Lacy Property in the future and felt this would be a good time for the City to act since there were limited property owners to negotiate for utility easements.

B. Hooker expressed there were too many subdivisions going at this time and was not selling as predicted. He did not feel the City should spot annex another tract of land at this time. J. Bonee stated it is a selling point for a developer to advertise the lots have City sewers and certain infrastructure. J. Bonee stated he is not in favor of giving the developer “the farm” and that all developers should pay their own way.

I. Dysart referred to an article in the newspaper where Leavenworth County Commissioner Joe Daniels voted against the annexation on the basis that there were questions on the location of the sewer line. Mr. Hooper stated the annexation request does not include the Ginger Creek Subdivision and Mr. Lacy's home.

President Espinoza called for the vote. B. Hooker, I. Dysart, Sifford-Nay. Espinoza and Bonee-Aye. Motion to deny the request for annexation failed 2-3.

City engineer Joe McAfee came forward stating the council may not be aware that the 24/40 Highway Interceptor Line was designed to take wastewater from the area in question. He encouraged the annexation.

A motion was made by K. Sifford to overturn the original vote based on the information provided by the city engineer and approve the annexation of the Lacy Property as requested. Sifford, Espinoza, Bonee – Aye. Hooker, Dysart-Nay. Motion carried 3-2.

**ORD. 413 – AN ORDINANCE ANNEXING LAND TO THE CITY OF BASEHOR,
KANSAS.**

**Item #8. Approve or Deny Final Plat and Improvements Agreement for Creek Ridge
Subdivision (Sec 3, Twp 11, Range 22E)**

A motion was made by K. Sifford and seconded by J. Bonee to approve the final plat and improvements agreement for Creek Ridge Subdivision. All voted in favor except B. Hooker. Motion carried 4-1.

**Item #9. Approve or Deny Change Dental Insurance Providers from Delta Dental to Blue
Cross Blue Shield**

A motion was made by J. Bonee and seconded by K. Sifford to approve the change from Delta Dental Insurance to Blue Cross Blue Shield of Kansas effective September 1, 2003. All aye. Motion carried 5-0.

**Item #10. Approve or Deny Authorization of Staff to Research Creation of Section 125
Cafeteria Plan**

President Espinoza questioned AFLAC representative Shane Davis regarding the supplemental policies available for employee purchase. Mr. Davis explained the insurance plans are pre-taxed (excluding the disability plan) and are guaranteed renewable for life.

A motion was made by B. Hooker and seconded by K. Sifford to approve authorization for AFLAC representatives to meet with city staff and the administrative liaison regarding the Section 125 Cafeteria Plan and supplemental insurance policies. All aye. Motion carried 5-0.

MAYOR'S REPORT

President Espinoza announced Kansas Department of Health and Environment has granted approval for the 24/40 Highway Interceptor Bid to Miles Excavating.

COUNCIL MEMBER REPORTS

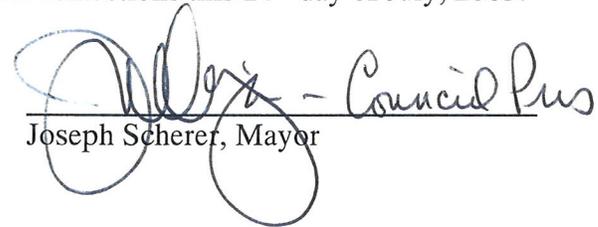
Bill Hooker

Councilman Hooker congratulated the city treasurer for the financial reports and memorandums he has been submitting to the council.

ADJOURNMENT

There being no further business to discuss, a motion was made by K. Sifford and seconded by B. Hooker to adjourn the meeting. All aye. Motion carried 5-0. Meeting adjourned at 10:50 p.m.

Submitted for Council approval with/without corrections this 14th day of July, 2003.



Joseph Scherer, Mayor

Attest:



Mary A. Mogle, CMC City Clerk