

The Olathe City Council met in regular session at 7:00 p.m. with Mayor Copeland presiding. Councilmembers Bacon, Wittenborn, Randall, Huttman and Vogt were present. Councilmember Montgomery was absent. Also present were City Manager Wilkes and City Attorney Glinstra.

1. **CALL TO ORDER**
2. **BEGIN TELEVISED SESSION – 7:00 P. M.**
3. **PRESENTATION OF THE COLORS BY THE OLATHE POLICE DEPARTMENT COLOR GUARD**
4. **PLEDGE OF ALLEGIANCE**
5. **SPECIAL BUSINESS**

PROCLAMATIONS

- A. Proclamation designating February 20, 2007, as the City of Olathe's 150th Birthday.

150th Anniversary Committee Co-chairs Mike Haskin and Marlene Natoli accepted the proclamation.

AWARDS

- B. Special presentations were introduced by 150th Anniversary Committee Co-Chairs Michael Haskin and Marlene Natoli.

Seniors Serving Schools, directed by Brian Steele, sang two songs for the audience.

Kansas State School for the Deaf students Arizona Marsh and Renate Rose presented birthday greetings.

Steve Kowalewski, U.S. Postal Service, talked about the First Day Issue and Postal Commemorative.

Bob Courtney, Olathe Historical Society President, presented a brief overview of Olathe's history over the decades, then introduced a short video clip highlighting the Olathe Anthem, composed by Howard Abernathy and performed by Paula McLaughlin.

6. **CONSENT AGENDA**

Motion by Randall, seconded by Bacon, to approve the consent agenda as presented. Passed 6-0.

MINUTES

- A. Council meeting minutes of February 6, 2007, were considered and approved.

PROJECTS

B. Consent Calendar

1. Change Orders

- a. Santa Fe, West of Ridgeview Grade Separation, Project No. 38299C, was considered and approved.

Change Order No. 7 increases the contract amount by \$26,843.82.

2. Project Completion Certificates

- a. Brentwood Plaza Shopping Center 2nd, Sanitary Sewers, Project No. 15906D, was considered and approved.
- b. Red Hawk Run II, Street, Project No. 35204D, was considered and approved.
- c. Upper Cedar Creek Sewer Interceptor – West Exp., Sanitary Sewer, Project No. 12704D, was considered and approved.

3. Final Payment to Contractors

- a. Upper Cedar Creek Sewer Interceptor – West Exp., Project No. 12704D, was considered and approved.

Final Payment -	\$	2,000.00
Original Contract Amount -	\$	2,960,314.86
Paid-To-Date -	\$	2,899,859.46
Change Orders -	\$	(58,455.40)
Final Contract Amount -	\$	2,901,859.46
Contractor -		Team Excavating, LLC

4. Final Payment to Consultants

- a. Water Master Plan, Project No. 50104C, was considered and approved.

Final Payment -	\$	6,152.76
Original Contract Amount -	\$	157,907.00
Paid-To-Date -	\$	151,754.24
Amendments -	\$	0.00
Final Contract Amount -	\$	157,907.00
Consultant -		Carollo Engineers

- b. ATMS Phase II Bidding Phase, Project No. 33298C, was considered and approved.

Final Payment -	\$	2,352.00
Original Contract Amount -	\$	16,776.21
Paid-To-Date -	\$	14,424.21
Amendments -	\$	0.00
Final Contract Amount -	\$	16,776.21
Consultant -		Olsson Associates

LICENSES

- C. A massage therapy establishment application was considered and approved.

PROJECTS

- D. Acceptance of Transportation Enhancement Funds from the Kansas Department of Transportation for the 127th Street, Mur-Len to Black Bob Project, PN 30606, was considered and approved.

CONTRACTS

- E. Acceptance of bids and award of contract to Maxwell Products, Inc. for rubberized asphalt for the Street Division of Public Works was considered and approved.
- F. Acceptance of bids and award of contract to Deffenbaugh Industries, Inc. , d/b/a Johnny on the Spot, for portable toilet rental for all city departments was considered and approved.
- G. Acceptance of bids and award of contract to Saint Joe Distributing for concession supplies for the Recreation Division of the Parks & Recreation Department was considered and approved.
- H. Acceptance of bids and award of contract to Dell Marketing, L.P. for a tape back-up and storage area network for the Information Technology Services Department was considered and approved.

7. NEW BUSINESS - PLANNING

REZONING

- A. Ordinance No. 07-08, RZ-06-029, requesting approval to rezone 22.61± acres from RUR to RP-3 and a preliminary development plan for 132 town home units for Villages of Forest Hills; located on the northeast corner of 175th Street and Legler Road (future) was considered. Owner/Applicant: Rogler Investments, Ken Rogler. Agent: Oppermann LandDesign, Pete Oppermann. Planning Commission recommends approval, 7-0.

The Assistant City Planner noted this request is within the Coffee Creek subdivision area and indicated there were no protest petitions filed. He stated staff and Planning Commission support with no stipulations.

Councilmember Vogt questioned the elevations of the site. The Assistant City Planner displayed depictions and stated some of the units would be one-story sites.

Councilmember Vogt stated it is good to see some one-story units to provide additional needs for the community. Ms. Vogt asked about the building materials. The Assistant City Planner indicated the materials would include 50% masonry, some stucco, etc. adding the buildings would meet the Coffee Creek guidelines.

Ms. Vogt asked why the lower 50% masonry when the city's standard is 75%. The Assistant City Planner addressed the matter indicating there was a lot of discussion by both the Planning Commission and Council and the decision was the 50% masonry would be acceptable as a compromise.

Councilmember Huttman stated this matter has been addressed before, adding the 50% masonry was part of the annexation agreement. Staff agreed.

Councilmember Bacon asked about the potential materials of the remaining 50%. The Assistant City Planner informed the Council a sample board would be presented to the Planning Commission at the final site development plan.

Judd Clawson, Phelps Engineering, 1270 Winchester and Ken Rogler, Rogler Investments, 16040 Mur-Len, appeared on behalf of the developer and entertained questions from the Council.

Mr. Rogler noted the Home Owners Association would be responsible for all the outside upkeep, which would be tied into the Forest View Estates. He stated the materials should be sustainable for 40 years or so, and anticipated the dues would be approximately \$175 - \$200 per month for present and future upkeep.

Councilmember Randall asked if this product is a demand being seen. Mr. Rogler indicated yes, adding more ranch and one and one-half story units are being requested.

Motion by Randall, seconded by Bacon, to approve. Passed 6-0.

SPECIAL USE PERMITS

- B. Resolution No. 07-1017, SU-07-001, requesting approval of a special use permit for Avis Rent-A-Car System, Inc on 0.443 acre; located at 1804 E. Santa Fe was considered. Owner: Philip M. & Karen G. Brokenicky. Agent: Polsinelli Shalton Welte Suelthaus, Curtis Holland. Planning Commission recommends approval, 6-1.

The Assistant City Planner informed the Council the member of the Planning Commission voting against this item stated he did not oppose the use, but the number of vehicles. He informed the Council that staff and Planning Commission recommend approval.

Councilmember Vogt asked if the stipulations were the same as other car rental sites.

The Assistant City Planner stated, yes, typically one year approval, then additional years, if warranted.

Curtis Holland, Polsinelli Law Firm, appeared representing the applicant. He stated the building is a four-sided brick building, and indicated there are no plans to upgrade the exterior, but will upgrade the site with landscaping on the front and sides. He indicated the interior would be upgraded and an exterior bay door would be added to the rear. He stated the concern of his client is the stipulation limiting the rental cars to ten. Mr. Holland noted there is availability for 19 to 21 spaces and it is his client's desire to utilize up to 14 spaces for rental cars. He added another issue is the term of the permit, adding there were no limitations to Enterprise, but one placed on Hertz. He informed the Council there is a significant investment for this business, adding the client has a five-year lease on the property, but with a one-year permit limitation, bank financing is difficult to obtain. He added that with a special use permit, if business does not comply, revocation action could commence.

Wally Rist, representing the owner of the building, added comments regarding potential business loans based upon limitations of the special use permit.

Councilmember Bacon asked staff's opinion of the increase of sited vehicles. The Assistant City Planner stated the stipulation relates to painted/no parking spaces.

Councilmember Huttman stated she has no concerns with 13 to 14 spots, adding these vehicles are generally rotational.

The Assistant City Planner stated the stipulated ten vehicles were based upon the square footage of the building.

Councilmember Huttman stated she disagrees with ten vehicles and indicated she would support a five year special use permit.

Councilmember Vogt asked what could be done if the business does not comply. The Assistant City Planner stated the special use permit can be called back before the Council.

Councilmember Wittenborn stated she has no concern with longer time or increase in cars. She stated she is concerned with approving a resolution which cannot be easily enforced.

Councilmember Randall indicated he is supportive of a one-year permit.

Mayor Copeland suggested, as in the past, to issue a five-year permit with a one year review and adding no limits on cars.

Motion by Randall, seconded by Bacon, to approve, amended to allow the number of cars limited to the maximum number of allowable vehicles, a five-year special use permit with a one year review. Passed 6-0.

REZONING

- C. Ordinance No. 07-09, RZ-06-031 and RZ-07-001, requesting approval to rezone 6.825± acres from CP-2 to NC and a revised preliminary development plan for 25.87± acres of Ridgeview Falls; located on the northeast corner of 119th Street and Ridgeview Road was considered. Owner: Ridgeview Falls LLC, Walt Clements. Agent: Polsinelli, Shalton, Welte, Suelthaus, PC, John Petersen. Planning Commission recommends approval, 7-0.

The Assistant City Planer stated staff recommends approval of the Neighborhood Center (NC) zoning, adding the Planning Commission voted in favor.

He informed the Council that some of the buildings will be four stories, with first story consisting of shops and the upper three floors as condominiums. He added that other buildings may be configured as three stories, noting this is the first true NC zoning in the city.

Motion by Randall, seconded by Bacon, to approve.

John Peterson, Polsinelli Law Firm, representing the applicant stated he has a concern with the stipulation indicating receipt of a letter of approval from Aberdeen Village is needed for a final approval – he questioned if this is a delegation of approval by a third party.

The meeting recessed at 9:00 p.m. for a video tape break.

The meeting reconvened at 9:12 p.m.

Councilmember Vogt stated this is an exciting project and questioned the stipulation regarding a letter from Aberdeen Village. She indicated in the past adjoining property owners have worked together towards a consensus. She noted the applicant should meet with Aberdeen Village prior to the final plan.

Motion by Vogt, seconded by Randall, to amend the motion to eliminate Stipulation C (of the motion by Planning Commissioner Campbell on January 22, 2007 regarding the final development plan) and instead stipulate that the applicant meet with representatives of Aberdeen Village to discuss the landscape buffering and screening to be located on the eastern property line prior to submitting their final plan.

Councilmember Huttman questioned the inclusion of this stipulation, questioning if it is legal.

The City Attorney indicated the compromise is probably better.

The vote on the motion to amend passed 6-0.

The vote on the motion as amended passed 6-0.

ANNEXATIONS

- D. Consideration of Ordinance No. 07-11, ANX-07-001, requesting approval of a voluntary annexation of approximately 15.49± acres located at 17077 W 165th St. was considered. Applicant: USD 230, Spring Hill School Board.

Motion by Randall, seconded by Bacon, to approve. Passed 6-0.

8. NEW BUSINESS – ADMINISTRATION

ECONOMIC DEVELOPMENT

- A. Resolution No. 07-1018 establishing the date and time of a public hearing regarding the Ridgeview Falls Transportation Development District was considered.

Motion by Randall, seconded by Bacon, to approve. Passed 6-0.

9. PUBLIC HEARINGS

WEEDS

- A. A public hearing to consider levying assessments to collect unpaid city expenditures for weed mowing and debris removal was opened.

Motion by Randall, seconded by Bacon, to close the hearing. Passed 6-0.

- B. Ordinance No. 07-12 levying assessments to collect city expenditures for weed mowing and debris removal was considered.

Motion by Randall, seconded by Bacon, to approve. Passed 6-0.

10. NEW CITY COUNCIL BUSINESS

Councilmember Huttman wished the city – happy birthday. She also extended congratulations to the 150th Committee members.

Councilmember Wittenborn thanked the Committee members coordinating the Governor's Ball, adding it was a great event.

Councilmember Bacon informed the audience a listing of the 150th Anniversary events is posted on the city's website.

Councilmember Randall expressed birthday wishes.

Councilmember Vogt offered a reminder of the Mahaffie Farmstead Open House on February 24, 2007. She stated the purpose of the open house is the renovation of the dining hall and noted the stagecoach would be offering rides.

Mayor Copeland spoke of the fun time at the Governor's Ball and good entertainment, adding it served as the "kick-off" event for the 150th Anniversary.

The City Manager informed the Council of the Grand Opening event for the Olathe Bass Pro store.

11. END OF TELEVISED SESSION

12. GENERAL ISSUES AND CONCERNS OF CITIZENS

None

13. EXECUTIVE SESSION

Motion by Randall, seconded by Bacon, to recess into an executive session for 30 minutes under the real property acquisition and attorney-client privilege exceptions to the Kansas Open Meetings Law to consider the following items. Passed 6-0.

- A. Acquisition of property for the 167th Street Project; PN 30906B.
- B. Acquisition of property for the Dennis Avenue Bridge Project; PN 33704.
- C. Acquisition of property for a neighborhood park site in northwest Olathe.
- D. Matters which would be deemed privileged in an attorney-client relationship pertaining to T-Mobile Central LLC v. City of Olathe.
- E. Matters which would be deemed privileged in an attorney-client relationship pertaining to an agreement for water production rights.

The meeting recessed at 9:28 p.m.

The meeting reconvened at 9:58 p.m. with Mayor Copeland and Councilmembers Bacon, Vogt and Wittenborn present.

Motion by Bacon, seconded by Vogt, to recess back into executive session for 30 minutes. Passed 4-0.

The meeting recessed at 9:59 p.m.

The meeting reconvened at 10:29 p.m. with Mayor Copeland and Councilmembers Randall, Bacon and Vogt present.

Motion by Randall, seconded by Bacon, to recess back into executive session for 30 minutes. Passed 4-0.

The meeting recessed at 10:30 p.m.

14. RECONVENE FROM EXECUTIVE SESSION

The meeting reconvened at 10:58 p.m. with Mayor Copeland and Councilmembers Bacon, Wittenborn, Randall and Vogt present. Councilmember Huttman was absent.

Councilmember Huttman returned at 11:00 p.m.

PROJECTS

- A. Acquisition of property for the 167th Street Project; PN 30906B, was considered.

Motion by Randall, seconded by Bacon, to authorize staff to begin negotiations to acquire the needed property and bring back contracts valued at more than \$25,000 for Council approval. Passed 6-0.

- B. Acquisition of property for the Dennis Avenue Bridge Project; PN 33704, was considered.

Motion by Randall, seconded by Bacon, to authorize staff to begin negotiations to acquire the property needed and bring back contracts valued at more than \$25,000 for Council approval. Passed 6-0.

REAL ESTATE

- C. Acquisition of property for a neighborhood park site in northwest Olathe was considered.

Motion by Randall, seconded by Bacon, to have staff bring back further information. Passed 6-0.

LAWSUITS

- D. Matters which would be deemed privileged in an attorney-client relationship pertaining to T-Mobile Central LLC v. City of Olathe was considered.

Motion by Randall, seconded by Bacon, to accept staff report and authorize City Attorney to begin discussions with T-Mobile. Passed 6-0.

AGREEMENTS

- E. Matters which would be deemed privileged in an attorney-client relationship pertaining to an agreement for water production rights was considered.

Motion by Randall, seconded by Bacon, to authorize staff to begin negotiations and bring back an agreement for Council consideration. Passed 6-0.

15. ADJOURNMENT OF REGULAR SESSION

Motion by Randall, seconded by Bacon, to adjourn. Passed 5-0.

The meeting adjourned at 11:03 p.m.



City Clerk