

The Olathe City Council met in regular session at 6:32 p.m. with Mayor Copeland presiding. Councilmembers Montgomery, Bacon, Campbell, Randall, Huttman and Vogt were present. Councilmembers Huttman and Randall were absent. Also present were Assistant City Managers Sherman and Brymer and City Attorney Glinstra.

1. CALL TO ORDER

2. EXECUTIVE SESSION

Motion by Bacon, seconded by Montgomery, to recess into executive session for 25 minutes under the attorney-client privilege exception to the Kansas Open Meetings Law to consider the following items. Passed 5-0.

- A. Discussion of matters which would be deemed privileged in an attorney-client relationship pertaining to potential claims of Ames Construction Company.
- B. Discussion of matters which would be deemed privileged in an attorney-client relationship pertaining to amendments to the Redevelopment Agreement and Project Plan between the City and RTR Development, LLC (Maegrace) for the Olathe Retail District.

The meeting recessed at 6:33 p.m.

Councilmember Huttman arrived at 6:33 p.m.

Councilmember Randall arrived at 6.35 p.m.

3. RECONVENE FROM EXECUTIVE SESSION

The meeting reconvened at 7:00 p.m. announcing the executive session would continue at the end of the meeting.

4. BEGIN TELEVISED SESSION – 7:00 P. M.

Mayor Copeland spoke about the youth and contributions they make to the community. He noted Olathe Teen Council Co-Chair Devin Smith would be featured on FOX 4 NEWS as part of its "Reaching 4 Excellence" series.

Ron Ernst, director of the Moonlight Serenade Orchestra, spoke about the next event for the City's 150th Anniversary. He noted the World War II Style USO Show is scheduled for November 10, 2007 at the old Olathe Naval Air Station; adding tickets are available.

5. PLEDGE OF ALLEGIANCE

Ron Ernst led the audience in the Pledge of Allegiance.

6. SPECIAL BUSINESS

AWARDS

- A. Presentation of the Salt Institute's Excellence in Salt Storage Award to the Olathe Streets Division.

Peter Powell, The Salt Institute, was present. Joe Bonney, Street Maintenance Superintendent, and Danny Turner, Street Maintenance Supervisor, accepted the award.

PROCLAMATIONS

- B. Proclamation designating October 7-13, 2007 as "Fire Prevention Week."

Fire Division Chief Brad Henson accepted the proclamation.

- C. Proclamation designating October 15-19, 2007 as "Disability Awareness Week."

Mark Gash, Chair of the Persons with Disabilities Board, accepted.

AWARDS

- D. Recognition of the Olathe National Education Association for their donation to the Recreation Scholarship Program.

Larry Spotts, president of the Olathe National Education Association, accepted the certificate of appreciation.

7. CONSENT AGENDA

Mayor Copeland announced Item I was removed from the agenda at the request of staff.

Councilmember Campbell requested item L be considered separately.

Councilmember Bacon requested item P be considered separately.

Motion by Randall, seconded by Bacon, to approve the Consent Agenda with the noted exceptions. Passed 7-0.

MINUTES

- A. Council meeting minutes of September 18 and September 25, 2007 were considered and approved.

PLATS

- B. Final plat, P-07-066, requesting approval for Mahaffie Business Park III; containing three (3) lots, located west of Ridgeview and north of 159th Street, was considered and approved. Owner: Mahaffie 78, LLC. Planning Commission recommends approval, 5-0.
- C. Final plat, P-07-068, requesting approval for Reserve at Shadow Lake, 4th Plat, on 10.81± acres, containing nine (9) lots and four (4) tracts; located in the vicinity of College Boulevard and Moonlight, was considered and approved. Owner/Applicant: Ronald A. Mather, Cedar Creek Development Co., Inc. Planning Commission recommends approval, 5-0.

PLATS

- D. Final plat, P-07-071, requesting approval for KH Jensen, LLC, Bulk Warehouse, on 40.9251± acres, containing one (1) lot; located in the vicinity of 167th Street and Lone Elm Road, was considered and approved. Owner: Mackey Family Trust. Planning Commission recommends approval, 5-0.

PROJECTS

- E. An engineering services agreement with Payne and Brockway for the design of sanitary sewer to serve the property north of KVC and west of Olathe Medical Center, Project No. 17406b, was considered and approved.
- F. An engineering services agreement with Payne and Brockway for the design of 153rd Street, from the east end of the existing roadway to 2250' east, Project No. 36706b, was considered and approved.
- G. An engineering services agreement with Payne and Brockway for the design of a North South Street, from Lone Elm Road to 151st Street, Project No. 36806B, was considered and approved.
- H. An engineering services agreement with Payne and Brockway for the design of Woodland Road Widening to accommodate north and south bound left turn lanes and a northbound right turn lane at 115th Street, Project No. 3B-048-07, was considered and approved.
- I. An Architectural/Engineering Services Agreement with Landplan Engineering for construction administration services for the Eastbrooke Trail, PN 41300c, was **REMOVED FROM AGENDA**.
- J. Supplemental Agreement No. 2 with HNTB for Construction Observation and also design services beyond the scope of previous agreements on the Dennis Avenue Bridge over Little Cedar Creek, PN 33704C, was considered and approved.
- K. Engineer's estimate, acceptance of bids and award of contract to Miller Paving and Construction, Inc. for the construction of Aurora Street, North of Harold Street, Project Nos. 30207b and 50207b, was considered and approved.
- L. Change Order No. 3 to mitigate the gas storage tanks and contaminated soil from the 200 E. Santa Fe properties, Project No. 37106c, was **REMOVED FOR SEPARATE CONSIDERATION**.
- M. Resolution No. 07-1114 pertaining to the improvement of 127th Street from Black Bob Road to Mur-Len Road, Project No. 30606C, was considered and approved.
- N. An offer made to The Roman Catholic Archdiocese of Kansas City for street right-of-way and easements needed for the 167th Street, Ridgeview Road to Black Bob Road Project, Project No. 36605, was considered and approved.

BONDS

- O. Resolution No. 07-1115 consenting to a subordination of fee agreement in connection with The Gerson Company industrial revenue bonds projects, Series A and Series B, was considered and approved.

REAL ESTATE

- P. A real estate contract for property located at the southwest corner of Harold and Iowa Streets for use as a neighborhood park was **REMOVED FOR SEPARATE CONSIDERATION.**

BONDS

- Q. Resolution No. 07-1116 authorizing the public sale of general obligation temporary notes, series 2007-C, was considered and approved.

EXPENSES

- R. Business expense statement of City Manager, Michael Wilkes for expenses incurred to attend the Greater Kansas City Chamber of Commerce Leadership Exchange in Seattle, Washington, September 16-18, 2007, was considered and approved.

ITEMS FOR SEPARATE CONSIDERATION:

PROJECTS

- Item L: Change Order No. 3 to mitigate the gas storage tanks and contaminated soil from the 200 E. Santa Fe properties, Project No. 37106c, was considered.

Councilmember Campbell asked if the previous owners should be responsible.

Staff indicated tests were not made of the sub-soils prior to purchase and release was given.

Motion by Campbell, seconded by Randall, to approve. YEA: Randall, Bacon, Vogt, Huttmann, Copeland, and Montgomery. NAY: Campbell. Passed 6-1.

REAL ESTATE

- Item P: A real estate contract for property located at the southwest corner of Harold and Iowa Streets for use as a neighborhood park was considered.

Councilmember Bacon asked if this parkland is in-fill.

The Parks and Recreation Director indicated it could be considered as in-fill, but added the need is due to growth in the area.

Mr. Bacon stated concern with parks along arterial streets (Harold Street).

The Parks and Recreation Director noted the situation may not be ideal, but the best of available areas.

Motion by Randall, seconded by Vogt, to approve. YEA: Vogt, Huttman, Copeland, Montgomery, Campbell, and Randall. NAY: Bacon. Passed 6-1.

8. NEW BUSINESS - PLANNING

SPECIAL USE PERMITS

- A. Resolution No. 07-1117, SU-07-014, requesting approval of a special use permit for an animal facility with an outside run for Camp Bow Wow, on 0.46± acres, containing one (1) lot; located at 1802 E. 123rd Street, was considered. Owner/Applicant: Brenda Happenstall, Puppy Palace, LLC d/b/a Camp Bow Wow. Planning Commission recommends denial, 4-4. A valid protest petition was filed.

The Current Planner overviewed the actions by Planning Commissioners and speakers when this matter was considered at the Planning Commission.

Councilmember Bacon questioned if there have been complaints in regards to other similar businesses within the city. The Current Planner indicated she is not aware of any.

Matt Austin, representing the applicants, informed the Council Camp Bow Wow is a national chain. He stated the zoning for this area is M-2, noting this use would be allowed with a special use permit in a commercial zoning district. Mr. Austin addressed the improvements proposed to accommodate the intended use. He also overviewed the clients typically using this service. He spoke about the neighboring property owners concerns and addressed the concerns. Mr. Austin indicated his client would be supportive of stipulations indicating fewer animals on site. He spoke about and compared similar businesses within the city. He also requested the Council consider approval of a special use permit for at least five years, rather than the recommended one-year permit for purposes of bank loan purposes. He asked for support of this request.

Joseph Lolli, 6201 SE 69th, Berryton, KS, informed the Council he has used the services of Camp Bow Wow in the Denver area with good experience. He stated he is in support, adding no facility is close to his home near Topeka and would support this business.

Randy Fruit, building owner at 1802 E. 123rd, stated his property is near the application site. He stated he believes this will be a good business to the area and is supportive.

Ramon Blachly, owner of Olathe Heating & Cooling, 1804 E. 123rd, stated his building is directly next to this location and would be the most impacted due to the proposed location of the dog runs. He stated concern with noise, water run-off, and odor. He also noted concern with parking and traffic flows. He informed the Council several nearby property owners filed protest petitions. He requested denial of the request.

Tabitha Jurgensmeyer, 880 S. Sycamore Street, Gardner, KS, stated she recently moved to the area from Springfield, Missouri. She informed the Council she used Camp Bow Wow in Springfield and was glad to hear that a location would be available in the area. She stated this service adds value to the community.

Councilmember Vogt asked questions concerning the facility, city and state health codes. Staff addressed the facility but indicated not familiar with all the health codes.

Councilmember Randall stated he heard three issues – noise, odor, and parking. He asked the outcome of violations of the special use permit. The Current Planner stated the special use permit could be revoked.

Councilmember Montgomery stated this is appropriate zoning with M-2 and compared this site location with the city's animal shelter. He stated he sees controls are in place and indicated he could support a five-year permit.

Councilmember Bacon stated he would like the business in Olathe, but noted this might not be the right location.

Councilmember Randall stated agreement with Councilmember Montgomery.

Councilmember Vogt stated she is struggling with this request due to the neighbor's concerns. She noted this is an important service to the community.

Councilmember Huttman stated if the zoning allows, she will be supportive.

Motion by Randall, seconded by Montgomery, to approve.

Motion by Montgomery, seconded by Huttman, to amend the motion to increase the term of the special use permit to three years. YEA: Montgomery, Randall, and Huttman. NAY: Copeland, Campbell, Bacon, and Vogt. Motion failed 3-4.

The vote on the original motion: YEA: Montgomery, Randall, and Huttman. NAY: Campbell, Bacon, Vogt, and Copeland. Motion failed 3-4.

VACATIONS

- B. Ordinance No. 07-101, VAC-07-011, requesting approval to vacate a utility easement for Lots 45, 46, and 47 of Brighton's Landing, First Plat; located south of 114th Terrace and east of Brownridge Street, was considered. Owner: Bradford Properties, Inc. Planning Commission recommends approval, 5-0.

Motion by Randall, seconded by Bacon, to approve. Passed 7-0.

REZONINGS

- C. Ordinance No. 07-102, RZ-07-031, requesting approval to rezone from CTY RUR and RP-1 to R-1 for Southglen of Cedar Creek, Phase 2 on 4.59± acres, containing 11 lots and two (2) tracts; located in the vicinity of 115th Street and Clare Road, was considered. Owner: Ronald A. Mather, Cedar Creek Development Co., Inc. Planning Commission recommends approval, 5-0.

Motion by Randall, seconded by Bacon, to approve. Passed 7-0.

ANNEXATIONS

- D. An Annexation Agreement with Bruncker Farms Partnership and O'Donnell & Sons Construction Company for approximately 177.399± acres located at the southwest corner of 151st Street and Lone Elm Road was considered. Applicant: Bruncker Farms Partnership and O'Donnell & Sons Construction Company.

Motion by Randall, seconded by Montgomery, to approve. YEA: Vogt, Huttman, Copeland, Montgomery, Campbell and Randall. NAY: Bacon. Passed 6-1.

The meeting recessed at 8:57 p.m. for ten minutes.

The meeting reconvened at 9:08 p.m.

Councilmember Randall was absent.

- E. Ordinance No. 07-103, ANX-07-007, requesting approval of a voluntary annexation of approximately 177.399± acres located at the southwest corner of 151st Street and Lone Elm Road was considered. Applicant: Bruncker Farms.

Motion by Huttman, seconded by Montgomery, to approve. YEA: Vogt, Huttman, Copeland, Montgomery and Campbell. NAY: Bacon. Passed 5-1.

Councilmember Randall returned at 9:10 p.m.

9. NEW BUSINESS - MUNICIPAL SERVICES

PROJECTS

- A. Ordinance No. 07-104 approving the description and survey of lands necessary for constructing and maintaining a 42" transmission line from Water Plant No. 2 to 119th Street and Lone Elm Road, PN 51604, was considered.

The Director of Municipal Services overviewed the process to meet the city's ultimate needs for water services. He noted this will also help provide redundancies to aid the 50-year old water system. In addition, he provided a history of the past two years concerning this project.

Motion by Randall, seconded by Bacon, to approve. Passed 7-0.

10. NEW BUSINESS – ADMINISTRATION

PLANNING

A. Presentation on Downtown Projects.

The Director of Neighborhood and Human Services spoke about the Civitas Downtown Plan which included immediate steps recommended. Also included in the presentation were highlights of completed projects and projects in process. She overviewed the infrastructure process for downtown which includes: parking garage, elevated railroad, quiet zone, Santa Fe streetscape, wayfinding signage, culture and art improvements, civic improvements, and historic preservation.

The presentation was well received; no action requested or taken.

11. NEW CITY COUNCIL BUSINESS

Mayor Copeland spoke of his recent attendance at the Police Volunteer Appreciation Dinner. He spoke about Operation Lifeline and invited viewers to contact the city for more information.

Mr. Copeland encouraged voters to complete the election ballots delivered by mail recently.

12. EXECUTIVE SESSION

Motion by Randall, seconded by Montgomery, to recess back into Executive Session under the same exceptions noted previously for 20 minutes. Passed 7-0.

The meeting recessed at 9:38 p.m.

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

Motion by Randall, seconded by Montgomery, to recess back into Executive Session for 20 minutes. Passed 4-0.

The meeting recessed at 9:59 p.m.

The meeting reconvened at 10:34 p.m. with all members present.

LEGAL

A. Matters which would be deemed privileged in an attorney-client relationship pertaining to potential claims of Ames Construction Company were considered.

Motion by Randall, seconded by Bacon, to accept the report of the City Attorney, hire Morris and Hecker to handle legal issues related to the claim and authorize the hiring of a critical path expert, if required. YEA: Campbell, Randall, Bacon, Vogt, Copeland, and Montgomery. NAY: Huttman. Passed 6-1.

LEGAL

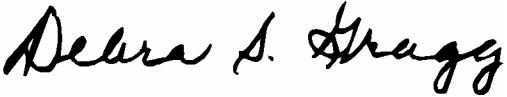
- B. Matters which would be deemed privileged in an attorney-client relationship pertaining to amendments to the Redevelopment Agreement and Project Plan between the City and RTR Development, LLC (Maegrace) for the Olathe Retail District were considered.

Motion by Randall, seconded by Bacon, to continue negotiations. Passed 7-0.

13. ADJOURNMENT

Motion by Randall, seconded by Bacon, to adjourn. Passed 7-0.

The meeting adjourned at 10:38 p.m.



City Clerk