

The Olathe City Council met in special session at 7:01 p.m. with Mayor Copeland presiding. Councilmembers Montgomery, Bacon, Campbell, Randall, Ryckman and Vogt were present. Also present were City Manager Wilkes and City Attorney Glinstra.

**1. CALL SPECIAL SESSION TO ORDER**

**2. HEARING**

- A. A hearing on a property owner's request to allow a private basketball court to encroach upon City park land, or to sell the park land to the property owner, or to turn the basketball court into a neighborhood facility was held.

The City Attorney, Tom Glinstra, made a presentation regarding the basketball court and explained options available to the Council.

Councilmember Campbell asked if all of the court is located on city property.

The City Attorney stated that the majority of the court is on city property.

Councilmember Vogt asked about the direction provided to Mr. Lyon.

Park Ranger, Paul Krueger, said he advised Mr. Lyon the court could not be constructed on city property.

Mayor Copeland asked if the court could have been built on Mr. Lyon's property.

The Parks and Recreation Director, Kevin Corbett, said the exact size is very close and it would have filled the entire property.

Jeff Lyon, 12927 S. Hagan St., submitted a petition, news articles, maps, insurance, photographs and other documents to support his request for the city to allow the court.

Mr. Lyon described the surrounding neighborhood and provided a history and his reasons for construction of the court.

Councilmember Vogt asked if Mr. Lyon knew the court was built on city property and if he considered the liability.

Mr. Lyon said yes and after looking at other encroachments he proceeded.

Councilmember Vogt asked why the court wasn't built on his property or on subdivision property and about his knowledge of permit requirements.

Mr. Lyon said it wouldn't fit on his property and subdivision property wasn't considered. He also said that he is not familiar with permitting requirements.

Councilmember Ryckman asked if Mr. Lyon was still considering donating the court to the city or if he would reimburse the city for its costs if it was possible to transfer the property.

Mr. Lyon indicated due to accommodations required by the Americans with Disabilities Act (ADA) he withdrew the offer to donate the court, but would be willing to pay reasonable costs to acquire the property.

Councilmember Ryckman asked if Mr. Lyon were able acquire the property and retain the court, what limitations would he establish for the court.

Mr. Lyon said except for some dusk until dawn considerations it would be an open court.

Councilmember Bacon expressed concern about insurance not covering improper uses and questioned how insurance could be written for property that wasn't owned by the party being insured.

Mr. Lyon said indemnification is provided for the city and the insurance coverage provisions are established in the documents he submitted on page 3 of 21 in paragraph 12c.

Councilmember Randall asked why the court wouldn't fit on Mr. Lyon's property and what access was available to the court for safety purposes.

Mr. Lyon said the size of the court was too large or may have fit very tight on his property. He also said that access for safety provisions for the court would be very costly based on information prepared by the City Attorney and is part of the reason he has withdrawn the donation option.

Mayor Copeland said to clarify the options Mr. Lyon's request is to purchase the property.

Mr. Lyon said purchase the property or arrange for short term use of the property and provide indemnification for the city.

Mayor Copeland requested legal advice on remedies and how to proceed from the City Attorney.

The City Attorney suggested discussing the legal remedies in executive session.

The consensus of the Council was to recess into executive session to discuss the available legal remedies.

### **3. EXECUTIVE SESSION**

Motion by Randall, seconded by Bacon to recess into an executive session for 20 minutes under the attorney-client privilege exception to the Kansas Open Meetings Law to discuss matters which would be deemed privileged in an attorney-client privilege relationship pertaining to litigation matters relating to a basketball court. Passed 7-0.

The meeting recessed at 8:25 p.m.

### **4. RECONVENE FROM EXECUTIVE SESSION**

The meeting reconvened at 8:49 p.m.

Mayor Copeland announced a motion following the executive session would occur following the comments of speakers.

Lou Havrilla, 12729 S. Hagan St., complimented Mr. Hagan on his efforts and described the court as an improvement to the surrounding area. Mr. Havrilla said he would like to see the court remain and believed the best option is to allow Mr. Lyon to purchase the property.

Dennis Meehan, 12933 S. Hagan St., spoke in support of Mr. Lyon and allowing the court to remain.

Michelle Burns, 15410 W. 154<sup>TH</sup> Terrace, counsel for Mr. and Mrs. Lyon restated the options and preferences of Mr. and Mrs. Lyon for the basketball court.

Mayor Copeland requested a summary of the deliberations by the Parks and Recreation Foundation Board.

Doug Svatos, 2125 S. Central, Chairman of the Parks and Recreation Foundation Board, summarized the actions taken by the board regarding the basketball court and described the reasoning behind denial of the request made by the Lyon's. Mr. Svatos said the board voted unanimously to reject the request and direct removal of the court with a plan for removal submitted by June 2<sup>ND</sup> and removal completed by December 2<sup>ND</sup>.

Mayor Copeland asked the City Attorney what should be the next steps of the Council to proceed with the matter.

The City Attorney said the next step would be a vote of the Council. However, he requested an opportunity, along with the City Manager, to meet with Mr. Lyon to discuss the matter.

Councilmember Campbell said he supports the request to find a way to resolve the matter, but believes the communities views on the matter, ADA compliance requirements and liability issues will make it difficult to resolve.

Councilmember Montgomery agreed with Mr. Campbell's comments and added that if valid protest were submitted that would require an election it would end other possible choices for him as a result of the election costs.

Mayor Copeland recommended closing the hearing and allowing the City Attorney and City Manager approximately one month to work with Mr. Lyon.

Motion Randall, seconded by Bacon, to close the hearing. Passed 7-0.

## **5. RECESS FROM SPECIAL SESSION**

The special session recessed at 9:06 p.m. to proceed with the study session.

Councilmember Bacon left the meeting at 9:25 p.m.

The study session adjourned at 10:00 p.m.

## **6. RECONVENE SPECIAL SESSION**

The special session reconvened at 10:01 p.m.

Mayor Copeland announced the discussion in executive session centered around questions that may result in removal of the basketball court and the process required for removal of the court with the City Attorney directed to identify the process. The discussion also included potential legal remedies going forward and clarification of legal issues as a result of the hearing.

**7. ADJOURNMENT OF SPECIAL SESSION**

The meeting adjourned at 10:03 p.m.

*Donald P. Howell*

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City Clerk