

The Olathe City Council met in regular session at 6:35 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 TO ORDER**

**2. 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 consider. Passed 7-0.

- A. Matters which would be deemed privileged in an attorney-client relationship pertaining to potential litigation involving a liquor license.

**3. RECONVENE FROM EXECUTIVE SESSION**

The meeting reconvened at 7:00 p.m.

Councilmember Randall noted Council consulted with the City Attorney and no action was needed.

**4. BEGIN TELEVISED SESSION**

**5. PLEDGE OF ALLEGIANCE**

Mayor Copeland announced Planning Session Item C, discussion regarding a proposed development project in north Olathe, was removed and would be rescheduled.

**6. SPECIAL BUSINESS**

**AWARDS**

- A. Presentation of service award to former Planning Commissioner Tom Marsh.

Mayor Copeland presented the service award to Mr. Marsh.

**APPOINTMENTS**

- B. Resolution No. 10-1059 appointing a member to the Planning Commission.

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

- C. Resolution No. 10-1060 appointing members to the Citizens Police Advisory Council.

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

## 7. PUBLIC HEARINGS

### ECONOMIC DEVELOPMENT

- A. A public hearing on the advisability of creating the Great Mall of the Great Plains Community Improvement District was opened.

Ron Shaver, Deputy City Attorney, introduced the item and provided an overview.

Councilmembers asked questions and received information regarding the result of action on the project as it is currently proposed for funding, sales tax collections, inclusion/exclusion of properties within the district, involvement of property owners within the district and reasoning for the district as a result of citizens expressing opposition for the increased sales tax.

Mark Levin, Great Olathe Center and Chase Simmons, Polsinelli Shugart Law Firm, made presentations and responded to questions.

Ron Krause, 44 Montgomery #3300, San Francisco, CA, representing ownership of six of the parcels included in the district. Mr. Krause commented that initially they were not included in discussion for development of the district and believes that not just any re-development would be beneficial to their properties. They desire to be included in the planning process if they are going to be forced into the district.

Councilmember Bacon asked Mr. Krause about the letter to the City Council expressing opposition for the project to obtain clarification of the position.

Mr. Krause said their position is softened if the proposal has a sunset for the planning process and they are included in the process, but would like their properties excluded if it's not necessary to include them in the district at this time. However, they still wish to participate in the process and would consider joining the district at a future date when a completed plan is identified.

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

Options for City Council action were explained. Further discussion revealed the parcels occupied by restaurants which included those identified by Mr. Krause would account for approximately 15% to 20% of the potential revenue within the district.

The Council asked for the applicant's position regarding the initial exclusion of all parcels not owned by the applicant.

Mr. Simmons responded due to timing concerns regarding the ability to collect sales tax beginning January 1, 2011, their desire would be to proceed now even if that meant initially excluding the parcels in question and if that occurred they will be sitting down with them as quickly as possible.

**ECONOMIC DEVELOPMENT**

- B. Ordinance No. 10-58 authorizing the creation of the Great Mall of the Great Plains Community Improvement District was considered.

Motion by Randall, seconded by Montgomery, to approve the amended Great Mall of the Great Plains Community Improvement District excluding all property that is not owned by the applicant.

Mr. Shaver suggested the following amendment to the motion for clarification to include Tract A, The Great Mall, a subdivision in the City of Olathe, Johnson County, Kansas, according to the recorded plat thereof, filed October 31, 1996 in Plat Book 97 at Page 31. Lots 9-12, The Great Mall, a subdivision in the City of Olathe, Johnson County, Kansas, according to the recorded plat thereof, filed October 31, 1996 in Plat Book 97 at Page 31. Lot 1, The Great Mall, 2<sup>nd</sup> Plat, a subdivision in the City of Olathe, Johnson County, Kansas, according to the recorded plat thereof, filed June 4, 2004 as Document No. 20040624-0011867, in Book 200406 at Page 011867. Also including any and all adjacent Right-of-Way.

Councilmembers Randall and Montgomery agreed to amend the motion and second to include the description as stated by Mr. Shaver.

The motion passed 7-0.

**8. CONSENT AGENDA**

Councilmember Ryckman requested item K be considered separately.

Councilmember Montgomery requested item J be considered separately.

Councilmember Campbell requested items G and I be considered separately.

Motion by Randall, seconded by Bacon, to approve the consent agenda with the exception of items G, I, J and K. Passed 7-0.

**MINUTES**

- A. Council meeting minutes of September 7, 2010, were considered and approved.

**PROJECTS**

- B. Consent Calendar.
1. Change Orders
    - a. None.
  2. Project Completion Certificates
    - a. 2010 Cedar Creek Street Improvements; Project No. 3-R-003-10, was considered and approved.

**PROJECTS**

3. Final Payment to Contractors
- a. 2010 Cedar Creek Street Improvements; Project No. 3-R-003-10, was considered and approved.

Final Payment -	\$	57,208.06
Original Contract Amount -	\$	448,907.51
Paid-To-Date -	\$	501,372.51
Change Orders -	\$	109,673.06*
Final Contract Amount -	\$	558,580.57
Consultant – Miles Excavating		

\*Over \$100,000 of the total change order amount was for the reconstruction of a portion of Hunter Drive. Once Hunter Drive was milled, it was obvious that just a mill and overlay would not work due to the base condition. At that time Change Order #1 was approved by Council for \$104,739.47 for the reconstruction of Hunter Drive.

4. Final Payment to Consultants
- a. None.

**PLATS**

- C. Final plat, P-10-019, for two lots on 3.39196± acres of Southpark Surgical Services, a replat of lots two (2) and three (3) of Olathe ASC, L.L.C.; located on the northwest corner of 151<sup>st</sup> Street and Southpark Boulevard was considered and approved.

**LICENSES**

- D. Drinking establishment license applications for Domo, Garozzo's Ristorante, Mi Ranchito, My Big Fat Greek Restaurant and Texas Roadhouse were considered and approved.
- E. A pawnbroker/precious metal dealer license application for Alpha Pawn and Cash Services was considered and approved.

**PROJECTS**

- F. An inter-local agreement with the Johnson County Stormwater Management Program to receive 75% reimbursement of Watershed Study fees, PN 20207C, was considered and approved.
- G. Supplemental Agreement No. 1 with GBA, for professional engineering services of 127<sup>th</sup> Street, Black Bob to Pflumm, Preliminary Design, PN 30401C, **WAS REMOVED FOR SEPARATE CONSIDERATION.**

**AGREEMENTS**

- H. The COMM1 Agreement between the City of Olathe, Kansas and the Board of County Commissioners of Johnson County, Kansas was considered and approved.

**POLICIES**

- I. Resolution No. 10-1061 adopting the Investment and Cash Management Policy and repealing previous policy established by Resolution No. 09-1058 **WAS REMOVED FOR SEPARATE CONSIDERATION.**

**CONTRACTS**

- J. Acceptance of bids and award of contract to Olathe Ford Sales for the purchase of nine (9) police cars **WAS REMOVED FOR SEPARATE CONSIDERATION.**
- K. Renewal of contract for Clearlane© and salt for snow and ice removal with Cargill, Inc., and Independent Salt Company **WAS REMOVED FOR SEPARATE CONSIDERATION.**
- L. Renewal of contract with iXtend, Inc., for managed services support for the JD Edwards Enterprise One System was considered and approved.

**TRAVEL**

- M. Authorization of travel for Judge Jon S. Willard's attendance at the American Bar Association Judicial Division Traffic Court Seminar, October 12-15, 2010, in Little Rock, Arkansas was considered and approved.

The meeting recessed for a 5 minute break at 8:57 p.m.

The meeting reconvened at 9:08 p.m.

**ITEMS FOR SEPARATE CONSIDERATION:**

**PROJECTS**

- Item G: Supplemental Agreement No. 1 with GBA, for professional engineering services of 127<sup>th</sup> Street, Black Bob to Pflumm, Preliminary Design, PN 30401C, was considered.

Councilmember Campbell requested and overview of the project.

Mary Jaeger, City Engineer, provided a project summary and described what's covered by the supplement agreement.

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

**POLICIES**

- Item I: Resolution No. 10-1061 adopting the Investment and Cash Management Policy and repealing previous policy established by Resolution No. 09-1058 was considered.

Councilmember Campbell asked what the cost and downside would be if the policy is not approved.

Maureen Rogers, Accounting Manager, described the benefit of expanded powers provided with the policy, but said comparable rates would remain available.

Mayor Copeland asked what the risk would be.

Ms. Rogers said only the operation risk related to time should a bank fail because the deposits remain fully collateralized.

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

### **CONTRACTS**

Item J: Acceptance of bids and award of contract to Olathe Ford Sales for the purchase of nine (9) police cars was considered.

Councilmember Montgomery expressed appreciation for the efforts made in reduction of vehicles as described in the recent audit.

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

Item K: Renewal of contract for Clearlane© and salt for snow and ice removal with Cargill, Inc., and Independent Salt Company was considered.

Councilmember Ryckman expressed concern regarding sufficient supplies should winter conditions occur causing greater than usual demand.

Staff described actions taken to address funding, inventory and supply issues to meet the demand.

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

## **9. NEW BUSINESS - PLANNING**

### **UNIFIED DEVELOPMENT ORDINANCE**

A. Ordinance No. 10-59, UDO-09-008, requesting approval of amendments to Chapter 18.64, Signs of the Unified Development Ordinance (UDO) was considered. Owner/Applicant: City of Olathe. Planning Commission recommends approval 6-0.

Dave Clements, Planning Manager, provided an overview of the amendments.

Councilmember Bacon expressed concern with the rotation of temporary signs on a permanent basis.

Mr. Clements described how they are addressed within the UDO.

Councilmember Campbell expressed concern with the lack of provisions established to better address garage sale and political signs.

Tom Glinstra, City Attorney, described the legal requirements that result in limitations for regulation of political signs.

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

**PLANNING**

- B. Comprehensive Plan Review – Opportunities for Public Input/Comment.

Thomas Morefield, Senior Long Range Planner, presented the proposed Comprehensive Plan.

Councilmember Randall left the meeting at 10:20 p.m.

Paul Ling, Planning Commissioner, spoke in support of the plan stating it is a visionary and ambitious document.

Dale Crawford, 512 N. Curtis, spoke in support of the plan.

Councilmember Vogt introduced comments from Jeff Creighton, former Planning Commissioner, who supports the plan and thanked Council for their support of the process.

Ms. Vogt also passed along support for the plan she received from Frank Taylor and Tim McKee of the Olathe Chamber of Commerce.

- C. Ordinance No. 10-60 (CPA-06-05) adopting the revised City of Olathe Comprehensive Plan was considered.

Motion by Bacon, seconded by Vogt, to table the item until the October 5, 2010, regular session and include options for flood plain maps. Passed 6-0.

**10. NEW BUSINESS - ADMINISTRATION**

**MUNICIPAL CODE**

- A. Ordinance No. 10-61 amending Olathe Municipal Code Section 7.04.030 pertaining to Occupation Tax – Penalty for Nonpayment was considered.

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

- B. Ordinance No. 10-62 amending Olathe Municipal Code Section 7.06.030 pertaining to License Fee was considered.

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

- C. Ordinance No. 10-63 amending Olathe Municipal Code Section 7.08.030 pertaining to License Fee was considered.

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

- D. Ordinance No. 10-64 renewing a franchise agreement between the City of Olathe and Atmos Energy Corporation was considered.

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

**11. NEW CITY COUNCIL BUSINESS**

Councilmember Vogt reminded citizens of the Wild West Show and Bullwhacker Days at Mahaffie Stagecoach Stop and Farm this weekend.

Mayor Copeland announced the Greater Kansas City Disability Mentoring Day and Job Fair sponsored by the City of Olathe and the Olathe Persons with Disabilities Advisory Board will take place at the Bell Cultural Event Center on the campus of Mid-America Nazarene University on Friday, October 15, 2010, from 9:00 a.m. to 3:00 p.m.

**12. END OF TELEVISED SESSION**

**13. GENERAL ISSUES AND CONCERNS OF CITIZENS**

Gary Coselman, Pastor of The Gathering Place Church, spoke in opposition to the location of a retail liquor store in proximity to The Gathering Place Church and nearby learning institutions asking Council to consider the spirit and intent of the law.

Mayor Copeland asked the City Attorney to speak in reference to the matter.

Tom Glinstra, City Attorney, spoke to the application of intent and specifics of the law regarding distance restrictions and school requirements. Mr. Glinstra advised the distance restrictions are legally specific and based on attorney general opinions and court cases with regard to schools, these address public, parochial and nursery schools. Staff does not believe the Gymboree and the dance studio located nearby come under the purview of a school. Additionally, due to the time and money spent by the retail liquor store with reliance they are in compliance with our requirements, staff opinion is that the city could be subject to liability for detrimental reliance if they are denied a license. The recommendation is to proceed with issuance of the license from the City Clerk's Office.

**14. CONVENE FOR PLANNING SESSION**

**FEES**

- A. Water rates, wastewater rates and system development fees for inclusion in the 2011 Comprehensive Listing of Fees and Charges were discussed.

Councilmembers expressed concern with the proposed increases.

Staff described the history surrounding fees as a result of infrastructure expansion to meet growth and the resulting debt, reduced use by customers, regulatory mandates, and current efforts to limit rate increases.

Staff was directed to return with two rate increase options providing for a 75% and 50% reduction of the proposed rates along with the impact it will have on future years.

**PROJECTS**

- B. The project review for the KDOT T-Works Program was discussed.
- Ron Norris, Public Works, Planning and Environmental Services Director, provided an update on the program from the recent MARC meeting advising the Gateway Project appeared to have consensus as a priority.
- C. Discussion regarding a proposed development project in north Olathe was removed from the agenda.

**15. ADJOURNMENT**

The meeting adjourned at 12:12 a.m.

*Donald P. Howell*

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City Clerk