

Regular Meeting  
June 10, 2013, 6:30 p.m.  
City of Oswego, Kansas

Present: Councilmembers Dee Brown, Jane Rea, Bill Owens, Darren Tynan, Susan Bringle and Kelly Vance, with Mayor Glenn Fischer presiding.

Also Present: Police Chief George Elliott, Interim City Superintendent Calvin Jurgensen, Attorney Rick Tucker, City Clerk Cheri Peine and Deputy City Clerk Carol Eddington, Ken Foster, Mark, Penny and Ethan Spore, Mark LaTurner, Bob Guilfoyle, Craig Wilbert, Jerry Waltrip, Keith Carr and Stan Jayhay.

### **OPENING PRAYER & PLEDGE OF ALLEGIANCE**

Rick Tucker opened the meeting with a prayer. Councilman Owens led the Pledge of Allegiance.

### **PROCLAMATION – ETHAN SPORE TO PLAY IN 2013 SHRINE BOWL**

Mayor Fischer read the Mayor's Proclamation recognizing Ethan Spore's accomplishment in being selected to participate in the 40<sup>th</sup> Annual All-Star Shrine Bowl of Kansas. He then presented the proclamation to Ethan. Ethan's parents as well as three Shriners from the Mirza Temple were in attendance. The game will be played July 27<sup>th</sup> in Topeka.

Mayor Fischer called for a short break so everyone could congratulate Ethan and wish him well.

### **PETITIONS AND DELEGATIONS**

#### **Labette County Fair Board – Beer Garden**

Ken Foster, Labette County Fair Board Member, addressed the Governing Body. He said that the Fair Board would like to have a beer garden again this year during the fair (July 30 – August 2), between the hours of 6:00 p.m. and 10:30 p.m. They have submitted a CMB license application.

The Fair Board would also like to see the age restriction of 21, for access inside the garden, be lifted so that all members of the family can stay together even if the dad wants to have a beer. Foster said that the garden will have two access points that will be manned; ID's will be required at the point of sale; armbands will be given out at the point of sale. Only 3.2 beer will be sold. Foster said that they have cut individuals off when they feel they have had too much and since the Fair Board knows most of the young people in the county, they have also turned away individuals they knew were not old enough. When asked, Police Chief Elliott said he had no problems with the requests just as long as the beer garden was policed as well as it has been in the past two years.

After further discussion, Owens made a motion and Tynan seconded to approve the request for the CMB to be held during the fair and to allow the age restriction of 21 for access inside the garden to be lifted. Motion carried with Rea and Vance voting no.

#### **CrawKan Telephone – Fiber Optic Services**

Bob Gilfoyle and Craig Wilbert, CrawKan, explained that CrawKan has received calls from Oswego educators asking if they could provide service to Oswego. The State has dropped the

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KanEd program that was providing service to the schools. CrawKan is a broad band company that serves several schools in the area. In looking at bringing their services to Oswego, it would be cost prohibitive to bury cable lines considering the amount of rock they would encounter. However, in speaking with an individual that lives here and then with the City Superintendent, they found out that there are abandoned water lines that run through town after the new water lines were installed. With the City's permission, CrawKan could use these abandoned water lines in town since there were new lines installed with the recent water project. Gilfoyle said that the impact to the town would be minimal as they would not have a lot of street cuts like the water project had.

The School District needs a solution before school starts so that would be their first priority. Wilbert said CrawKan would provide the school with a high definition camera free of charge with the service. The representatives said that they would be able to put fiber optic to residences in the future (possibly late this year or early Spring of next year) and could set up a franchise fee for cable but not on internet service. Gilfoyle noted that they would need a centralized location to house their electronics. Individuals would have to buy the internet to get the cable TV and people can check out their website for pricing and packages.

Wilbert said they would need a lease agreement to use the abandoned water lines. Attorney Rick Tucker asked that their people make it up and then he will take a look at it. Council suggested a five year lease and asked about free internet for the City. Wilbert said they could provide that as well as free video and a firewall for the City.

Council suggested staff check with other cities that have entered into agreements with CrawKan ask them how it went.

## **CONSENT AGENDA**

The Consent Agenda includes minutes from regular and any special meetings since the last regular meeting, accounts payables for the month (copies of the warrants were available for review). Councilmember Bringle asked that the minutes reflect the fact that she did not oppose the new roof for the Senior Citizens Center but that she opposed the way the motion was constructed. Owens made a motion and Bringle seconded to approve the Consent Agenda with the addition to the minutes. Motion carried.

## **OLD BUSINESS**

### **Condemnations**

Courtesy letters were mailed to the following property owners on May 2, 2013 advising them of the unsafe and dangerous structures on their property:

923 Commercial St. – garage  
22 N. Commercial St. – house and garage  
1211 First St. – house and garage  
641 Indiana St. – garage

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It was reported that the garage at 923 Commercial has been torn down and hauled off but that the other structures were still standing. The owner of 923 Commercial is the only property owner that has contacted the city since receiving the courtesy letter.

Councilmember Owens noted that you have to go down the alley to see the garage at 641 Indiana and he wondered how properties were selected for condemnation. Police Chief (and Code Enforcement Officer) Elliott stated that people either call the city and turn them in or sometimes the Code Enforcement Officers themselves notice them and turn them in.

Resolutions, fixing August 12, 2013 as the date for the public hearing and providing for notice of the hearing, were presented to the Council on all properties. Bringle made a motion and Brown seconded to approve the condemnation resolutions on all properties but 923 Commercial. Motion carried with Owens voting no. Resolutions were numbered as 6-10-13A (22 N. Commercial), 6-10-13B (1211 First St.) and 6-10-13C (641 Indiana).

#### **Nuisance Violations – 645 Merchant St.**

Robyn Armstrong & Charles Lawson had been notified of the code violations. Chief Elliott reported that the items are still there but they are now in a couple of piles. Rea made the motion and Bringle seconded to send the order of violation. Motion carried with Owens voting no.

#### **On-Call Services Contract with Shafer, Kline & Warren**

Attorney Tucker reviewed the agreement for services with Shafer, Kline & Warren (SKW). He felt there were some parts to the agreement that the city needed to consider before approving:

*Certificate of Merit* – Tucker feels that it is unreasonable to require the City to provide written certification from an independent consultant before making a claim against SKW for professional negligence, errors or omissions.

*Consequential Damages* – Tucker said that by including this paragraph, the City could not sue SKW for any damages the city would incur caused by the negligence of SKW.

*Covenant Not to Sue* – This would be limiting the City to a 12 month statute of limitation. Kansas law provides a 60 month statute of limitation for written contracts.

*Limitation of Liability* – This would limit the ability to recover against an engineer for negligence. Tucker felt it was not wise to include such a limitation.

Attorney Tucker recommended requesting SKW remove these paragraphs from the agreement. Brown made a motion and Bringle seconded to have the four paragraphs removed from the agreement before the City will sign the contract. Motion carried. Owens said he had a problem with the way the cost looks in the agreement, is it fixed or estimated? Clerk Peine felt sure that it was a fixed amount, however, she will contact SKW to confirm this.

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### **City Hall Renovation – LaForge & Budd Pay Request**

A copy of the final pay request, in the amount of \$5,974.38, was included in the Council packets for review. Chief Elliott said his door was not fixed yet. The door does latch and lock but it is not square with the wall. The latch on the opening in the floor in the Council room has not been replaced yet either. Rea noted that the contractor's had to use the existing wall to mount the door to and that wall is not plumb. As for the latch for the floor opening, the part is in, they have just had not had anyone free to come down here and install it yet. Rea also noted that the City still has a one year warranty.

Brown made a motion and Vance seconded to go ahead and pay LaForge and Budd but call them and advise them there are still repairs needed for the police department door and the latch on the opening in the Council Room floor. Motion carried with Rea abstaining, Owens and Tynan voting no.

### **NEW BUSINESS**

#### **Senior Citizen's Center – Roof Bid**

Per Council direction, the city sought bids on replacing the entire roof of the Senior Citizen's Center. Three bids were received:

Plumb & Square - \$12,704  
Bittner - \$11,900  
Elliott Roofing - \$12,806

Council made careful consideration of materials proposed in each bid, warranty of the materials, references, and what the bid specs required versus what was received. After some discussion, Tynan made a motion and Bringle seconded to award the bid to Elliott Roofing because the Council does not want a metal roof on the flat roof section (as bid by Bittner) and because mule hide would not last as long (as bid by Plumb & Square). Motion carried.

#### **Oswego Professional Building**

Police Chief Elliott and Councilmember Owens went through the Professional Building (as much as possible). Elliott felt that it is not feasible to save the building. Even though part of the building with the concrete roof and steel beams seems to be structurally sound, the bricks are very soft and crumble easily. He was not able to access the third floor roof.

In the past two weeks more bricks have fallen down and more metal from up above has come loose from the building. When asked if the city could sue the owner, Attorney Tucker said it would be difficult since the city has not been able to find him. The owner has closed out his post office box and left no forwarding address. Clerk Peine said she thinks there is statutory authority, in the case of imminent danger on commercial buildings, to by-pass the lengthy condemnation process and proceed with tearing down the building.

The Council would like to be able to save part of the building if at all possible. Mayor Fischer suggested checking with the Historical Society for names of structural engineers. Clerk Peine will call them and see if she can find out what the charge would be. Council asked Interim Supt. Jurgensen to have the bench removed from the sidewalk in front of the building.

### **Storm Shelters**

Mayor Fischer stated that the city has not had storm shelters available for the past two years, yet this spring, with the recent storm activity, the city has received complaints, phone calls and the television station requested an interview on the subject. The Mayor told the television station that he would do an interview after the Council meeting tonight. Mayor Fischer wanted to make sure that he had the Council's support to inform the media that the City would continue with the current policy. Discussion was held on the fact that the city did not have the means to provide official storm shelters for the entire population of Oswego; that the buildings used in the past were not safe enough to be storm shelters; that it is not a municipality's responsibility to provide storm shelters, etc. The Governing Body would like to see the storm shelters at places like Westside Homes and the trailer park, etc. Attorney Tucker said the city could pass an ordinance requiring mobile home parks, etc. to install storm shelters as other cities have.

### **Labette Community College – CTE Agreement**

LCC submitted the annual agreement that permits city employees to take classes through the college tuition free. Rea made a motion and Brown seconded to approve the agreement. Motion carried.

### **Excess Equipment – Authorization to Sell on Purple Wave**

Clerk Peine said there are several items the city has that can be sold on Purple Wave: gas grill, convection oven, abandoned vehicle (Branson), police car, bicycles, light bars, sirens, mower, tractor and possibly items from the golf course. Also, the city van needs to have the windshield wipers repaired, however, the cost for the repair will be \$1500 as the part must come from the factory direct. Jurgensen reported that they tried an after-market part but then the car wouldn't start. Peine said the car was a rebuilder with 140,000 – 150,000 miles on it and they needed to know whether the Council wanted to repair it, sell it on Purple Wave or trade it in. After some discussion, Brown made the motion and Owens seconded to have the windshield wipers repaired. Motion carried.

Owens suggested Interim Supt. Jurgensen check with O'Malley's to see what they would give the city for a trade in on the JD 318 mower and 800 Ford tractor before selling them on Purple Wave. Jurgensen listed all that was wrong with the 800 Ford tractor and Council thought it might be worth more on Purple Wave. Brown made a motion and Rea seconded to allow the department heads and the golf course put on Purple Wave what they feel needs to be sold except for possibly trading in the JD 318 mower when the city trades in mowers next year. Motion carried.

### **Concealed Carry Legislation**

The League of Kansas Municipalities prepared a briefing on the recently passed legislation on concealed carry (HB 2052). The legislation authorizes the carrying of concealed weapons in state and municipal buildings. Under the provisions of the bill, cities will have the following choices: Remove no-carry signs and allow concealed carry in municipal buildings; Provide metal detectors and personnel at each public entrance in order to post the building as no-carry;

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Assess city buildings and establish a security plan (allowing for the eligibility of a 4-year exemption from the law).

The effective date of this legislation is July 1, 2013, however, the League advised that if the city would like time to assess their buildings and make specific determinations, the city can send a letter to the Attorney General requesting an extension. In this case, the city would have until January 1, 2014 to determine what they are going to do.

The Mayor has drafted a letter to the Attorney General requesting the exemption from the Bill (to expire January 1, 2014). Owens made a motion and Brown seconded to send the letter to the Attorney General requesting an exemption for all city buildings. Motion carried.

### **Financial Information/ Reports**

Regular monthly reports include the revenue reports, Fund Balance, revenue and expense reports for water, sewer, refuse and the golf course, expense report for the general fund, sales tax report, overtime report, vacation report, water reports, building reports and Municipal Court reports.

Rea expressed concerns about the water consumption being down and how that is going to affect the water fund. Clerk Peine said she was also concerned with the amount of water loss. Interim Supt. Jurgensen said that the guys have been replacing the frost free hydrants that were leaking. It was also noted that the water plant is not using as much water for backwash as before. Peine will check with Fire Chief Allison and make sure that the fire dept. is metering their usage during training.

Owens asked about how the fair board gets billed when their usage goes over 100,000 gallons for the year. Peine said that was just consumption during the fair, not for the whole year (which has since been confirmed). She will double check that to make sure. Jurgensen said that water meter for the fairground barns is also used at the Little League field. When asked, he said it would be difficult to get a meter installed just for the ballfield due to the layout of the lines and the asphalt over the lines. He also said that the fair board is working on putting in a new water line to the hog barn that should take care of a leak between the hog barn and the meter.

### **INDIVIDUAL REPORTS**

**Vance** – asked when the open house will be on the newly renovated city hall? Peine said that the city is waiting on the blinds (they have been ordered) and there are still items to put into place. The knobs on the cabinet doors also need to be installed. She said that it is difficult to get prepared for the open house in the summer considering budget time and staff vacations.

- said that there are ruts in her yard from the post office vehicle getting to her mail box. She said they installed the mailbox as instructed by the post office but now they have ruts in their yard from the post office vehicle. Mayor Fischer suggested she contact the post office.

- said she is waiting on the steps for the pool to begin her classes.

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**Owens** – asked if the city has received commitment from USD 504 for the Safe Routes to School program- Phase I? Clerk Peine said yes.

- asked if the city had received the 2012 audit yet? Clerk Peine said no, that usually the city receives the audit around August or September, however, they conducted the audit about a month later this year.

- asked about the City Superintendent position applications? Mayor Fischer said that the city is taking applications until June 21<sup>st</sup>.

- asked that the police check out the sight triangle at Ohio and the Highway – there is a problem seeing around the white truck usually parked at Wide Open Customs.

- asked about the campaign to write tickets for not wearing seat belts over the Memorial Day holiday? Chief Elliott said that was a County program - city officers did not participate. It was noted that all city employees are to wear their seat belts at all times.

**Brown** – said that the trees in the alley behind their house need to be trimmed up a little. She knows that the limbs scratch the top of the city truck as they go to read the lift station. Also their neighbor has not mowed their back yard. Bringle will speak to the owner.

**Rea** – asked if the city was going to have the company that resurfaced the tennis courts come back and fix the area along the fence line where the coating is not all the way to the edge? The area around the posts is not sealed either – there are cracks. There is no coating behind the backboard. The main concern she has is that the whole court is not being sealed. The city needs to create a punch list and have the company come back.

- she also said that the sign on the gate at the tennis courts fell off and asked if the sign could be put on the fence instead of the gate.

**Bringle** – said that she and Tom had discussed the sidewalks for the Safe Routes to School Program. They felt that the city may be able to get sidewalks between the schools at a much lower cost than through the KDOT program. The city would need to use a route with some existing sidewalks, would not have to comply with all of KDOT's requirements and Realty could do the necessary easements. Clerk Peine said that the city would still have to put in sidewalks that met ADA standards and some engineering would be necessary.

- asked about why the Council wouldn't use the tax levy for the Senior Citizen's building for the roof repairs. Peine explained that the only money received for the Senior Citizen's building is money received from their board once a month to help cover the cost of utilities. Peine said that part of the problem with the Senior Citizen's building is that it is completely run by their board even though it is a city-owned building. The Board does not report to the city in any way. The city did not know that they had any problems with leaks even though they have evidently been having problems for years. Considering the city owns the building and carries the insurance on the building, there should be more communication there. Bringle asked if staff could check with the city's auditor and make sure that the

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manner in which the tax levy money received by the Senior Citizen's Board is being handled is proper/legal. Peine will contact the auditor.

ADJOURN

Owens made a motion and Brown seconded to adjourn the meeting at 9:25 p.m. Motion carried.

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Glenn Fischer, Mayor

Attest:

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Carol J. Eddington, Deputy City Clerk