

Regular Council Meeting
April 11, 2016 6:30 p.m.
City of Oswego, KS 67356

Present: Councilmembers Darren Tynan, Caleb Strickland, David Newby, Scott Grassl and Kelly Vance with Mayor Bill Cunningham presiding.

Also present: City Clerk Carol Eddington, City Supt. Calvin Jurgensen, Police Chief George Elliott, City Attorney Rick Tucker, Deputy Clerk Renee Cochran, Elizabeth Rucker, Brenda Willis, Scott Riley, Pat Hendrickson, Carole McKinley, Bob Conway, Jane Rea, Teri Feagan, John & Bobby Hine, Glenn Fischer, Susan Bringle, John Davis, Larry Richardson, and Paula Kern.

OPENING PRAYER AND PLEDGE OF ALLEGIANCE

Bob Conway, United Methodist Church, gave the opening prayer and City Supt. Calvin Jurgensen led the Pledge of Allegiance.

PETITIONS AND DELEGATIONS

Councilmember Resignation

Mayor Cunningham read a resignation statement from Councilmember Bill Owens. Owens has served on the Council since April 2011 and as Council President since May 2015. Mayor Cunningham and Council said they appreciated his years of service and he will be missed.

Golf Course Pond Dirt Work – Scott Riley

Scott Riley attended the meeting to ask Council about building a pond at the golf course for an alternate water source. The pond would be around an acre with a gravity feed so they can use it to water the greens. Riley said they would still need to pump some water from the lagoon but it would let them save on watering cost and it would be one less acre to mow.

Riley estimated that the cost would be around \$8,000 which should include everything. They contacted several area contractors who do this type of work and only one was interested in the job. Josh Huckle checked out the area and took soil samples. Riley asked Council if they would waive the bid process so that Huckle could get started right away. He stated it was supposed to start raining soon and they want to get it done before the rain starts.

Council asked Attorney Tucker for his recommendation. Tucker said that normally projects over \$5,000 are required to go out for bids. However, since other companies were sought with no response then a determination to circumvent the bid process would be up to the Council.

Council asked how the project would be funded. Clerk Eddington said the golf course has some restitution money and funds left from sale of equipment that could be used. Tynan made a motion and Grassl seconded to approve the project and waive the bid process, allowing the Golf Course to use Mr. Huckle. Motion carried.

Request to Vacate Portion of 7th St. – John & Bobbi Hine

John & Bobbi Hine attended the meeting to address the Council in regards to their request for part of 7th Street to be vacated. They stated they have lived at the residence for ten years and have been working on the request since November 2015. Currently they maintain the street which adjoins their property in front of their home. Mr. Lloyd Schlatter occasionally uses the

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street for access to his property, via along the railroad right of way, which is located behind their house. The request to vacate has gone to the Planning & Zoning Commission who studied the issue, heard from the parties involved, held a public hearing and visited the site in question including the Hine property, the railroad right of way and the Schlatter property. At the March Planning and Zoning meeting and after much consideration by all of the members, the Planning Commission unanimously recommended to the Council to leave 7th Street open. Brenda Willis, Vice-President of the Planning & Zoning Committee also attending the meeting to answer any questions.

Clerk Eddington reported that the reasons a city closes a street or alley is if it is not used by anyone, not utilized as a street or alley for any traffic flow, and if there are no objections from the adjoining property owners. This street is used by the city when necessary and by Mr. Schlatter through a legal easement obtained from the railroad. Eddington said the city's Zoning Consultant advised that Mr. Schlatter would have a case against the city if they would close it since he is utilizing it as a city street. Council asked Attorney Tucker for his recommendation. Tucker said that since the Planning and Zoning Committee voted to deny the request that determination should be taken in to consideration. There was no statute that he was aware of that would override their decision. No action was taken.

Proclamations – Fair Housing, Volunteer Week and Arbor Day

Mayor Cunningham asked that the Proclamations for Fair Housing, Volunteer Week and Arbor Day be moved to later in the meeting so that they could move on to the offer to purchase Stone Hill Estates. Council agreed.

David Newby entered the meeting at 7:05 p.m.

CITY ATTORNEY

Offer to Purchase Stone Hill Estates

An offer from William and Jan Owens to purchase Stone Hill Estates for \$132,000 was presented. The contract for sale of the property was provided by Chesnutt Real Estate to Wood-Dulohery, the listing agent. Clerk Eddington reported that Janice Dulohery, Wood-Dulohery, generated an addendum to the contract adding the property address and legal description, the fact that Wood-Dulohery is the listing agent who will receive the commission and split it with Chesnutt, the fact that if the buyer fails to close, the earnest deposit goes to the seller and that the property is to be sold as is (unless termite treatment is needed and then the seller will have that done).

The contract stated that the buyer has asked that a fence be repaired, a downed tree removed, as well as requiring the seller provide proof that the water and electricity are working. Attorney Tucker stated that if approved, the addendum would override the contract, which says the property would be sold as is with no guarantees except for termite treatment. The city's listing agent said items such as whether the utilities are in working order is the determination of the buyer through an inspection, not the responsibility of the seller.

Council discussed that the asking price was \$132,500 and asked what the city had in the property. Clerk Eddington said \$202,975 which includes the original purchase price, engineering fees and cost of the bond issue. Strickland asked how much has not been recouped yet. Eddington said that \$142,671 was the balance if you include the \$60,304 the city received for the Grainger property. Strickland asked about the amount remaining on the bond issue. Eddington reported a balance of \$157,000 still owed on the original \$166,000 bond issue. If the revenue for the Grainger property is applied approximately \$97,000 remains on the bond. Strickland made a motion and Tynan seconded to accept the offer of \$132,000 with the “as is” addendum.

Newby asked if Attorney Tucker could address any legal ramifications before taking a vote. Attorney Tucker said there wasn't a precedent to go by so he provided Council information on the city's code and Kansas Statutes regarding Conflicts of Interest. Tucker stated that he realized he wasn't offering an opinion, just information. Since Councilmember Owens had excused himself from discussion and voting when setting the price, he didn't believe there were any legal issues. However, he also stated that there is a moral obligation to the public not to give the appearance of a conflict of interest. Council discussed the benefits of waiting to give someone else an opportunity to make an offer since the price has just been lowered and thus avoid the appearance of unethical dealings.

After further discussion the Mayor called for a vote. Motion failed with Strickland and Tynan voting in favor and Grassl, Vance and Newby voting against.

Resolution – Sales Tax

A Resolution to seek a half cent sales tax increase for the Fire Department, water bill relief and adequate public services as determined by the Governing Body was presented. The tax would be for a period of four (4) years and would take effect on the 1st day of January, 2017.

At the 28th Special meeting, Council determined to seek a half cent sales tax increase for the Fire Dept. and for relief on water bills. Clerk Eddington reported that when researching the issue League Attorney Eric Smith said that since the city already has a 1% sales tax that is for specific purposes, any other sales tax must be for general purposes. The city can say the fire department and water bill credit but he advised to add wording such as “and funding for adequate public services as determined by the Governing Body”.

In researching whether the city can do a credit on the water bills, the auditor said there was no auditing standard that would prohibit applying a credit, but questioned the reasoning and recommended she contact the League or City Attorney. The League attorney said he didn't think it was a good idea – the amount received from sales tax is a fluid amount, therefore, the amount of credit would have to be re-calculated often; it would be even more difficult to make an adjustment to the rates due to the amount being unreliable. Another consideration is that once the four years is up, it would be like a whole new increase on the water bill if the tax was not passed again or if the new Council determined there was a greater need elsewhere – and expenses will have risen over time so that a rate increase would probably be needed – that potential double

increase would make it even more difficult for people to absorb. Clerk Eddington stated that the water fund is taking care of itself. The tax lid is going to make it difficult for cities to take care of anything else that is not already in the budget.

Eddington stated that the city's accounting software company has said they can assist with setting up our system to put credit on the bills; however they cannot set it to where the credit is based on water usage. It will also affect some accounts in that adding one more line would cause their bill to be printed on two cards instead of one.

It was discussed that a half cent sales tax would bring in approximately \$90,000 a year based on what is received now. Further discussion included the needs of the fire department and that it was important to have a sunset. Vance made a motion and Tynan seconded to approve the resolution with the wording as presented. Motion carried with Strickland opposing. Clerk assigned the Resolution # 4-11-16A.

CONSENT AGENDA

The Consent Agenda including minutes from regular and any special meetings, accounts payables check registers for the month, payroll checks and utility deposit refund checks for the month were presented. (Copies of the warrants were available for review).

Appointments

Planning & Zoning Commission – Mayor Cunningham submitted Bill Farris and Linda Schreppel for reappointment. Term expiring May 2019.

Mayor Cunningham asked if there was any discussion or corrections to the Consent Agenda. It was requested that a change be made in the discussion about Kamp Siesta. Westar is donating materials not electricity. Supt. Jurgensen said that he suggested a 3-5 cent discount not a 33 cent discount on airport fuel as a draw during the ceremony for the new apron. After some discussion Tynan made a motion and Newby seconded to approve the Consent Agenda with the corrections as requested. Motion carried.

OLD BUSINESS

Downtown Demolition Grant

Change Order

Change Order #1 to remove the materials and labor to install the metal skin on 325 Merchant – a deduction of \$31,708, bringing the total bill to \$13,500 was presented. Clerk Eddington reported that Kyle Denham, PLJBD, met with the contractor to inspect the work on the project. The inspection report was provided for Council review. Newby made a motion and Vance seconded to approve the change order. Motion carried.

Final Bills – Contractor, SEKPRC & Engineer

Final invoices were presented for Council approval.

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- SEKRPC - Invoice #4 (\$3,000) to be paid now and Invoice #5 (\$2,000) to be approved for payment upon submission of the closeout packet, which must be done by the end of the month as that is the grant deadline.
- PLJBD – Final Invoice \$850 (less than the quoted \$1,250 since less inspection work)
- DALTON-KILLINGER CONSTR. - \$13,500

Vance made a motion and Tynan seconded to approve all of the final bills. Motion carried.

Bond Issue Amount Determination

Clerk Eddington reported that after checking with the Grant Administrator and the Bond Counsel, the city does not have to determine the amount of the bond issue at this point in time since the authorization Ordinance has been done and as long as the city elects to pay for the final grant expenses themselves now (and be reimbursed by the bond issue later.)

Council discussed the possibility of applying for another demolition grant for 325 Merchant. Clerk Eddington said the grant administrator advised her that the State has recently made changes to the requirements. They now require an engineer to be hired to provide a PER (preliminary engineering report – usually an expense of \$2K - \$10K depending on project) and to oversee the project. They also require the asbestos testing to be completed prior to the grant application being submitted. Any costs incurred prior to the application (PER & asbestos testing) are at the city's expense and cannot be included in the grant application or reimbursement. The additional engineering costs would be added to the grant project budget and Davis Bacon wages would be required. The city would have none of these costs if they took care of the building outside of a grant.

Council also considered what Attorney Tucker said about city liability if Council decides not to follow through with demolition of the building. *Under the Kansas Tort Claims act, KSA 75-6104, the city is not liable for failure to enforce an ordinance as that is an administrative function. An exception to that would be if the city acts willfully or wantonly in its failure. Since the city knows of the hazards to occupants, pedestrians and passersby as well as drivers of cars passing by, the city should at a minimum barricade the structure in a safe manner and remove all occupants.* Council also discussed the concern that barricades would not keep the Newspaper Office, located to the west of the apartment building, safe if the west wall gives way.

Council reviewed the results of an online survey the city did in 2013/2014 asking the public what they thought the city should do with the Professional Building. The majority of citizens thought the building should come down if the expense to save it was much greater than removing it.

The condemnation public hearing for 325 Merchant is set for the May 9th Council Meeting. A second Resolution will be presented at that time allowing another time frame in which the owner has the opportunity to take care of the property themselves, usually 30 days. The Council could determine at the June meeting to seek bids and have them read for bid award at the July meeting. Eddington reported that Bond Counsel, Cowan, said the city can wait to pass the final bond ordinance after the demolition bids come in. With the decrease in cost of the Downtown

Demolition Project, the amount unused out of the \$150,000 bond issue max is now \$82,926.80 (possibly more depending on how much the bond issue itself costs).

Kamp Siesta

Supt. Jurgensen updated Council on the progress to add additional camp sites at Kamp Siesta. At last month's meeting Council discussed changing the camping fees to help cover the cost of the recent upgrades and the additional electricity cost for the new 50 amp spots. Clerk Eddington provided information on the history of Kamp Siesta's camping fees for the last 15 years and a listing of the current rates for area campgrounds. Newby suggested the rates stay the same for those using the sites for the fair this year since advertisements have already been sent out. Council agreed and decided to table further discussion about the rates until after the fair. Supt. Jurgensen said that he would test the amperage during the fair to see how much electricity is being used.

Health Insurance Rates/Changes

Clerk Eddington reported that the final health insurance quote came in below what MPR had quoted earlier. Discounts were applied due to low usage. The PPO-B was slated to go up 8% but came in at a 7% increase. The HDHP Plan was set to increase by 2.5% but came in at a 1.5% increase. The 2016 budget includes a 10% increase to health insurance rates.

MPR will meet with the employees on May 25th to discuss the changes to the plans. Employees will have to begin paying more, in most cases, for their prescription drugs as they will be paying 20% of the generic drug cost versus paying a flat \$7. The rest of the plans coverage and out of pocket amounts (PPO-\$3,250+copays and HDHP - \$3,000) stayed the same.

Clerk Eddington said that Council will also need to determine whether to continue the same rate of reimbursement on out of pocket expenses. The Health Ins. Premium Fund was established when the city went to the higher out of pocket insurance plans in order to save money on premiums. The balance of the account now is \$19,433.46. Currently, employees are reimbursed at the rate of \$250 once they have met their deductible and \$500 toward their coinsurance once they have paid out a minimum of \$500. Tynan made a motion and Vance seconded to approve renewal with MPR and continue the same reimbursement rate for out of pocket expenses. Motion carried.

NEW BUSINESS

Building Permit Approval

A building permit from Cheynea Clifton for a new hair salon downtown was submitted for approval. Council also reviewed the Fire Limits section of the Code Book that applies to downtown construction. Building permits within this fire limits district are to be approved by the Mayor and Council. The property owner also requested approval to construct the building using metal in addition to brick. Metal is an alternative construction material which must also be approved by the Mayor and Council.

Councilmember Strickland is assisting Clifton with the building design and said he would be happy to answer any questions if that is appropriate. Attorney Tucker said it was fine for Strickland to answer questions as long as he didn't offer any opinions on the matter. Strickland stated the building would be constructed with 2 x 6" studs, a slab floor and metal siding. After some discussion Strickland said construction should begin mid-May and is expected to be completed around the end of July. Council asked Supt. Jurgensen if he had any objections. Jurgensen said he thought the floor plan was fine and didn't see an issue with the building being a "stick" building since the building that was just torn down in that spot was also a stick building. Tynan made a motion and Newby seconded to approve the building permit. Motion carried with Strickland abstaining.

Offer from County – Building at 4th & Merchant

Councilmembers met prior to the meeting to tour the building at 4th & Merchant. County Commissioner Lonie Addis had recently contacted the city with an offer from the County to return this property to the city. The city gave this property to them in May, 2000 and the Sheriff's Dept. has been using the building for storage.

The building is now in disrepair and the Sheriff has told the Commissioners that they no longer need it. Council discussed that they do not want to put any money in to the building for repairs. Chief Elliott said he thought he knew someone who might be interested in purchasing it. After some discussion on the best options on how to sell the building, Strickland made a motion and Grassl seconded to accept the county's offer of the building with the intention of selling it as is. Motion carried with Tynan opposing.

Library Audit Report

Last month, Mayor Cunningham appointed Councilmember Owens to work with Paula Kern again this year to audit the library's 2015 records and report back to the Council. Neither were currently in attendance so the issue was tabled.

Swimming Pool – Daily Admission Rates

Clerk Eddington reported that swimming pool manager, Heather Duke, had asked about raising the price of admission back to the \$2 daily admission rate to increase pool revenue. The rate was lowered to \$1 last year in an effort to raise attendance levels that had been steadily dropping off for the past three years.

When considering daily admissions, individual passes and 10-swim pass, pool revenue came in at \$2,984.25 last year and \$3,710.00 the year before. Clerk Eddington stated that Duke did not feel that the increase in attendance last year was overwhelmingly due to the price of admission. Duke said many people came expecting to pay \$2. Based upon input from parents she felt that the increase was due to the way the pool was being managed with better adult supervision.

Council agreed and said they had also received positive comments about the pool management but they also liked the better price. Council reviewed a 2015 survey of surrounding cities pool prices and amenities. After further discussion no action was taken to change the prices.

Boot Block Request – Friends of the Library

A Boot Block Request was submitted by Mike Reed on behalf of the Friends of the Library. The event will be held June 4, 2016 from 8 a.m. – 1 p.m. Newby made a motion and Strickland seconded to approve the request. Motion carried.

Selection of Council President

Mayor Cunningham said with the resignation of Council President Bill Owens a new Council President will need to be elected to serve in the absence of the Mayor. Strickland made a motion and Newby seconded to elect Darren Tynan as Council President. Motion carried.

Proclamations – Fair Housing, Volunteer Week, Arbor Day

Fair Housing Proclamation

A proclamation issuing April as Fair Housing month was presented. As part of CDBG funding the city must conduct a fair housing activity each year and is encouraged to issue this proclamation annually. Other fair housing activities this year include placing Fair Housing Flyers in the city's lobby, the Schmoker Park bulletin board, the Courthouse and the Library.

Volunteer Week Proclamation

A proclamation setting aside April 11-16, 2016 as National Volunteer Week was presented. The proclamation will be published in the newspaper and sent to all of the volunteers on city committees along with a letter of appreciation for their service.

Arbor Day Proclamation

A proclamation recognizing Friday, April 29th as Arbor Day was presented. The Tree Board has invited the public to attend the tree planting ceremony at 1:00 p.m. on the 29th at the Community Building. The invitation and proclamation will be sent to Labette Avenue for publication. Kindergarteners from Neosho Heights have also been invited to attend and take part in the planting ceremony. The proclamation is one of the requirements for Tree City USA recognition. The City of Oswego has proudly received the Tree City designation for the past 26 years.

Newby made a motion and Tynan seconded to approve all three proclamations. Motion carried.

INDIVIDUAL REPORTS

Jurgensen– said they are doing some crack sealing. Supt. Jurgensen also said to expect some water loss next month. They are washing out the clarifiers and water towers.

Strickland – asked about the airport fuel loss. Supt. Jurgensen said they need to spend money to have the pumps calibrated and certified but it will cost \$175 for the trip plus labor.

- suggested using the balance of the sale of the Grainger property to pay for the expense to demolish 325 Merchant. Clerk Eddington said that the bond interest rate on the Stone Hill Estate property is 5.4% for 20 years. The Downtown Demo bond issue is only 4% for 10 years so it would be more beneficial to pay off the bond with the higher interest rate.

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Eddington – said Joplin Disaster Recovery Summit is May 19 & 20th. The conference would be providing information on preparing for disasters. Chief Elliott said he would check in to going.

- said she is hoping to attend a one day conference provided by WSU. It is the Mid-West Economy and Government Public Finance Research on the Effect of Tax Lid Legislation. She wants the information on the tax lid but is checking in to why the cost (\$230) is so high.

- asked if any Councilmembers need to fill out a new Substantial Interest Form. It needs to be done annually when there are any job or business changes. Vance and Tynan took a form.

PUBLIC DISCUSSION

Mayor Cunningham asked if there were any comments from the public. Since Paula Kern was now in attendance the Mayor asked about the Library Audit Report. Kern said that she and Owens had completed the audit and didn't see anything out of line. She said Owens was impressed with the way Liz Turner kept records and thought she did a good job. He made a couple of suggestions and Turner is following up on those.

Several members of the public still in attendance at the end of the meeting expressed disappointment that the Stone Hill Estates property did not sell.

Mayor Cunningham – said he strongly encourages the Council to follow through with the condemning and demolition of the building at 325 Merchant.

ADJOURNMENT

There being no further business Strickland made a motion and Grassl seconded to adjourn the meeting at 9:14 p.m. Motion carried.

Attest:

Mayor F. W. Cunningham, Jr.

Deputy City Clerk Renee Cochran