

MINUTES

The meeting was called to order with Roll Call by Mayor David Anderson.

Roll Call:	Cannon	Present	Urbanek	Present
	Maniez	Present	Zindler	Present
	Templin	Present		

Citizens signed the book on page 21.

Mayor Anderson led the citizens in the Pledge of Allegiance.

Consent Agenda Items will be acted upon by one motion unless a Council member requests an item be removed for discussion and separate action.

1. Consent Agenda:
 - a. Approve Minutes from the Council meeting of July 15th, 2004.
 - b. Approve Pay Ordinance No. 502.
 - c. Approve Ordinance No. 2053 Adopting the 2004 Standard Traffic Ordinance for Kansas Cities.
 - d. Approve Ordinance No. 2054 Adopting the 2004 Uniform Public Offense Code for Kansas Cities.

Motion by Councilwoman Templin to approve the Consent Agenda; second by Cannon.

Roll Call:	Cannon	Yes	Urbanek	Yes
	Maniez	Yes	Zindler	Yes
	Templin	Yes		

Motion carried.

2. Call to Public:

“Members of the public are welcome to use this time to comment about any matter relating to City business that is not listed on this Agenda. The comments that are discussed under Call to Public may or may not be acted upon by the Council during this meeting. **There is a four-minute time limit.** Please stand and wait to be recognized by the Mayor.”

Melissa Moore, 8550 Waverly -- currently a beautifully tree-lined street. Ms. Moore stated she is presenting a petition on the proposed widening of Waverly Road. (A copy of which is attached hereto and incorporated by reference.) They feel the road does not need to be widened at this time. Ms. Moore read a letter to the Council expressing the views of the citizens on Waverly Road who signed the petition. She stated she went from house-to-house on Waverly Road and no one refused to sign the petition. The citizens do not want to remove the trees along the roadway and they feel the road does not need to be improved, nor do the taxpayers need to pay the bill for an unasked for improvement. Ms. Moore stated she saw the article in the newspaper before she received a letter from the City.

Councilman Urbanek stated people are complaining that Waverly Road isn't good enough to drive on. The reason the City wants to widen it is because there is very poor drainage. Ms. Moore stated she talked to residents in person and not one person stated they were unhappy with the road. Discussion by Mayor Anderson.

Pat Hinkle, 8545 Waverly, stated he is an administrator with the police department in Lenexa. He initially signed the petition based on the widening of the road. He has since changed his mind as he has consulted with a professional street engineer. Mr. Hinkle stated the creek runs through his property and the City did a terrible job when they did the last improvements. Mr. Hinkle stated the drainage is in very poor condition. He feels there is a great lack of communication on the City's part in notifying the property owners, and he believes the City is going to have to go through condemnation procedures to widen the road. He would like to hear from the City first, not the newspaper.

John Sweatt, 8811 Waverly, stated there is a drainage problem where Mr. Hinkle lives. Mr. Sweatt stated he received a letter today and he's not sure what the easement comments refer to. He gave the City of De Soto thirty (30) feet of easement free when he built his home. He doesn't want to give up any more land on his side. Mr. Sweatt stated he has put up new vinyl fence along his property. He doesn't understand why the City would want to cut down the cedar trees along the roadway. Mr. Sweatt said there is a safety situation now as people speed up and down the road. He doesn't want to see the road improved.

Frank Weinhold, 8690 Waverly Road, stated he signed the petition and agrees with what it says. He stated the taxpayers are supposed to have a representative government and the City did not approach them about this matter first. This has caused a lot of turmoil with the constituents.

Thomas Psotta, 8965 Waverly, stated he can sympathize with the neighbors. He said he agrees with most of the items and he would like to know more about this project. He just bought this property about three months ago, and he is all for betterment and improved property values. He feels the City should be more diligent in talking with the residents.

Ken Knapp, 28441 W. 85th Terrace in Oak Manor Estates. He applied for a building permit a few weeks ago to rebuild a structure on his property. The original building is about 27 years old. Mayor Anderson asked Mr. Knapp to address this item later in the Agenda, under 4.c.

Jim Carpenter, stated he is representing a property at 8510 Hadley, which is the grain elevator. He applied for and received a building permit in May for an addition to the office. Construction was started, he has \$20,000 invested, and then he was issued a stop work order because he was told the building was too close to the property line. Since then, he has had the property surveyed, and the City road and a corner of the tennis court is actually on his property. Mr. Carpenter stated the planning regulations are not supportive for a grain elevator. He stated he is building on an existing foundation that has been there for many years, and is not enlarging the foundation. He is asking for direction from the Council.

Mike Brungardt, City Engineer, stated he had talked to Mr. Carpenter and had sent him a letter. Mr. Carpenter hired a surveyor and it appears the City road is on Mr. Carpenter's property. Mr. Carpenter interjected that he has also been paying taxes for the City's road as it is on his property. Mr. Brungardt stated site plan approval is necessary if a structure is improved more than 50%. Mr. Brungardt explained the reasons that the site plan is required.

Patrick Reavey, City Attorney, provided Council with a copy of the City's Site Plan Requirements. Mr. Reavey discussed the alterations to the proposed project as it is triggered by the Site Plan Requirements.

Councilman Maniez stated he looked at this existing foundation this evening. Councilman Maniez stated he has a problem in that the building permit was issued, and the grain elevator is a collection of all the buildings, not just the one little office. He feels it is an injustice to Mr. Carpenter to make him now stop and go through the site plan process. This building will enhance the property. Discussion by Councilman Maniez that the road probably does belong to the grain elevator. It used to be a large parking lot, and through the use of it by citizens for many years, the City has paved it in past years to control the dust. Discussion by the Council on the regulations. Councilman Maniez stated he feels it is the Council's obligation not to cause undue hardship on a citizen when a permit has been issued.

Mayor Anderson said Council needs to direct staff and the Planning Commission to make a text amendment to change this language so it is more clear for interpretation, and it is not as muddled, so that the 50% is clear. Discussion by Councilwoman Templin that she doesn't see a problem with the

language. She said the problem is that building permits are being issued when they shouldn't be. Mayor Anderson stated that problem is being handled. Councilman Maniez said it is the Council's responsibility to make things right for the citizens. Mayor Anderson agreed, and he stated he wanted to make sure it is clear that it is the Building Official's problem that caused this, without the interpretation of these regulations. They are clear. Patrick has shown us legally why the City had to revoke the VFW permit and that is also why Jim's permit was revoked, because there could be the potential for a neighbor to protest the non-conformance of following the regulations.

Discussion by Councilman Maniez with Mr. Reavey on what puts liability on the City when a building permit is issued and then withdrawn. Mr. Reavey stated that when a building permit is issued and it does not comply with all the regulations, then it is a non-compliance permit, and the City can revoke the permit. He has provided Council with a legal memorandum on this issue. There was a case in 1977 that set precedence in the state Court, and the City Council does have the right to revoke a building permit. Mr. Carpenter stated he is aware of that case and it is not the same circumstances as his permit or the VFW's circumstance. This was a case of deceit. Mr. Reavey stated the City can legally revoke the building permit. The City can also address the unfairness to the citizen in that we have a City employee that issued a permit that was not in compliance with the City's regulations.

Councilwoman Cannon stated she agreed with Councilman Maniez that all the buildings are included in the grain elevator. When you look at the whole site, it is all a grain elevator. All the buildings make up the whole as a grain elevator, not just a little office. The whole site is used for grain storage and sales.

Discussion by Councilman Urbanek that Intervet built another building that was not attached to anything, and they didn't go through the site plan process. This is the same situation and Intervet didn't go through a site plan review process. This is another building that doesn't touch any other buildings.

Councilwoman Zindler stated she wants to make things right with Mr. Carpenter and the VFW. There are several issues involved here. The City needs redevelopment; but, there needs to be some clarifying language when these types of structures are improved and redeveloped. Discussion by Councilman Urbanek that if this grain elevator property is in the historical district, why are we making him go through this review process. Discussion by Council and Mr. Brungardt that this property is zoned industrial.

Councilwoman Templin stated it is unfortunate for Mr. Carpenter and the VFW that this has happened. But because something was done incorrectly, the City Council can't say, out of fairness because it was issued incorrectly, that we just fix it. We have to follow the regulations. She agrees that the City Council needs to make it right, but the regulations have to be followed. Discussion by Mr. Carpenter, Mr. Brungardt and Councilwoman Templin on the site plan review. Mr. Carpenter stated the site plan review is too restrictive and will take more time and cost a lot of money. If he has to go through the site plan review process, the plan won't pass their review because of all their landscaping and curb and gutter requirements. Mr. Carpenter stated the Council should do what is right for the VFW and for him.

Mayor Anderson stated he has talked with Greg, Mike, Patrick and Jim, and there is some vagueness in the regulations that might allow some of these things to be taken care of. He said it is good and he is appreciative that the VFW and Mr. Carpenter have approached the Council. Discussion on the building permit application and submission of construction documents.

Mr. Carpenter stated he was told this would be discussed tonight and it wasn't put on the Agenda. He would like to know a decision now. He stated the City can't just hold up someone. Mr. Reavey stated this situation is truly unique in that a foundation already existed. Discussion by Mayor and Council with Mr. Reavey. Mr. Reavey stated a text amendment could be added in the regulations that would address pre-existing and approved foundations on redevelopment of older or partially-built structures. Council agreed.

Discussion by Mike Brungardt that the foundation that is there was not originally built as a building foundation. It was a containment footing or foundation for some tanks. Discussion by Mr. Carpenter that the foundation was opened up and the footings and depth were reviewed and approved for the addition. Mr. Carpenter stated the outside walls are the only load-bearing walls. Councilwoman Templin asked who reviews the building permit applications. Mayor Anderson stated that would be Greg and the new Building Plans Examiner.

Motion by Councilman Maniez to direct staff to look at text amendments to address redevelopment exceptions to the rule for Jim Carpenter and reinstate his building permit, pending necessary drawings for building permit approval; second by Urbanek. Mayor Anderson stated he has a problem with this motion's wording.

Motion was withdrawn by Councilman Maniez; second withdrawn by Councilman Urbanek.

Motion by Councilman Maniez to direct staff to do a text amendment regarding partially built structures and to lift the stop work order on Jim Carpenter's building permit; second by Urbanek.

Roll Call:	Maniez	Yes	Urbanek	Yes
	Cannon	Yes	Templin	No, because the City is using creative legal tactics
	Zindler	Yes		

Motion carried.

Alana Clark, 8780 Waverly, stated she purchased a tree-lined home about three years ago. She heard about the plan that was in the paper to widen Waverly. She received a drawing in the mail today. She stated there is 237 feet on the frontage of her property and every foot, with the exception of the driveway, has trees on it. If the City takes the right-of-way, there will not be one single tree left and she finds that appalling.

Heather Cotton, 8580 Waverly Road, stated she signed the petition and is voicing her opposition to the widening of Waverly. She stated it is unfortunate that her neighbor has a drainage issue. She has talked to her neighbors and she hasn't heard one person complain about the street. The widening of the road would be a tragic loss of all the trees. People already drive too fast on this road and widening it would only make this worse. Ms. Cotton said she didn't approve of the way this information had been sent out.

Noel Duerksen, 8610 Waverly Road, said he moved here two weeks ago. He stated a reason he chose his house is because of the bumpy road, and all of the trees that are along the road. He is very disturbed about the plan that could remove all the trees on the road. He has listened to all the comments and it seems to be the consensus of the neighborhood to leave the road as it is. Mr. Duerksen stated the current right-of-way has a lot of trees in it, and he would like to have clarified how many trees, or how many feet of trees, will be removed.

Mayor Anderson stated that Councilmen Urbanek and Maniez are on the Street Committee and have seen the ditch sections undermine the improvement efforts on Waverly Road. The road isn't straight with the section lines. To improve the roadway and address the drainage issue, the right-of-ways would have to be improved. This came about because the Council is working on a road policy. Mr. Brungardt stated the scope of the Capital Improvements Plan was to resurface the road and improve the drainage. Discussion by Mr. Brungardt on how the Waverly Road project was being scoped out. Discussion by Mayor Anderson that a road policy is under discussion and that is how this subject came up. Discussion by Mr. Duerksen that his understanding of the intent in the letter was that the decision had already been made. Discussion by Mr. Brungardt that the Council and staff are requesting informational input from the property owners on what is to be improved on Waverly Road.

Councilman Maniez stated that this improvement was originally presented in the Capital Improvements Plan. He stated his concern is if the City is willing to spend \$200,000 every three years to do a chip and seal, or to spend more money to properly improve the roadway and the drainage. It was not his intention that the newspaper print certain comments and everything gets blown out of proportion. The City's intention all along was to have an informational meeting and talk with everyone on Waverly as to what they can live with as far as street improvements. The City was not going to do anything on Waverly without an informational meeting, setting policy, and doing the road right in addressing drainage, right-of-way, and everything involved. Councilman Maniez apologized to everyone that this has happened and was blown out of proportion before the letters were sent to the neighbors. The City isn't going to do anything without talking to the neighbors. Councilman Urbanek stated his comment was taken from a three or four paragraph discussion, and the City never discussed condemning anyone's land. He is

strictly against condemning land.

Dave Vigness, 8930 Lexington, stated he wanted to comment on the lack of communication of staff to the residents along Lexington. He said he had to come in and talk to Mike to find out what is going on with Lexington. Neither he nor his neighbors have received a letter to inform them what is happening. He is pleased with what is being done, but he had different and widely varied versions of what improvements are being made. He thinks the City staff needs to have more communication with the property owners.

Mike Brungardt stated he wanted to respond that there is no confusion among the contractors on what work is to be done. He said he has worked closely with the property owners that will be affected. At this point, no one's access to their property has been affected. Mr. Brungardt stated Mr. Vigness had left a message and Mr. Brungardt did call him back a day or two later.

Mr. Vigness stated there is a trench on the west side of the road and several properties were unable to get out of their driveways today for about four hours. No one was notified that this was going to happen today.

Mr. Bub Schmidt stated he is the contractor on this job and he personally knocked on doors. No one was home at this address. He further stated the driveways were not closed for three hours.

Mayor Anderson closed the Call to the Public and called a five-minute recess at 8:20 p.m.
Mayor Anderson reconvened the Council at 8:25 p.m.

3. Old Business: NONE

4. New Business:

- a. Consider Development Agreement for Linden-Tripkos Post 6654 VFW Property. Mr. Brungardt, City Engineer, provided Council with a revised site plan that was submitted today and a supplemental staff report. Based on recent discussions with the applicant and the site plan submitted today, some items have been addressed. The applicant was very diligent in providing the materials for the site plan review. The site plan is attached to a development agreement, which the Council will be discussing. There are only four (4) items that have not been submitted for approval. 1) the existence or non-existence of the right-of-way of 84th Street and the ingress and egress to the building as an access driveway; 2) the property must be rezoned to the proper zoning district prior to an occupancy permit; 3) the property has to be final platted prior to occupancy; and 4) the revision to the parking lot and the number of parking spaces will need to be approved by the Planning Commission. Mr. Brungardt feels with the enactment of the Development Agreement, the City can approve and proceed with the building permit.

Patrick Reavey, City Attorney, reviewed the proposed Development Agreement with Council. This addresses the mechanism for the City to follow the regulations and to determine the implementation of the improvements as deferred to in the future by the City Council. The development agreement states that the VFW will annually provide a progress report to the Council at the time of the liquor license renewal. The VFW also has a special use permit in place for the serving of alcohol at this location, which allows the City the ability to revoke the special use permit if these conditions have not been met. Mr. Reavey recommends the Development Agreement be adopted as written, with the caveat that on page 2, the right-of-way issue has not been resolved. On Page 2, there is a schedule numbered 1.a through e. and these are the dates the VFW has requested. The building façade has been discussed and the Council has waived the excise tax on this redevelopment. Discussion by Mayor Anderson.

Councilwoman Templin asked Mr. Reavey about the building façade being completed at the initial construction. Discussion by Mr. Reavey that staff feels the façade should be done at the construction phase.

Mr. Frank Taylor, attorney for the VFW, 130 N. Cherry, Olathe, Kansas, stated they are another victim of page 117 of the development regulations. He stated the VFW wants to do the project right as long as they can do it within their cost guidelines. He understands that it would be nice to put the façade on the building, and it would cost about \$23,000. Their loan limit is consistent with the debt service they can

manage. They are requesting the Council approve the development agreement as written.

Councilman Urbanek asked about the right-of-way for 84th Street. Mr. Reavey stated he will work with Mr. Taylor on obtaining the title policy. Discussion by Councilwoman Templin on the condition of this being resolved prior to construction of the parking lot. Mr. Taylor stated he has worked with Mike and Patrick on parking spaces and the VFW will be going back to the Planning Commission on this matter. Discussion by Councilman Maniez on whether or not the members of the VFW are in agreement with this development agreement. Discussion by Mr. Taylor that the VFW will bring this to the membership.

Motion by Councilman Maniez to approve the Development Agreement with the VFW as written, with exception to Item J.2.(e) being conditioned on the building of the parking lot; second by Templin.

Roll Call:	Cannon	Yes	Urbanek	Yes
	Maniez	Yes	Zindler	Yes
	Templin	Yes		

Motion carried.

Mayor Anderson thanked the men and women of the VFW, the City staff and the Site Plan Review Committee for working together on a hard issue and getting things done in a great manner.

- b. Presentation on Sewer Master Plan and consideration of improvements for the wastewater treatment facility. Mr. Brungardt introduced Mr. Jay Norco, Shaffer Kline & Warren, who provided the Council with a summary update for the first phase of the study. The second issue is the interim policies to be set on the existing facility's ability to handle future sewer expansion. Discussion by Mr. Brungardt and Councilwoman Templin on the information that the City had exceeded its discharge limits in previous months.

Mr. Norco provided a progress report on the master plan. He stated the data collection phase has been completed and the planning projection phases. Mr. Norco stated, overall, the system is in good shape and are working well. The actual condition of the lines are far better than most. Mr. Norco reviewed the costs that are associated with improving the wastewater system. He discussed the future planning for costs and the possibility for growth and expansion. Mr. Norco stated they will continue to work on the future expansion and prepare several scenarios to present in the future. Councilwoman Zindler asked Mr. Norco to review the City's development fee structure. Discussion.

Mr. Norco reviewed the facility improvement options and the aerators currently being utilized. Councilman Maniez asked about the maximum flow rate for Intervet. Mr. Brungardt stated they are at full production now and the strength and flow into the system has increased considerably. Discussion by Councilman Maniez and Mr. Brungardt on taking samples to determine where the increased strength is coming from. Councilman Maniez stated he wants staff to closely look at the expansion of Intervet and how it will affect the system, as well as projected development. Councilwoman Templin asked that staff contact Intervet to discuss their projections. Mr. Brungardt stated they have contacted some developers who have permits pending that approvals may be dependent upon this policy and capacity.

Mr. Norco discussed the improvements for the aeration facilities. He proposed doing the aeration improvements in this first phase, as well as an improved sludge holding tank for phase two. Discussion by Mr. Brungardt and Councilwoman Templin on discussions with KDHE representatives.

Motion by Councilwoman Zindler to authorize funding for the interim improvements in an amount not to exceed \$127,000; second by Cannon.

Roll Call:	Cannon	Yes	Urbanek	Yes
	Maniez	Yes	Zindler	Yes
	Templin	Yes		

Motion carried.

Councilman Maniez asked Mr. Brungardt for the collection data results when they are done. Mr. Brungardt stated it will be about a month to obtain the information. Councilwoman Templin asked about the reports that are received from KDHE and who reviews the reports. Discussion by Mr. Johnson and Mr. Brungardt on how the collection data reports are handled.

- c. Discuss administration of excise tax ordinance pertaining to accessory structures on residential lots. Mr. Brungardt stated Mr. Knapp came to the Building Official with an application for a building permit to reconstruct a structure on his property. The ordinance requires the City collect excise tax on the building or expansion of accessory structures. The City has to consider the square footage of the existing residential structure. The interpretation needs to be clarified through the ordinance. In this instance, the excise tax for this improved accessory structure will not be charged.

Mr. Reavey stated the square footage of each residential structure can be obtained from Johnson County Appraiser's website. Discussion by Councilwoman Templin on rebuilding of structures and increased square footage. Mr. Reavey discussed language for storage purposes on redeveloped structures. He will work on proposed language for the Council to consider. Discussion.

Discussion with Mr. Knapp on the size and expansion of his proposed redeveloped accessory structure. Discussion by Mr. Reavey and Mr. Brungardt regarding the regulation language on the replacement of accessory structures and square footage of accessory structures.

5. Advisory Reports:

- a. City Administrator, Greg Johnson, said he and Patrick met regarding the Time-Warner franchise agreement, and sent them a letter today. Councilman Maniez asked if the service area is going to be expanded. Discussion by Mr. Johnson and Mr. Maniez on the previous franchise fee discussions.

Mr. Johnson has completed all the state budget forms and the public hearing is set for the next Council meeting on August 19th. He will provide a budget summary next week.

- b. City Attorney, Patrick Reavey, stated the island on Commerce Drive is within the City's right-of-way, and there is not any written agreement that it is Mr. Fry's responsibility to maintain the island. Discussion by Councilman Maniez that the tall growth is a safety hazard. He asked Mr. Brungardt to provide a line of sight triangle for this particular location.
- c. City Engineer, Mike Brungardt, stated he will be gone next week. The Lexington Avenue project got underway this week. The bridge work south of 95th Street on Lexington will begin on August 14th. The paving operation by the park should be completed by the De Soto Days festival.
- d. City Clerk, Lana McPherson, asked if Council is going to do "September Sweep" at the end of September this year. Several citizens have requested the dumpsters so they can clean their properties. Council agreed this was a benefit to the citizens and to proceed with the plans. She also commended Kim Gordanier for the outstanding work she has performed on the City's website.

6. Council & Mayor Comments:

Councilwoman Cannon asked about the completion of 83rd Street. Mr. Brungardt stated the parking lot in front of "Yummies" restaurant should be completed next week. Some of the driveways and clean up may be a few more weeks before it is completed.

Councilman Urbanek asked about all the retaining walls that were put up and the difference in driveways. Mr. Brungardt stated he was given direction to talk with the property owners regarding their parking preferences and try to meet their needs. Councilman Maniez stated he feels the City was extremely generous in providing these residents with paved parking.

Councilman Urbanek asked about the waterline that was put in under Commerce Drive. He stated the holes should be filled in so it can be mowed. Councilman Urbanek said the political sign ordinance needs

to be reviewed. Councilman Maniez stated they should be taken down. Mr. Reavey stated the City must provide notice to the sign owner. Councilman Urbanek stated he would also like to see some method for the City to notify property owners in advance of what construction work is going to be done that week.

Councilman Maniez stated Kurt Guntert called and thanked the City for putting down dust control on 87th. Councilman Maniez also asked about having some discussion with Jim Carpenter on the City having a road on his property. The City needs to explore the roadway question. Mr. Brungardt will check into this.

Councilwoman Zindler asked if Council would be interested in having the Planning Commission review the regulations on redevelopment of non-residential use of infill developments. Council agreed.

No comments from Councilwoman Templin.

No further comments from Mayor Anderson.

Motion by Councilman Maniez to adjourn at 10:40 p.m.; second by Templin.
All Council agreed by "ayes".

Respectfully submitted:

Lana R. McPherson, CMC
City Clerk