

# CITY COUNCIL PROCEEDINGS

JOURNAL 189

AUGUST 21, 2007

PAGE 486

## MINUTES OF THE MEETING OF THE CITY COUNCIL

Wichita, Kansas, August 21, 2007  
Tuesday, 9:05 A.M.

The City Council met in regular session with Mayor Brewer in the Chair. Council Members Fearey, Gray, Longwell, Schlapp; Skelton, and Williams present.

George Kolb, City Manager; Gary Rebenstorf, Director of Law; Karen Sublett, City Clerk; present.

Chaplain Sue Oldfather from the Kansas Masonic Home gave the invocation.

The pledge of allegiance to the flag was participated in by the Council Members, staff, and guests.

The Minutes of the regular meeting of August 14, 2007, approved 7 to 0.

### Proclamations

Mayor Brewer read aloud the following Proclamations:

- Project ReDirectory Month
- Kansas Food Safety Month

## CONSENT AGENDA

Council Member Schlapp Council Member Schlapp requested that item 6b, be pulled for discussion.

Motion--

--carried

Brewer moved that Consent Agenda items 1-12f, excluding item 6b, be approved in accordance with the recommended action shown thereon. Motion carried 7 to 0.

### BOARD OF BIDS

## REPORT OF THE BOARD OF BIDS AND CONTRACTS DATED AUGUST 20, 2007

Motion--

--carried

Brewer moved to receive and file report; approve Contracts; authorize necessary signatures. Motion carried 7 to 0.

Bids were opened August 17, 2007, pursuant to advertisements published on:

2007 Sanitary Sewer Reconstruction, Phase 8 (various locations north of Harry, west of Hydraulic) (468-84390/620485/667603) Traffic to be maintained during construction using flagpersons and barricades. (District I, IV, VI)

WB Carter Construction - \$151,000.00

Water Distribution System to serve South Broadway Gardens Addition (Mead Street from 55th to 57th Street South & 57th Street South from Mead to Washington) (448-90222/735332/636189/470005/777580) Traffic to be maintained during construction using flagpersons and barricades. Water Distribution System to serve South Broadway Gardens Addition (east of Broadway, south of 55th Street South) (448-90235/735337/470010) Traffic to be maintained during construction using flagpersons and barricades. (District III)

Nowak Construction - \$80,442.00 (Group 1)  
\$ 9,644.50 (Group 2)  
\$90,086.50 (Total Bid)

# CITY COUNCIL PROCEEDINGS

JOURNAL 189

AUGUST 21, 2007

PAGE 487

Water Main Replacement for Main and Market; from Harry to Mt. Vernon to serve Anderson First Addition (west of Broadway, south of Harry) (448-0283/636185/777576) Traffic to be maintained during construction using flagpersons and barricades. (District III)

Mies Construction - \$344,858.00

Herrington from the south line of Harry to the south line of Willow Creek East Addition; Sally from the west line of Herrington to the west line of Willow Creek East Addition; Funston from the east line of Herrington to the east line of Willow Creek East Addition; Lynnrae from the west line of Herrington to the south line of Willow Creek East Addition to serve Willow Creek East Addition (south of Harry, east of Greenwich) (472-84535/766138/490156) Does not affect existing traffic. (District II)

Cornejo & Sons Construction - \$261,957.20

Water Distribution System to serve Blackstone Addition (north of 13th Street North, east of 151st Street West) (448-90184/735372/470045) Does not affect existing traffic. (District V) - \$85,000.00

Nowak Construction - \$47,866.55

Motion--

Brewer moved that the contracts be awarded as outlined above, subject to check, same being the lowest and best bid within the Engineer's construction estimate, and the necessary signatures be authorized.

--carried

Motion carried 7 to 0.

WATER UTILITIES DEPARTMENT/SEWAGE TREATMENT DIVISION: All terrain mower:  
DewEzeATM 72LC All-Terrain Mower

Turf & Golf Technology - \$32,951.50 \*

\*Purchases utilizing Sole Source of Supply Ordinance No. 35-856, Section 2.(b)

Motion--

Brewer moved that the contracts be awarded as outlined above, same being the lowest and best bid, and the necessary signatures be authorized. Motion carried 7 to 0.

--carried

## CMBS

### APPLICATIONS FOR LICENSES TO RETAIL CEREAL MALT BEVERAGES:

<u>Renewal</u>	<u>2007</u>	<u>(Consumption on Premises)</u>
Linda M. Coria	Cholita's Mexican Restaurant Inc.*	8987 West Central
Roberto Beltran	Taco's Mexican Fast Food*	1930 East Pawnee Street
Damon P. Jones	Taco Tico Operations Inc.*	3257 East Harry
Damon P. Jones	Taco Tico Operations Inc.*	2051 South Seneca
Damon P. Jones	Taco Tico Operations Inc. *	311 East Pawnee
<u>New Operator</u>	<u>2007</u>	<u>(Consumption on Premises)</u>
Damon P. Jones	Taco Tico Operations Inc.*	3131 North Rock Road
Damon P. Jones	Taco Tico Operations Inc.*	460 North West

\*General/Restaurant - 50% or more of gross receipts derived from sale of food.

Motion--

Brewer moved that the licenses be approved subject to Staff review and approval. Motion carried 7 to 0.

--carried

# CITY COUNCIL PROCEEDINGS

JOURNAL 189

AUGUST 21, 2007

PAGE 488

## PRELIM ESTS.

### PRELIMINARY ESTIMATES:

- a. Lateral 523, Southwest Interceptor Sewer to serve Gray's 6th Addition (south of MacArthur, west of Hoover) (468-84360/744240/480928) Does not affect existing traffic. (District IV) - \$37,000.00
- b. 2007 Park Lighting for Orchard Park, Park Villa at Riverside, & Linwood Park (472-84506/472-84507/472-84508/785095/785096/785108/397215) Does not affect existing traffic. (Districts I, and VI) - \$150,000.00
- c. Zelta Drive from the north line of Kellogg Drive to the south line of Waterman (north of Kellogg, east of Greenwich) (472-84300/765972/490078) Traffic to be maintained during construction using flagpersons and barricades. (District II) - \$296,100.00
- d. 2007 Sanitary Sewer Rehabilitation, Phase D (various locations north of MacArthur, east of West Street) (468-84382/620484/667602) Traffic to be maintained during construction using flagpersons and barricades. (Districts I, II, IV) - \$389,000.00
- e. Water Distribution System to serve Blackstone Addition (north of 13th Street North, east of 151st Street West) (448-90185/735365/470038) Does not affect existing traffic. (District V) - \$115,000.00
- f. Storm Water Drain #323 to serve Legacy 3rd Addition (north of 47th Street South, west of Meridian) (468-84330/751447/485338) Does not affect existing traffic. (District IV) - \$390,000.00

Motion--carried

Brewer moved to receive and file. Motion carried 7 to 0.

## STREET CLOSURES

### CONSIDERATION OF STREET CLOSURES/USES.

There were no street closures to consider.

## NORTHGATE

### AGREEMENT FOR STAKING IN NORTHGATE ADDITION, NORTH OF 53RD STREET NORTH, WEST OF MERIDIAN. (DISTRICT VI)- SUPPLEMENTAL

Agenda Item No. 5a.

The City Council approved the paving improvements in Northgate Addition on October 24, 2006. On March 27, 2007 the City approved an Agreement with Baughman Company, P.A. to design the improvements. The Design Agreement with Baughman requires Baughman to provide construction engineering and staking services if requested by the City.

The proposed Supplemental Agreement between the City and Baughman provides for staking the improvements. Due to the current workload created by previous projects, City crews are not available to perform the staking for this project.

Payment to Baughman will be on a lump sum basis of \$13,810 and will be paid by special assessments.

This Supplemental Agreement addresses the Efficient Infrastructure goal by providing the engineering services needed for the construction of paving improvements in a new subdivision. It also addresses the Economic Vitality and Affordable Living goal by providing public improvements in new developments that are vital to Wichita's continued economic growth.

The Supplemental Agreement has been approved as to form by the Law Department.

Motion--  
--carried

Brewer moved that the Supplemental Agreement be approved and the necessary signatures authorized. Motion carried 7 to 0.

# CITY COUNCIL PROCEEDINGS

JOURNAL 189

AUGUST 21, 2007

PAGE 489

## FOX RIDGE

### AGREEMENT TO RESPREAD ASSESSMENTS: FOX RIDGE SECOND ADDITION, NORTH OF 29TH STREET, BETWEEN MAIZE AND TYLER. (DISTRICT V)

Agenda Item No. 5b.

The landowners, Fox Ridge Development Co., Inc.; Jeremy D. & Misha Bender; David W. & Marie A. Piper; and Jason M. & Kari K. Mitchell, platted Fox Ridge 2nd Addition and have submitted an Agreement to respread special assessments within the Addition.

The land was originally included in an improvement district for a sanitary sewer main project and a water distribution system. The purpose of the Agreement is to respread special assessments on a fractional basis for each lot. Without the Agreement, the assessments will be spread on a square foot basis.

There is no cost to the City.

The City of Wichita aggressively uses special assessments to lower the cost of residential developments. In doing so, the City's program satisfies the City Council's goal to promote Economic Vitality and Affordable Living. The program supports this goal through partnering with stakeholders in the development community and sustains affordable living by lowering the costs of home ownership.

The Agreement has been approved as to form by the Law Department.

Motion--  
--carried

Brewer moved that the Agreement be approved and the necessary signatures authorized. Motion carried 7 to 0.

## CHANGE ORDER

### PHASE B, 2007 SANITARY SEWER REHABILITATION PROGRAM, BETWEEN EVERETT, ST. CLAIR, 32ND AND 31ST STREETS SOUTH. (DISTRICT IV)

Agenda Item No. 6a.

On May 22, 2007, the City Council approved a construction contract with Insituform Technologies USA, Inc. to rehabilitate certain sanitary sewer lines in southwest Wichita. After the contract was awarded, it was determined that an additional sanitary sewer located between Everett, St. Clair, 32nd and 31st Streets South was also in need of immediate repair due to high ground water and excessive infiltration.

A Change Order has been prepared for the cost of the additional work. Funding is available within the project budget.

The total cost of the additional work is \$12,471 with the total paid by the Sanitary Sewer Utility. The original contract amount is \$280,367. This Change Order represents 4.45% of the original contract amount.

This project addresses the Efficient Infrastructure goal by providing ongoing maintenance of the City's sanitary sewer system.

The Law Department has approved the Change Order as to legal form. The Change Order amount is within the 25% of construction contract cost limit set by City Council policy.

Motion--  
--carried

Brewer moved that the Change Order be approved and the necessary signatures authorized. Motion carried 7 to 0.

# CITY COUNCIL PROCEEDINGS

JOURNAL 189

AUGUST 21, 2007

PAGE 490

(ITEM 6B)  
CHANGE ORDER

## ASBESTOS REMOVAL AT 7700 EAST KELLOGG, FORMER LA QUINTA INN. (DISTRICT II)

Agenda Item No. 6b.

On November 7, 2006 the City entered into a contract with Minority Contractors & Consultants, Inc. for removal of asbestos for 7700 E Kellogg (former La Quinta Inn). As a result, there was additional cost for rental of scaffolding required to complete this project from a subcontractor Midwest Scaffold Service located in Omaha, NE.

A Change Order has been prepared for the additional cost of scaffolding. Funding is available within the project budget.

The total cost of the additional work is \$51,787.50. The original contract amount is \$350,000. This Change Order plus previous change orders represents 19.6% of the original contract amount.

This project addresses the Efficient Infrastructure goal for the construction of Kellogg Rock Road Interchange project.

The Law Department has approved the Change Order as to legal form. The Change Order amount is within the 25% of construction contract cost limit set by City Council policy.

Council Member Schlapp Council Member Schlapp stated that she has concerns and questions about this and is confused by the fact that we had a project that has been delayed for various reasons and asked why we would pay for additional scaffolding if we had a contract with someone. Asked if that would have not been part of a project and deal that was made to get this project completed.

Scott Moore Assistant City Manager of Operations explained that this project started in November and the original contract was for \$413,000 and felt that MCCI was the only asbestos contract the City had at the time that this contract was led. Stated the weather was a part of the delay and the scaffolding was set up and when the weather was bad, they asked the contractor to move his workers inside to remove the asbestos and the scaffolding did not get set up until December.

George Kolb City Manager explained the scaffolding was set up prematurely and in January and February we had bad weather, so they moved inside to do inside work and they exceeded their contract. Stated they then called the bonding company in to take care of the overage in the contract and they agreed to do so, however, at the end of the contract they sat down with the bonding company and arrived at a settlement. Stated the request for payment was much more than the change order that the Council has before them today and they agreed that they would pay for the extended time for the scaffolding, which was approximately \$50,000.00. Stated it is a negotiated settlement.

Council Member Schlapp Council Member Schlapp stated she has concerns about this and thinks that is an awful lot of money for scaffolding and that this project has gone on and on and there are constantly things that come up. Stated she is not so sure this was done very efficiently and does not understand that if we have somebody that does a job and then they come in over, then why did we pick them in the first place and feels that we have done a very poor job in watching and making sure that we get these jobs done correctly.

George Kolb City Manager stated Staff will have discussions with her at a later time about this contract and how they arrived at this solution and thinks this is the best outcome of a bad situation.

# CITY COUNCIL PROCEEDINGS

JOURNAL 189

AUGUST 21, 2007

PAGE 491

- Council Member Gray Council Member Gray stated he will not vote to approve this today unless he is able to sit down and see a work schedule of what days they worked in January, February, and March. Stated he cannot think of how many times he drove by this and did not see a single person out there working. Stated it was a bad winter but construction workers were out there working and there were buildings being built, which is the nature of the business. Stated he is not convinced that we should just pay them and does not care what the settlement says. Stated he did not know we were going to have to have a settlement. Stated \$50,000.00 because they put the scaffolding up in January, which he feels, was up for nearly four months and he hardly ever saw anyone out there working. Stated just because it was cold is not a good enough excuse because it was cold for everyone else in this community that was building commercial and residential structures.
- George Kolb City Manager stated there were options where they could work inside rather than working outside in the cold weather and this payment is not to the contractor but to the scaffolding firm. Stated if the Council would like more explanation on this, they would be willing to have this deferred.
- Mayor Brewer Mayor Brewer stated that this does appear that this is poor management not on our part but their part.
- Motion--carried Fearey moved to defer this until September 18<sup>th</sup>. Motion carried 7 to 0.

## PROP. ACQUIS.

### **PARTIAL ACQUISITION OF 811 EAST WATERMAN FOR THE EAST WATERMAN STREET IMPROVEMENT PROJECT FROM MAIN STREET TO WASHINGTON STREET. (DISTRICT I)**

Agenda Item No. 7a.

On May 16, 2006, City Council approved the improvement of Waterman from Main Street to just west of Washington. This project calls for increasing the storm sewer system to serve the arena project as well as improving Waterman Street.

The proposed acquisition area is the north 19.17 feet of the subject property and consists of 2,613 square feet. The property is improved with a 120,000 square foot warehouse/office built in 1955, parking lot and business advertising sign. The proposed area encompasses twelve of the twenty-four striped parking spaces and requires the owner to relocate their sign. The proposed take was valued at \$26,065. This includes \$5.00 per square foot for the land, \$4,000 for the sign relocation and \$9,000 as damages for lost parking. The owner rejected this offer.

The owner agreed to donate the proposed acquisition area in exchange of a 3,828 square foot area off of the city owned, northeasterly portion of 777 East Waterman site. This specific strip of land is currently vacant and the transfer of such does not adversely impact on the remainder of the site. The City will retain that part of the strip of land along Waterman as right-of-way where there is a decorative brick wall and landscaping. Bids totaling \$41,250 were received to relocate the business advertising sign and construct replacement parking along the west side the building. The owner would only be compensated for the relocation of the advertising sign and cost to cure parking at a total of \$41,250. An Ingress/Egress easement will be granted to the seller for limited access across 777 East Waterman.

\$42,500 is the requested budget for the acquisition of this parcel. This amount includes zero dollars for the purchase price, \$1,250 for closing costs and title insurance. The funding source is General Obligation Bonds.

The acquisition of this parcel is necessary to ensure efficient infrastructure as this area is rapidly growing.

The Law Department has approved the agreement as to form.

- Motion--  
--carried Brewer moved that the agreement be approved and the necessary signatures authorized. Motion carried 7 to 0.

# CITY COUNCIL PROCEEDINGS

JOURNAL 189

AUGUST 21, 2007

PAGE 492

PROP. ACQUIS.

## PARTIAL ACQUISITION OF 4001 WEST MACARTHUR FOR MAIN 22 SANITARY SEWER PROJECT. (DISTRICT IV)

Agenda Item No. 7b.

On August 15, 2006, City Council approved a sanitary sewer main project to serve an area along MacArthur, between a half-mile east of West Street and the Wichita-Valley Center Flood Control Ditch. It is necessary to acquire sanitary sewer easements through five parcels of land. This particular parcel is vacant and zoned Limited Industrial.

The proposed acquisition area consisting of 8,172.7 square feet is located at the southwest portion of the property. A 23,933.4 square foot temporary construction easement is also required. This part of the 35-acre farmstead located at 4001 West MacArthur is vacant and in agriculture production. None of the subject parcel improvements are impacted by the project. The landowner agreed to accept the appraised value of \$3,270, or \$.40 psf.

\$3,300 is the requested budget for the acquisition of this parcel. This amount includes the \$3,270 purchase price and \$30 for document recording costs. The funding source is Sewer Utility and assessments to the improvement district.

This project addresses the efficient infrastructure goal by improving and expanding sanitary sewer services to an area within the community experiencing growth.

The Agreement has been approved as to form by the Law Department.

Motion--  
--carried

Brewer moved that the agreement and budget be approved and the necessary signatures authorized. Motion carried 7 to 0.

PROP. ACQUIS.

## ACQUISITION OF LAND IN THE SOUTHWEST QUADRANT OF KELLOGG AND 119TH STREET WEST FOR IMPROVEMENT OF WEST KELLOGG. (DISTRICT V)

Agenda Item No.7c.

It is planned that Kellogg (US54) will be improved to freeway standards beyond 119th Street West at some time in the future. In the interim, the Kansas Department of Transportation (KDOT) has approved an access control project for the south side of Kellogg from 119th to 135th. This project consists of constructing a two-way frontage road parallel to Kellogg from 119th to 135th and eliminating all direct access to Kellogg along this mile. To provide proper clearance from the intersections, the frontage road will move south away from Kellogg near the intersections. When Kellogg is improved to freeway standards, the frontage road will be realigned to parallel Kellogg. With this acquisition, all required right of way for this project will be acquired.

The acquisition was appraised for \$296,000. This includes \$83,340 for 53,733.53 square feet needed along 119th (\$1.55 per square foot), \$208,660 for 134,619.29 square feet \$1.55 per square foot) needed to move the frontage road south of Kellogg at 119th and \$4,000 for 36,808 square feet (\$.11 per square foot) for temporary construction easements. The 134,619.29 square foot parcel will be surplus to right of way needs when Kellogg is upgraded to freeway status. The sellers desired to retain eventual ownership of this parcel. They have agreed to accept \$183,510 for the required land. This includes \$88,660 (\$1.65 per square foot) for the land needed along 119th, \$6,000 (\$.16 per square foot) for the temporary easements and \$88,860 (\$.66 per square foot) for the 134,619.29 square foot parcel with the caveat that when the freeway is completed, the City will release its easement and the land will revert to the seller. The purchase price equates to approximately 5 years of temporary easement payment. The actual holding period is undetermined but is expected to exceed 5 years.

A budget of \$200,000 is requested. This includes \$183,510 for the acquisition and \$16,490 for closing costs, surveys, appraisals, title insurance, etc. The funding source is Local Sales Tax revenues. It is anticipated that KDOT will reimburse the City for its acquisition costs.

# CITY COUNCIL PROCEEDINGS

JOURNAL 189

AUGUST 21, 2007

PAGE 493

The acquisition of this parcel is necessary to ensure efficient infrastructure as this area is rapidly growing.

The Law Department has approved the agreement as to form.

Motion--  
--carried

Brewer moved that the agreement be approved and the necessary signatures authorized. Motion carried 7 to 0.

## SIDEWALKS

### SIDEWALK REPAIR ASSESSMENT PROGRAM. (DISTRICTS I, II, III, & IV)

Agenda Item No. 8.

State Law and City Policy provide that sidewalk maintenance is the responsibility of abutting property owners. When sidewalk trip hazards are identified, property owners are required to make repairs, either with their contractor or with the City's contractor. Property owners who use the City's contractor have the opportunity to spread the cost over five years as a special assessment.

Sidewalks are condemned in all districts and then listed in a logical order for the contractor to repair. The first list of sidewalk repair included Districts 1 through 5. The lists do not go to City Council until the sidewalks have been repaired. This is the second list of sidewalks that has been repaired under this years contract.

Ordinance have been prepared to establish authority to use special assessment funding for the current list of repaired sidewalks.

Statements of Charges will be mailed to the property owners on August 31, 2007. The property owners have 30 days from date of statement to pay their assessment and avoid paying interest. The interest added to the principal amount will be determined by the rate at which the July 2007 bond sold. The principal and interest will then be spread over 5-years and placed on the 2007 tax roll.

This program addresses the Dynamic Core Area and Vibrant Neighborhoods goal and the Ensure Efficient Infrastructure goal by reducing sidewalk trip hazards and improving the appearance of sidewalks.

These assessments are in accordance with City Code 12.18.

Motion--  
--carried

Brewer moved that the proposed Assessments be approved and the Ordinances placed on First Reading. Motion carried 7 to 0.

### ORDINANCE

An ordinance making a special assessment to pay for the improvement of and providing a tax levy for the cost of construction of sidewalks in the City of Wichita, Kansas, introduced and under the rules laid over.

# CITY COUNCIL PROCEEDINGS

JOURNAL 189

AUGUST 21, 2007

PAGE 494

UNSAFE STRUC.

## ABATEMENT OF DANGEROUS & UNSAFE STRUCTURES.

Agenda Item No. 9.

The Office of Central Inspection (OCI) supports neighborhood maintenance and improvement through abatement of public nuisances under Titles 18 and 20 of the City Code. State law and local ordinances allow the City to demolish or board up and secure private property that is in violation of Housing and Building Code standards, after proper notification of the responsible party/parties. A private contractor, or City staff performs the work, and the Office of Central Inspection bills the cost to the property owner.

State law and City ordinance allow placement of the demolition and board-up costs as a special property tax assessment if the property owner does not pay. Payment has not been received for the demolition and board up abatements in question, and OCI is requesting permission for the Department of Finance to process the necessary special assessments.

Statements of Charges will be mailed to the property owners on August 31, 2007. The property owners have 30 days from date of statement to pay their assessment and avoid paying interest. The interest added to the principal amount will be determined by the rate at which the July 2007 bonds sold. The principal and interest will then be spread for 1-year and placed on the 2007 tax roll.

On January 24, 2006 the City Council adopted five (5) goals for the City of Wichita. These include: Provide a Safe and Secure Community, Promote Economic Vitality and Affordable Living, Ensure Efficient Infrastructure, Enhance Quality of Life, and Support a Dynamic Core Area & Vibrant Neighborhoods. This agenda item impacts the goal indicator to Support a Dynamic Core Area and Vibrant Neighborhoods: Continued revitalization of the Core Area. Dangerous building condemnation actions, including demolitions and emergency property board-ups, remove blighting and unsafe buildings that are detrimental to Wichita neighborhoods.

The assessments are in accordance with City Code 18.16.070, 18.16.080 and 18.16.090.

Motion--  
--carried

Brewer moved that the proposed assessments be approved and the ordinances placed on first reading. Motion carried 7 to 0.

### ORDINANCE

An ordinance making a special assessment to pay for the removal of certain structures, being dangerous and unsafe buildings which have been declared a nuisance (building emergency board-up) under the provision of Sections 18.16.010 to 18.16.090 of the Code of the City of Wichita, Kansas, introduced and under the rules laid over.

### ORDINANCE

An ordinance making a special assessment to pay for the removal of certain structures, being dangerous and unsafe buildings which have been declared a nuisance (building condemnation-demolition) under the revision of Sections 18.16.010 to 18.16.090 of the Code of the City of Wichita, Kansas, introduced and under the rules laid over.

# CITY COUNCIL PROCEEDINGS

JOURNAL 189

AUGUST 21, 2007

PAGE 495

## NUISANCE

### NUISANCE ABATEMENT ASSESSMENTS.

Agenda Item No. 10.

The Department of Environmental Services supports neighborhood maintenance and improvement through abatement of nuisances under Titles 7 and 8 of the City Code. State law and local ordinances allow the City to clean up or mow private property that is in violation of environmental standards after proper notification of the responsible party. A private contractor performs the work, and Environmental Services bills the cost to the property owner.

State law and city ordinances allow placement of the cleanup and mowing costs as a special property tax assessment if the property owner does not pay. Payment has not been received for the nuisance abatements in question, and Environmental Services is requesting permission for the Department of Finance to process the necessary special assessments.

Nuisance abatement and mowing contractors are paid through budgeted appropriations from the City's General Fund. Placement of special assessments provides for reimbursement of these expenditures to the City. Nuisance abatements to be placed on special assessment total \$35,654.37 weed mowing charges total \$21,040.38.

Dynamic Core Area and vibrant Neighborhoods

These assessments are in accordance with Chapter 7.40.050 and 7.40.060 of the City Code.

Motion--  
--carried

Brewer moved that the proposed assessments be approved and the ordinances placed on first reading. Motion carried 7 to 0.

### ORDINANCE

An ordinance making a special assessment to pay for the cost of cutting weeds in the City of Wichita, Kansas, introduced and under the rules laid over.

### ORDINANCE

An ordinance making a special assessment to pay for the cost of abating certain public health nuisances (lot clean up) under the provision of Section 7.40.050 of the code of the city of Wichita, Kansas. Be it ordained by the governing body of the city of Wichita, Kansas, introduced and under the rules laid over.

## BOARD MINUTES

### MINUTES OF ADVISORY BOARDS/COMMISSIONS, AUGUST 21, 2007.

Wichita Employees' Retirement System, April 25, 2007  
Wichita Employee/Police & Fire Retirement Board, April 26, 2007  
Police & Fire Retirement System, May 23, 2007  
Wichita Employees' Retirement Board & Police & Fire Retirement Board, June 7, 2007  
Wichita Employees' Retirement System, June 20, 2007  
Police & Fire Retirement System, June 27, 2007

Motion--carried

Brewer moved to receive and file. Motion carried 7 to 0.

# CITY COUNCIL PROCEEDINGS

JOURNAL 189

AUGUST 21, 2007

PAGE 496

## ORDINANCES

### SECOND READING ORDINANCES: (FIRST READ AUGUST 14, 2007)

- a. Amendments to Title 18 - Adoption of 2006 International Building Code, 2006 International Residential Code and Revised Building Permit Fee Schedule.

#### ORDINANCE NO. 47-548

1. An ordinance adopting the 2006 International Building Code and City of Wichita amendments thereto, creating Chapter 18.50 and repealing the original of Chapter 18.05 of said code, read for the second time. Brewer moved that the Ordinance be placed upon its passage and adopted. Motion carried 7 to 0. Yeas: Fearey Gray Longwell, Schlapp Skelton Williams and Brewer.

#### ORDINANCE NO. 47-549

2. An ordinance adopting the 2006 International Residential Code and City of Wichita amendments thereto creating Chapter 18.51 of the Code of the City of Wichita, Kansas and repealing Chapter 18.06 of the code of the City of Wichita, Kansas, read for the second time. Brewer moved that the Ordinance be placed upon its passage and adopted. Motion carried 7 to 0. Yeas: Fearey, Gray, Longwell, Schlapp Skelton Williams and Brewer.

#### ORDINANCE NO. 47-550

3. An ordinance amending Section 18.08.010 of the Code of the City of Wichita, Kansas, and pertaining to building permit fees of the City of Wichita, Kansas, read for the second time. Brewer moved that the Ordinance be placed upon its passage and adopted. Motion carried 7 to 0. Yeas: Fearey, Gray, Longwell, Schlapp Skelton Williams and Brewer.

- b. MacArthur Improvement, between Meridian and Seneca. (District IV)

#### ORDINANCE NO. 47-551

An ordinance declaring Macarthur, between Meridian and Seneca (472-84580) to be a main trafficway within the city of Wichita, Kansas; declaring the necessity of and authorizing certain improvements to said main trafficway; and setting forth the nature of said improvements, the estimated costs thereof, and the manner of payment of same, read for the second time. Brewer moved that the Ordinance be placed upon its passage and adopted. Motion carried 7 to 0. Yeas: Fearey Gray Longwell, Schlapp Skelton Williams and Brewer

- c. Improvement to the Intersection of Broadway and 55th Street South.

#### ORDINANCE NO. 47-552

An ordinance declaring the intersection of 55th St. South and Broadway (472-84581) to be a main trafficway within the City of Wichita, Kansas; declaring the necessity of and authorizing certain improvements to said main trafficway; and setting forth the nature of said improvements, the estimated costs thereof, and the manner of payment of same, read for the second time. Brewer moved that the Ordinance be placed upon its passage and adopted. Motion carried 7 to 0. Yeas: Fearey Gray Longwell, Schlapp Skelton Williams and Brewer

# CITY COUNCIL PROCEEDINGS

JOURNAL 189

AUGUST 21, 2007

PAGE 497

d. Grease Interceptor Requirements - Amended Ordinance.

ORDINANCE NO. 47-553

An ordinance pertaining to grease interceptor requirements for sanitary sewer system; amending Chapter 16.24 of the code of the City of Wichita; and repealing the original of Chapter 16.24 of the code of the City of Wichita, read for the second time. Brewer moved that the Ordinance be placed upon its passage and adopted. Motion carried 7 to 0. Yeas: Fearey Gray Longwell, Schlapp Skelton Williams and Brewer

e. 2008 Annual Operating Budget and Revisions to the 2007 Budget.

ORDINANCE NO. 47-555

An ordinance amending section 17.12.090 of the code of the City of Wichita, Kansas, pertaining to schedule of rates and charges for water service, and repealing the original of said section, read for the second time. Brewer moved that the Ordinance be placed upon its passage and adopted. Motion carried 7 to 0. Yeas: Fearey Gray Longwell, Schlapp Skelton Williams and Brewer.

ORDINANCE NO. 47-556

An ordinance amending section 16.14.040 of the code of the City of Wichita, Kansas, relating to the schedule of rates for users of the sanitary sewer system, and repealing the original of said section, read for the second time. Brewer moved that the Ordinance be placed upon its passage and adopted. Motion carried 7 to 0. Yeas: Fearey Gray Longwell, Schlapp Skelton Williams and Brewer.

Motion--carried

Brewer moved that the Ordinances be adopted. Motion carried 7 to 0.

## UNFINISHED BUSINESS

HPC2006-00586

APPEAL OF HISTORIC PRESERVATION BOARD ACTION REGARDING PLACEMENT OF AN LED PROJECTING SIGN AT 300 NORTH MEAD, SUITE 107. (DISTRICT VI)-HPC2006-00586.

John Schlegel

Planning Director reviewed the item.

Agenda Item No. 13.

Staff Recommendation: Return the case to the Historic Preservation Office.

At the November 13, 2006, Historic Preservation Board (HPB) meeting, the applicant requested approval for placement of a twenty-eight-inch by fifty-three-inch projecting, two-sided LED sign. By a 5-1 vote, the HPB denied the placement of the sign and the applicant appealed the decision to the City Council.

City Council deferred action at its December 12, 2006 meeting, and directed the City Manager to have the Office of Central Inspections and the Planning Department review the Sign Code and work with the sign industry to prepare an amendment regulating electronic message signs for the Council's approval.

The Historic Preservation Board provided input as to regulations regarding electronic message signs located within designated historic districts, individually listed properties and environs of designated properties. Section 24.04.223 Specific Historic Preservation Requirements were incorporated into the recent amendments to the Sign Code.

# CITY COUNCIL PROCEEDINGS

JOURNAL 189

AUGUST 21, 2007

PAGE 498

Approved by the City Council at its August 7, 2007 meeting, Section 24.04.223(1) (a-e) allows for one electronic signboard per zoning lot within the environs of a state or national register listed property or district. Adoption of this ordinance allows for administrative approval of signs that meet the standards set forth in the recently adopted amendment.

The City Council has adopted new sign code regulations for electronic message signs that permit administrative approval rather than City Council action.

Core Area and Neighborhood

Mayor Brewer

Mayor Brewer inquired whether anyone wished to be heard and no one appeared.

Motion--

Fearey moved to return the case to the Historic Preservation Office for administrative approval of one electronic message sign as per Section 24.04.223(1)(a-e) of the amended sign code. Motion carried 7 to 0.

--carried

**HPC2006-00370**

**APPEAL OF HISTORIC PRESERVATION BOARD ACTION REGARDING PLACEMENT OF THREE LED SIGNS AT 2307 EAST CENTRAL. (DISTRICT I)-HPC2006-00370**

John Schlegel

Planning Director reviewed the item.

Agenda Item No. 14.

Staff Recommendation: Return the case to the Historic Preservation Office.

At the September 11, 2006, Historic Preservation Board (HPB) meeting, the applicant requested approval for placement of three four- by six-foot LED signs, one each on the east, north and the west sides of the building. By a 5-0 vote, the HPB denied the placement of the signs and the applicant appealed the decision to the City Council.

City Council deferred action at its November 14, 2006 meeting, and directed the City Manager to have the Office of Central Inspections and the Planning Department review the Sign Code and work with the sign industry to prepare an amendment regulating electronic message signs for the Council's approval.

The Historic Preservation Board provided input as to regulations regarding electronic message signs located within designated historic districts, individually listed properties and environs of designated properties. Section 24.04.223 Specific Historic Preservation Requirements were incorporated into the recent amendments to the Sign Code.

Approved by the City Council at its August 7, 2007 meeting, Section 24.04.223(1) (a-e) allows for one electronic signboard per zoning lot within the environs of a state or national register listed property or district. Adoption of this ordinance allows for administrative approval of signs that meet the standards set forth in the recently adopted amendment.

The City Council has adopted new sign code regulations for electronic message signs that permit administrative approval rather than City Council action.

Core Area and Neighborhood

Council Member Longwell Council Member Longwell asked if this property owner would still be allowed to have their free standing sign board if this is approved and if there is a limit to how many signs they can have on their property.

Kurt Schroeder

Office of Central Inspection stated they are probably allowed one ground sign under the code.

Council Member Williams

Council Member Williams asked if this is where the sign is going to be located when the Planning Department shows the Council a sample signage?

# CITY COUNCIL PROCEEDINGS

JOURNAL 189

AUGUST 21, 2007

PAGE 499

- John Schlegel Planning Director explained that they had on at three, one for this face on the building, another for the face that fronts Central and then for the other side of the building. Stated he does not know where they would want to place this one sign that they would be allowed to have.
- Council Member Williams Council Member Williams stated as we make approval does the Council have a choice or say in where the sign goes or does the applicant have to come back to the Planning Department to get approval of where the sign is placed.
- John Schlegel Planning Director stated the way the code is written now for Led signs, it is an administrative approval but if the Council would like some say in that , he can involve the Council in that decision.
- Mayor Brewer Mayor Brewer inquired whether anyone wished to be heard and no one appeared.
- Motion-- Williams moved to return the case to the Historic Preservation Office for administrative approval of one electronic message sign as per Section 24.04.223(1)(a-e) of the amended sign code with approval of the administration. Motion carried 7 to 0.  
--carried

**HPC2006-00572. APPEAL OF HISTORIC PRESERVATION BOARD ACTION REGARDING PLACEMENT OF A LED SIGN AT 825 EAST SECOND. (DISTRICT I) HPC2006-00572**

- John Schlegel Planning Director reviewed the item.
- Agenda Item No. 15.
- Staff Recommendation: Deny the application.
- At the November 13, 2006, Historic Preservation Board (HPB) meeting, the applicant requested approval for placement of a sixteen-inch by sixty-nine-inch electronic message pole sign. By a 6-0 vote, the HPB denied the placement of the sign and the applicant appealed the decision to the City Council.
- City Council deferred action at its December 12, 2006 meeting and directed the City Manager to have the Office of Central Inspections and the Planning Department review the Sign Code and work with the sign industry to prepare an amendment regulating electronic message signs for the Council's approval.
- The Historic Preservation Board provided input as to regulations regarding electronic message signs located within designated historic districts, individually listed properties and environs of designated properties. Section 24.04.223 Specific Historic Preservation Requirements were incorporated into the recent amendments to the Sign Code.
- Approved by the City Council at its August 7, 2007 meeting, Section 24.04.223(3) (a) does not allow electronic message signs on any individually listed buildings or buildings located within listed historic districts, unless the building is an operating theater.
- The City Council has adopted new sign code regulations for electronic message signs.
- Core Area and Neighborhood
- Mayor Brewer Mayor Brewer inquired whether anyone wished to be heard and no one appeared.
- Motion-- Fearey moved to deny the application for an electronic signboard as provided for in the sign code adopted August 7, 2007. Motion carried 6 to 1, (Gray-Nay)  
--carried

# CITY COUNCIL PROCEEDINGS

JOURNAL 189

AUGUST 21, 2007

PAGE 500

## NEW BUSINESS

### **C.E. MACHINE CO. PUBLIC HEARING AND TAX EXEMPTION REQUEST, ECK LEASING/C. E. MACHINE CO., INC. (DISTRICT IV)**

Lisa Totten

Industrial Analyst reviewed the item.

Agenda Item No. 16.

C.E. Machine Co., Inc., (C.E. Machine) located at 1741 S. Hoover Court in southwest Wichita, locally formed in 1975. C.E. Machine is a manufacturer of medium size precision machine parts and assemblies for the aerospace industry. C.E. Machine has experienced rapid growth in sales since its inception and as a result has expanded its manufacturing capacity to include additional manufacturing space and acquisition of new manufacturing equipment in the amount of \$3,486,867.

C.E. Machine is now requesting approval of an Economic Development Tax Exemption on the construction of a building addition and newly acquired equipment in conjunction with the expansion project.

C.E. Machine Co., Inc., manufactures medium size precision machine parts and assemblies for the aerospace industry. The close-tolerance component aircraft parts machined by C.E. Machine help support the U.S. Government Department of Defense and major aircraft manufacturers worldwide. C.E. Machine utilizes the newest technology available for machines and tooling. Currently, C.E. Machine supports production with an array of computer controlled manufacturing equipment. The list of equipment includes 3-axis and 4-axis CNC mills, CNC lathes, and Automated Coordinate Measuring Machine (CMM). C.E. Machine exports 96% of its business out of the State of Kansas via Boeing, Raytheon, Bombardier and Cessna.

The expansion project will result in new construction and new manufacturing equipment owned by Eck Leasing, LLC and will be leased to C.E. Machine Co., Inc. Both are owned 100% by Brian Eck the president of both companies.

C.E. Machines currently employs 34 employees and plans to add at least 16 new jobs over the next five years. The expansion project includes construction of a 33,600 s.f. building addition with a cost of \$1,255,270, and purchase of additional machinery equipment at \$2,231,597.

C.E. Machine's expansion project is itemized in Exhibit I attached hereto. Under the Economic Development Incentives Policy, C.E. Machine is eligible for the following:

#### TAX EXEMPTION ELIGIBILITY

ELIGIBLE %	INCENTIVE	EXPLANATION
50.00%	New Job Creation:	C.E. Machine will create at least 16 new jobs.
35.00%	Capital Improvements:	C.E. Machine will invest at least \$3,475,970.
85.00%	Sub Total Business - Incentive Eligibility (Maximum allowed is 100%)	
00.00%	Location Premium: C.E. Machine is not located in the central redevelopment area.	
85.00%	TOTAL EXEMPTION ALLOWED UNDER ECONOMIC DEVELOPMENT INCENTIVE POLICY	

# CITY COUNCIL PROCEEDINGS

JOURNAL 189

AUGUST 21, 2007

PAGE 501

Under the City's Business Incentives Policy, CE Machine is eligible for a 85% tax exemption for a five-year term on the identified real and personal property, plus an 85% tax exemption for a second five-year term on real property only, subject to City Council approval. A notice of public hearing has been published. C.E. Machine has agreed to comply with the conditions set forth in the Economic Development Incentive Policy.

The estimated first year taxes on the proposed \$3,475,970 expansion would be \$91,915 on real and personal property, based on the 2006 mill levy. Using the allowable tax exemption of 85 percent, the City would be exempting (for the first year) \$78,128 of new taxes from the real and personal property tax rolls. The tax exemption will be shared among the taxing entities as follows: City - \$21,509; County/State - \$22,089; and USD 259 - \$34,530.

Wichita State University Center for Economic Development and Business Research calculated a cost-benefit analysis indicating benefit-to-cost ratios, which are as follow:

City of Wichita	2.71 to one
Sedgwick County	1.91 to one
USD 259	1.18 to one
State of Kansas	8.27 to one

Economic Vitality and Affordable Living. Granting an ad valorem property tax exemption will encourage the business to create new job opportunities and stimulate economic growth for the City of Wichita and Sedgwick County.

The City Attorney's Office has approved the Ordinance as to form.

Mayor Brewer

Mayor Brewer inquired whether anyone wished to be heard and no one appeared.

Motion--

Gray moved that the public hearing be closed and approve first reading of the Ordinance, granting a 85% tax exemption on the identified real and personal property improvements for a five year term, plus a 85% tax exemption for a second five-year term on real property only, subject to City Council approval. Motion carried 7 to 0.

--carried

## ORDINANCE

An ordinance exempting property from Ad Valorem Taxation for Economic Development purposes pursuant to Article 11, Section 13, of the Kansas Constitution; providing the terms and conditions for Ad Valorem Tax Exemption; and describing the property of Eck Leasing/C. E. Machine Co., Inc., so exempted, introduced and under the rules laid over.

# CITY COUNCIL PROCEEDINGS

JOURNAL 189

AUGUST 21, 2007

PAGE 502

## SAFER GRANT

### STAFFING FOR ADEQUATE FIRE AND EMERGENCY RESPONSE (SAFER) GRANT.

Mike Rudd

Deputy Fire Chief reviewed the item.

Agenda Item No. 17.

Created by Congress in 2003, the SAFER grant is designed to provide funding to communities with career, volunteer and combination fire departments to “meet industry minimum standards prescribed by National Fire Protection Association (NFPA) Standards 1710 (Section 5.2.4.2 – Initial Full Alarm Assignment Capability) and 1720 and to attain 24-hour staffing that will provide adequate protection from fire and fire-related hazards. Congress appropriated a total of \$115 million to the Department of Homeland Security (DHS) to carry out the activities of the SAFER grants. There are two activities in which applicants may request funding under the SAFER grant. Career fire departments may only apply for funding in the “Hiring of Firefighters Activity.” These newly hired positions must be in addition to existing firefighter positions.

The Fire Department has prepared a \$4,844,728 grant application to hire 14 new firefighters. The SAFER grant will pay up to \$1,475,950 and the City match will be \$3,368,778 over the five-year life of the grant. The SAFER grant requires the City match an increasing proportion of firefighter salaries over a four-year period and, in the fifth year of the grant, the City must absorb the entire cost of any positions funded as a result of the grant. Based on a total funding cap of \$105,425 per position over five years, the maximum annual Federal share of funds that the City can receive under SAFER for salary and benefits for newly hired firefighters will not exceed the lesser of the following:

Year One:	90% of the actual costs or \$37,950.
Year Two:	80% of the actual costs or \$33,730.
Year Three:	50% of the actual costs or \$21,080.
Year Four:	30% of the actual costs or \$12,665.
Year Five:	No Federal share, all costs funded by the City.

If the SAFER grant is approved, the City will receive the maximum grant amount per firefighter. Additional costs the City would incur for each of the 14 new firefighters would be the cost of their physicals, uniforms, recruit manuals, and bunker gear.

The base salary and benefit cost to hire 14 new firefighters over a five year period is \$4,844,728. If approved, the \$4,844,728 grant application would require a local match of \$3,368,778, with \$1,475,950 funded through the SAFER Grant Program over the five-year life of the grant. In the 2008 Proposed Budget, match funding for 14 firefighters has been budgeted contingent upon the award of the SAFER grant.

This grant addresses the Safe and Secure Community goal by reducing emergency response time, improving community safety, and increasing citizen’s perception of safety.

Mayor Brewer

Mayor Brewer inquired whether anyone wished to be heard and no one appeared.

Motion--  
--carried

Brewer moved that the grant application be approved; the necessary signatures authorized; and any necessary budget transfers authorized. Motion carried 7 to 0.

# CITY COUNCIL PROCEEDINGS

JOURNAL 189

AUGUST 21, 2007

PAGE 503

## BAEHR STREET

### BAEHR STREET PAVING, BETWEEN NEWELL AND CENTRAL. (DISTRICT IV)

Jim Armour

City Engineer reviewed the item.

(Council Member Skelton momentarily absent)

Agenda Item No. 18.

On July 3, 2007, the City Council approved a Petition to pave Baehr between St. Louis and Newell. Baehr Street between Newell and Central is also unpaved. The road is difficult to maintain and drains poorly. On July 11, 2007, District IV Advisory Board sponsored a neighborhood hearing on the project. The Board voted 7-2 to recommend approval of ordering in the project.

The completed project will be a two-lane asphalt roadway with curb and gutter. A new storm water sewer system will be constructed.

The estimated project cost is \$191,200 with \$151,200 assessed to the improvement district and \$40,000 paid by the City. The method of assessment is the square foot basis. The estimated assessment to individual properties is \$00.85 per square foot of ownership. The City share is for the cost of intersection construction. The funding source for the City share is General Obligation bonds.

This project addresses the Efficient Infrastructure goal by providing paved access in an existing neighborhood.

State Statutes authorize the City Council to order in the paving.

Mayor Brewer

Mayor Brewer inquired whether anyone wished to be heard.

Suzanne Howard

Ms. Howard stated that she feels that this street is purposely not being taken care of by the City in order for the residents to have to pay for the paving of it.

Motion--  
--carried

Gray moved that the Project be approved; the Resolution adopted; and the necessary signatures authorized. Motion carried 7 to 0.

#### RESOLUTION NO. 07-478

Resolution of Findings of Advisability and Resolution authorizing construction of pavement on Baehr from the south line of Central to the south line of Newell 47-84575, in the City of Wichita, Kansas, pursuant to findings of advisability made by the governing body of the City of Wichita, Kansas, presented. Gray moved that the Resolution be adopted. Motion carried 7 to 0. Yeas: Fearey, Gray, Longwell, Schlapp, Skelton, Williams and Brewer.

# CITY COUNCIL PROCEEDINGS

JOURNAL 189

AUGUST 21, 2007

PAGE 504

TITLE 18.

**AMENDMENT TO TITLE 18-ADOPTION OF 2006 INTERNATIONAL EXISTING BUILDING CODE, CHAPTER 18.45, TO REPLACE THE CITY OF WICHITA EXISTING BUILDINGS REHABILITATION AND CHANGE OF USE CODE CHAPTER 18.44.**

Kurt Schroeder

Office of Central Inspection reviewed the item.

Agenda Item No. 19.

In May 2001, the City of Wichita adopted the City of Wichita Existing Buildings Rehabilitation and Change of Use Code. Until that time, Wichita had no building code specific to the unique requirements and/or challenges related to remodeling of older, existing buildings, especially when those buildings were being adapted to new uses. In 2001, none of the national/international model building codes clearly outlined minimum standards or expectations for either remodeling or adaptive re-use of existing buildings. At that time, model building codes left much to the discretion, judgment and/or interpretation of code officials and building construction plan examiners, making budget planning and consistency of interpretation a problem for developers and builders. Because of this, unpredictable, disproportionate or unrealistic requirements could sometimes become an impediment to the beneficial re-use of existing buildings.

Development and adoption of the 2001 City of Wichita Existing Buildings Rehabilitation and Change of Use Code has: (1) significantly reduced interpretation of new construction codes for rehabilitation projects, making design and budget planning easier for project planners, while saving both time and money; (2) allowed existing buildings to be more easily adapted to new uses through specific code alternatives, more flexibility on minimum design criteria, and delineation of specific code exceptions for remodeled buildings, without compromising life safety; and (3) established more realistic and readily achievable requirements that are flexible, predictable and more proportionate to project scale.

Recently, the International Code Council (ICC) has developed a model code specific to remodeling and adaptive re-use of existing buildings. It is called the International Existing Building Code (IEBC), and is currently published as the 2006 Edition. It is being adopted by jurisdictions across the country as the standard for rehabilitation of existing buildings.

The IEBC was reviewed by staff in conjunction with representatives from the architectural and building construction industry, and with input from local building and building owner associations. The IEBC provisions were compared not only to the City of Wichita Existing Buildings Rehabilitation and Change of Use Code, but also to current editions of the International Building Code, International Residential Codes and city-adopted electrical, mechanical and plumbing codes. Proposed amendments to the IEBC ensure that existing Wichita buildings can be safely, yet more easily remodeled and/or adapted to new uses, that rehabilitation standards are highly flexible, and that rehabilitation standards provide a wider variety of safe and affordable design alternatives.

The proposed IEBC and amendments have been presented to the Board of Code Standards and Appeals (BCSA). The BCSA has recommended that the IEBC, with proposed amendments, be adopted.

A summary of proposed IEBC amendments is included as Attachment 1.

There are no costs to the City associated with adoption of the ordinance. Adoption of the ordinances will not increase building permit fees.

On January 24, 2006, the City Council adopted five (5) goals for the City of Wichita. These include: Provide a Safe and Secure Community, Promote Economic Vitality and Affordable Living, Ensure Efficient Infrastructure, Enhance Quality of Life, and Support a Dynamic Core Area & Vibrant Neighborhoods. The proposed ordinance supports the "Provide a Safe and Secure Community" goal by ensuring the most up-to-date and tested/certified construction safety standards, installation methods and products for expanded, remodeled and/or repaired buildings in Wichita.

The Law Department has reviewed and approved the adopting ordinance as to form.

# CITY COUNCIL PROCEEDINGS

JOURNAL 189

AUGUST 21, 2007

PAGE 505

Mayor Brewer

Mayor Brewer inquired whether anyone wished to be heard and no one appeared.

Motion--

Brewer moved to approve the first reading of the ordinance adopting the 2006 Edition of the International Existing Building Code (creating Chapter 18.45 of the Code of the City of Wichita), and deleting the City of Wichita Existing Buildings Rehabilitation and Change of Use Code (Chapter 18.44 of the Code of the City of Wichita). Motion carried 7 to 0.

--carried

## ORDINANCE

An ordinance adopting the 2006 International Existing Building Code and City of Wichita amendments there to as chapter 18.45 of the code of the City of Wichita, Kansas, and repealing chapter 18.44, of the code of the City of Wichita, Kansas, all pertaining to building codes, introduced and under the rules laid over.

## PLANNING AGENDA

Motion--

Brewer moved that Consent Planning items 23 and 24 be approved in accordance with the recommended action shown thereon. Motion carried 7 to 0.

--carried

**PUD2006-02#24**

**PUD2006-02#24-CREATION OF THE WAL-MART AT OLIVER PLANNED UNIT DEVELOPMENT TO ALLOW GENERAL RETAIL SALES. GENERALLY LOCATED SOUTH OF KELLOGG AVENUE, EAST OF OLIVER AVENUE. (DISTRICT III)-REMAND.**

Gary Rebenstorf

Director of Law reviewed the item.

Agenda Item No. 20.

On August 14, 2007, the City Council deferred action on this agenda item until August 21, 2007.

The application area is 12.2 acres located southeast of the Kellogg and Oliver intersection, north of Orme and west of Bleckley. The applicants are seeking Planned Unit Development zoning (PUD-24) to allow re-development of the property for "any commercial use permitted by-right in the LC Limited Commercial district," excluding certain listed uses. The expected use on the site is a Wal-Mart, however there are not any requirements within the PUD application that require the site to be developed with any particular brand or company.

DAB II and DAB III heard the application and the Wal-Mart representative attended several neighborhood meetings. The MAPC heard the request on November 2, 2006, and voted 12-1 to recommend approval according to requirements contained in the staff report.

City Council heard the matter on December 6, 2006, and deferred action in order to allow the applicants additional time to address a number of issues that did not appear to be fully resolved. City Council again considered the item on January 9, 2007. A letter from the applicants' representative requested a further deferral and a representative was asked to address the Council on the deferral request. After discussion of the application and the request for deferral, the City Council voted to deny the zoning request (5-2, Nays Gray and Mayans). The applicants appealed the Council's decision to District Court.

The background material previously provided to the Council and the Court's Journal Entry were attached to the August 14 Agenda Report and are referenced in this Report. Materials from the applicants and a neighborhood representative were also provided at the August 14 meeting and are attached to this report.

The District Court heard the appeal from the denial of the application on May 10, 2007. After considering the record on appeal, video of the Council meetings, briefs of the parties, and oral argument, the District Court ruled on June 6, 2007. The Court remanded the case back to the City Council for the Council to provide more information on the factors it considered and the conclusions it

# CITY COUNCIL PROCEEDINGS

JOURNAL 189

AUGUST 21, 2007

PAGE 506

came to in making its decision. In the remand, the Court does not preclude the City Council from taking any other action allowed by law and by City ordinance in regard to the matter.

Proposed findings for the denial of the application, as prepared by Staff, are attached. These proposed findings are based upon the record presented to Council on December 6, 2006, and January 9, 2007, Council deliberations in these meetings, and suggestions given by individual Council members to Staff. The City Council may take the recommended action to adopt these finding to support the denial; the City Council may also act to modify or adopt alternative findings for the denial, or may take any other action on the application that is consistent with the Unified Zoning Code and state law.

Two letters from Legal Counsel for the Applicants and a letter from a neighborhood proponent dated August 14, 2007 were provided to the Council on August 14, 2007 and are attached. The letters inform the Council that the Applicants have entered into option contracts to purchase nine of the homes on Orme Street that would be impacted by the rezoning and that at least 10 of the protest petitions would be withdrawn. They request a deferral of 40 days to allow for contract negotiations to be finalized. Staff has calculated that, even if these referenced protest petitions could be withdrawn, there would still be 21.27% protest (compared to the 44.15% protest at the time of Council denial).

Promote economic vitality and affordable living.

The City Council needs to adopt findings to support its prior decision or take other action consistent with the Journal Entry of the Court in Nash Special K's LLC, et al. v. City of Wichita, 07 CV 416. In regard to whether Protest Petitions can be withdrawn at this time, it is too late for withdrawal of the Protest Petitions or for a change in the number of votes needed for approval of the application. Protest petitions can be withdrawn "at any time prior to the date of the scheduled hearing" of the Council (UZC sec. V-C.10.d). In this case the scheduled hearing was January 9, 2007.

Council Member Gray Council Member Gray inquired if he disagrees with the information being sent back, if he could vote no.

Gary Rebenstorf Director of Law stated yes.

Motion--

Skelton moved that the findings listed be adopted as the basis for the denial of the application.

1. The zoning, uses and character of the neighborhood. Property neighboring the application area is a mix of zoning; existing uses on neighboring properties are residential, medical offices, retail commercial, and vacant commercial. There are single-family residences facing the application area to the south, which are part of a larger, established residential neighborhood. An elementary school is located southwest of the corner of Orme and Oliver; children are able to walk to school from the neighborhood.

2. The suitability of the subject property for the uses to which it has been restricted. The application area is a mix of zoning; existing uses include residential and vacant, freestanding and strip retail sales and vehicle sales, as well as platted streets. The developed properties could continue to be used as currently developed and the vacant property could be expected to develop as currently zoned. It will become less attractive as residential due to Kellogg expansion and commercial encroachment.

3. The extent to which removal of the restrictions will detrimentally affect nearby property. Approval will increase the extent and scale of commercial activity, especially with respect to increased traffic, building size and hours of operation, which will impact the remaining residential uses and the elementary school. Approval will leave a narrow strip of single-family residential use (along Orme) sandwiched between multi-family use and the large commercial PUD. The traffic impacts to the residences on Orme and to Oliver and on pedestrian and school traffic are particular concerns that have to be carefully scrutinized and addressed. Delivery truck traffic, traffic from retail customers, increased traffic on existing narrow residential streets, the existence of small residential driveways with on-street parking, and the hours of operation of the commercial activity will all detrimentally affect the neighborhood. The traffic accommodations proposed by the applicants address and may reduce many of these concerns but do not solve all the problems, including the increased truck and retail traffic on Orme and the number of vehicles queued in the some of the turning lanes on Oliver. The other proposed conditions of approval (e.g., masonry screening, landscape buffering, access controls, and

# CITY COUNCIL PROCEEDINGS

JOURNAL 189

AUGUST 21, 2007

PAGE 507

street and intersection improvements) will mitigate some of the other detrimental impacts but still leave the various ancillary impacts of large commercial development on an immediately adjacent residential neighborhood.

4. The relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant. Denial will presumably result in a loss of economic opportunity for the applicants and a loss of convenience and choice for potential patrons of the business or businesses that could be located on the site. Approval of the request will provide a greater number of commercially zoned lots that could increase choice and convenience in the marketplace and for inner city areas. Fairness to the applicants, to the neighborhood, and to the community at large must be considered and balanced. These hardships on the applicants and gains for the community are offset by a greater concern for the detrimental impacts previously stated. Too many questions and concerns of these impacts remain unanswered or unresolved, even after numerous meetings and a previous deferral by Council.

5. The conformance of the requested change to the adopted or recognized comprehensive plan or other plans or policies being utilized by the City or County. The request is in conformance to Land Use Guide as appropriate for "regional commercial" uses, and an arterial street intersection with a freeway is where significant commercial development would be expected to occur. Other policies must be reviewed, however. Commercial Location Guideline #3 provides that any commercial use in proximity to residential development should have required site design features that limit noise, lighting and other aspects of commercial activity that may adversely impact surrounding residential land uses. Too many questions remain from the detrimental impacts above to allow us to find that the design features are adequate. With these outstanding concerns, the application is contrary to Comprehensive Plan's goal of improved quality of life as to the existing residences.

6. Impact of the proposed development on community facilities. Approval will result in an increase in publicly supplied services such as sewer, water, and traffic and may require additional policing in the neighborhood. The public improvement impacts would be addressed by zoning change conditions or replatting to insure that adequate facilities are in place.

7. Opposition or support of neighborhood residents. There is some neighborhood support for the proposed application, as expressed in DAB and neighborhood meetings. These meetings and the MAPC hearing also reflected significant neighborhood opposition. This opposition has resulted in protest petitions from 44.15 % of the notice area and is further illustrated by correspondence and petitions submitted to MAPC and the City Council.

8. A consideration of the recommendations of professional staff. MAPD Staff recommends approval. This approval was based upon a significant number of additional conditions that would have to be met by the applicant, however. This reflects a concern that the original application had a number of problems or deficiencies that were still being worked out at the time of Council consideration and others that would still have to be worked out even after an approval. Motion carried 6 to 1, (Gray-Nay).

--carried

# CITY COUNCIL PROCEEDINGS

JOURNAL 189

AUGUST 21, 2007

PAGE 508

ZON2007-13

**ZON2007-13 – ZONE CHANGE FROM “SF-5” SINGLE-FAMILY RESIDENTIAL TO “TF-3” TWO-FAMILY RESIDENTIAL FOR DUPLEX DEVELOPMENT; GENERALLY LOCATED WEST OF FLORENCE AND SOUTH OF SECOND STREET. (DISTRICT IV)**

John Schlegel

Planning Director reviewed the item.

Agenda Item No. 21.

MAPC Recommendations: Approve, subject to staff recommendations (9-0).

MAPD Staff Recommendations: Approve the zone change.

DAB Recommendations: DAB IV did not review.

The application area is a vacant, platted lot located on the west side of Florence and south of 2nd Street. The .21-acre site is zoned “SF-5”, and the applicant requests “TF-3” zoning to develop a duplex.

All property immediately surrounding the site is zoned “SF-5” and developed with single-family residences. Southeast of the site is an “SF-5” zoned church; “TF-3” and “MF-18” Multi-family residential zoning exists within the same block as the application area. One duplex exists within this same block, and several duplexes exist within a one block radius.

MAPC heard this request on May 17, 2007 and approved (9-0), based on staff recommendations. One residential neighbor contacted MAPD opposed to the request; see the attached letter. Staff received 20 protest petitions; 11 are valid protests within the legal protest area, accounting for 61.22% of the protest area. This exceeds 20% of the protest area, requiring City Council to have a three-quarters majority to override the protest and approve the zone change.

Promote Economic Vitality.

The ordinance has been reviewed and approved as to form by the Law Department.

Motion--  
--carried

Gray moved to concur with the findings of the MAPC and approve the first reading of the ordinance establishing the zone change. Motion carried 6 to 1, (Fearey-Nay).

## ORDINANCE

An ordinance changing the zoning classifications or districts of certain lands located in the City of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by section 28.04.010, as amended, introduced and under the rules laid over.

# CITY COUNCIL PROCEEDINGS

JOURNAL 189

AUGUST 21, 2007

PAGE 509

DR2005-21

## DR2005-21: PROPOSED AMENDMENTS TO THE UNIFIED ZONING CODE PERTAINING TO MCCONNELL AIR FORCE BASE AIRPORT OVERLAY DISTRICTS AND ANTI-TERRORISM/FORCE PROTECTION OVERLAY DISTRICTS. (DISTRICTS II AND III)

John Schlegel

Planning Director reviewed the item.

Agenda Item No. 22.

In November 2006, the Wichita City Council directed staff of the Wichita-Sedgwick County Metropolitan Area Planning Department to proceed with a number of zoning code text and zoning map amendments in order to implement the recommendations of the Implementation Coordination Committee for the McConnell Air Force Base Joint Land Use Study, May 2005 (JLUS). One of the initiated zoning code text amendments is to amend the AOD, Airport Overlay Districts to be more consistent with Federal Land Use Compatibility Guidelines (LUCG), which list compatibility of uses with McConnell Air Force Base (AFB) based on proximity to flight paths and noise contours.

Additionally, on June 5, 2007, when the City Council approved the zoning of properties near the AFB to the AT/FP-O, Anti-Terrorism/Force Protection Overlay District, the issue of a negative connotation being generated by the name of the overlay district was discussed. As a result, the City Council initiated a zoning code text amendment to change the name of the overlay district to the AFBP-O, Air Force Base Protection Overlay District.

The proposed amendments to the AOD do not entirely prohibit all the uses discouraged by the LUCG. Rather, many uses would be limited in their intensity through a limitation on floor area ratio. The proposed amendments would prohibit parking, aviation-related facilities, storage uses, cemeteries and certain agricultural uses in AOD I; residential uses in AOD II; and funeral homes and government services in AOD II and III. The density of residential uses would be further restricted in AOD III, and the intensity of auditoriums, stadiums, recreation, and community assembly uses would be limited in AOD II and III. The amendments further clarify that existing uses can continue, be rebuilt, and changed to other permitted uses. The proposed amendments to the AOD are shown in detail in an attached document. An attached map shows the boundaries of the AOD. The proposed amendments to change the name of the AT/FP-O to the AFBP-O, Air Force Base Protection Overlay District also are shown in detail in an attached document.

Although it is not statutorily-required, a written notice of the proposed amendments was mailed to the over 1,200 property owners within the AOD. These property owners were invited to an open house hosted by staff on July 9, 2007, in order to answer their questions regarding how the proposed amendments affect their specific property. The open house was attended by 36 property owners, and no significant opposition to the proposed amendments was expressed at the meeting. Staff has discussed the proposed amendments with another 75 or so property owners on the phone or by e-mail, with no significant opposition expressed by these citizens either.

On July 19, 2007, the Metropolitan Area Planning Commission (MAPC) held a public hearing to consider the proposed amendments. Two citizens spoke at the public hearing in opposition to the proposed amendments and indicated that the proposed amendments would negatively affect the value of their property. The minutes of the MAPC public hearing are attached. The MAPC voted unanimously (10-0) to recommend approval of the proposed amendments.

District Advisory Board III considered the proposed amendments at their meeting on August 1, 2007, and District Advisory Board II considered the proposed amendments at their meeting on August 6, 2007. Both District Advisory Boards recommend approval of the proposed amendments. A summary of each DAB meeting is attached.

The proposed amendments address the Safe and Secure Community Goal by establishing zoning restrictions that limit property uses in those areas of the City that are most prone to military aircraft accidents. The proposed amendments address the Economic Vitality and Affordable Living Goal by establishing reasonable growth management policies that help balance future operations at McConnell with the growth needs of the City.

# CITY COUNCIL PROCEEDINGS

JOURNAL 189

AUGUST 21, 2007

PAGE 510

The ordinance has been reviewed and approved as to form by the Law Department. The Unified Zoning Code provides two alternatives to the recommended action:

1. Return the proposed amendments to the MAPC with a statement specifying the basis for the City Council's failure to approve or disapprove, or
2. Deny the proposed amendments and override the MAPC recommendation with a 2/3 vote.

Motion--  
--carried

Schlapp moved that the proposed amendments to the Wichita-Sedgwick County Unified Zoning Code be approved and the ordinance placed on first reading. Motion carried 7 to 0.

## ORDINANCE

An ordinance amending Section III-C.5 of the Wichita-Sedgwick County Unified Zoning Code (April 19, 2001 Edition), as adopted by reference in City of Wichita code Sec. 28.04.010 by Ordinance No. 44-975 and Section III-C.9 and Section V-I.2.0. of the Wichita-Sedgwick County Unified Zoning Code (April 19, 2001 Edition) as adopted by reference in City of Wichita Code Sec. 28.04.010 by Ordinance No. 47-347 pertaining to the recommendations from the McConnell Air Force Base joint land use study, introduced and under the rules laid over.

**A07-15R**

**A07-15R REQUEST BY JAY RUSSELL, OF R&R REALTY, TO ANNEX LAND GENERALLY LOCATED NORTHEAST OF THE INTERSECTION OF K-96 AND RIDGE ROAD, ISLAND ANNEXATION. (DISTRICT VI)**

Agenda Item No. 23.

The City has received a request to annex 34.44 acres of land generally located northeast of the intersection of K-96 and Ridge Road. The subject property does not abut the City of Wichita, and therefore is an island annexation request. The property owner anticipates that the proposed property will be developed with 250,000 square feet of office or commercial development over the next ten years.

Land Use and Zoning: The proposed annexation consists of approximately 34.44 acres of property currently zoned "SF-20" Single-Family Residential. On November 15, 2006, the Sedgwick County Commission approved a North Forty-Fifth Place Community Unit Plan and a zone change request to "LC" Limited Commercial subject to platting the entire property within one year. However, a plat has not yet been submitted; therefore, upon annexation, the "SF-20" Single-Family Residential zoning will convert to "SF-5" Single-Family Residential until such time a plat is approved. Property directly to the north, east, south and west is zoned "SF-20" Single-Family Residential. Property to the south and east is primarily undeveloped, while property to the north and west is partially developed with a few scattered single-family homes.

Public Services: There is a 20" water main in Ridge Road coming from the south and ending at the south right-of-way line of K-96. The closest sewer main is an 18" sewer main in 37th Street North, at the mid-mile between Ridge Road and Hoover Road.

Street System: The subject property borders K-96 to the south, which is a four-lane expressway. The subject property also borders 45th Street to the north, which is a dirt road. The Sedgwick County Capital Improvement Program 2006-2010 and the 2006 Transportation Improvement Program have scheduled Ridge Road to be widened, between 53rd Street and K-96, which is west of the subject property. The City of Wichita Capital Improvement Program (CIP) 2005-2014 does not call for improvements near the proposed annexation site.

Public Safety: Fire services to this site can be provided by the City of Wichita within an eight (8) to nine (9) minute approximate response time from City Station No. 13, located at 3162 West 42nd Street North. Upon annexation, police protection will be provided to the area by the Patrol North Bureau of the Wichita Police Department, headquartered at 3015 East 21st Street North.

# CITY COUNCIL PROCEEDINGS

JOURNAL 189

AUGUST 21, 2007

PAGE 511

Parks: The Brooks Tract Park, a 272-acre park located 3/4 mile east of the subject property, has been proposed as a regional park. The North Ridge Village Addition Reserve D, a 17-acre park located 1/2 mile southwest of the subject property, is undeveloped and functions as habitat for the Eastern Spotted Skunk. In addition, the Sedgwick County Zoo and Park is located approximately 2 1/2 miles south of the subject property.

School District: The annexation property is part of the Unified School District 266 (Maize School District). Annexation will not change the school district.

Comprehensive Plan: The proposed annexation is consistent with the Wichita-Sedgwick County Comprehensive Plan. The annexation property falls within the 2030 Wichita Urban Growth Area, as shown in the Plan.

The current approximate appraised value of the proposed annexation lands, according to County records, is \$2,010 with a total assessed value of \$603. Using the current City levy (\$31.828/\$1000 x assessed valuation), this roughly yields \$19 in City annual tax revenues for the property. The future assessed value of this property will depend on the type and timing of any other developments on the proposed annexation property and the current mill levy. At this time, the property owner is anticipating that 250,000 square feet of office or commercial property will be developed within the next ten years. The total appraised value of this development after completion is estimated at \$30,000,000. Assuming the current City levy remains about the same, this would roughly yield a total of \$235,545 in City annual tax revenues.

Approving the annexation request would impact Wichita's goal to ensure efficient infrastructure, for annexation of this property would assist the City in satisfying the demand for new infrastructure needed to support growth and development.

If the City wishes to act upon an annexation request from a property owner for land not adjoining the City, K.S.A. 12-520c requires the adoption of a resolution by the City Council requesting the Sedgwick County Board of County Commissioners to make a finding that the annexation of such land will not hinder or prevent the proper growth and development of the area or that of any other city located within the county. The City Clerk must file a certified copy of the resolution with the Board of County Commissioners. Within 30 days of such filing, the Board of County Commissioners must make their finding. If the finding is favorable to the City, then the City Council can proceed to give first reading of an ordinance annexing the requested property into the City of Wichita.

Motion--  
--carried

Brewer moved that the annexation process be approved and the resolution adopted. Motion carried 7 to 0.

# CITY COUNCIL PROCEEDINGS

JOURNAL 189

AUGUST 21, 2007

PAGE 512

SUB2007-43

## SUB 2007-43-PLAT OF KANSAS STATE BANK ADDITION LOCATED EAST OF MAIZE ROAD AND NORTH OF KELLOGG. (DISTRICT V)

Agenda Item No. 24.

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (8-0)

This site, consisting of one lot on 1.25 acres, is a replat of a portion of the Verda Vista Addition and is located within Wichita's city limits. The site has been approved for a zone change (ZON 2007-07) from "SF-5" Single-Family Residential District to "GO" General Office District. A Conditional Use (CON 2007-09) has also been approved for the site for a financial institution.

Municipal services are available to serve the site. As per City Engineering, an Off-site Drainage Easement was submitted. A Restrictive Covenant was submitted to permit cross-lot access for the benefit of the abutting property to the north. In order to guarantee the closure of any driveway openings located in areas of complete access control or that exceed the number of allowed openings, a Driveway Closure Certificate was also submitted.

The plat has been approved by the Planning Commission, subject to conditions. Publication of the Ordinance should be withheld until the plat is recorded with the Register of Deeds.

Ensure Efficient Infrastructure.

The Drainage Agreement, Restrictive Covenant for Future Cross Circulation Agreement and Drive Approach Closure Certificate will be recorded with the Register of Deeds.

Motion--  
--carried

Brewer moved that the documents and plat be approved; the necessary signatures authorized; and the Ordinance placed on first reading. Motion carried 7 to 0.

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# CITY COUNCIL PROCEEDINGS

JOURNAL 189

AUGUST 21, 2007

PAGE 513

## CITY COUNCIL

### **BOARD APPTS.**

### **BOARD APPOINTMENTS.**

Council Member Williams Council Member Williams requested that Gwendolyn Mukes be appointed to the Cultural Funding Board.

Motion--carried Brewer moved that the appointments be approved. Motion carried 7 to 0.

### **TRAVEL EXPEND.**

### **APPROVAL OF TRAVEL EXPENSES FOR MAYOR BREWER AND CITY COUNCIL MEMBERS SCHLAPP, SKELTON, LONGWELL, GRAY AND WILLIAMS TO ATTEND LEAGUE OF KANSAS MUNICIPALITIES MEETING IN OVERLAND PARK, OCTOBER 6-9, 2007.**

Motion--carried Fearey moved that the expenditures be approved. Motion carried 7 to 0.

### **TRAVEL EXPEND.**

### **APPROVAL OF TRAVEL EXPENSES FOR MAYOR BREWER TO ATTEND LEAGUE OF KANSAS MUNICIPALITIES LEGISLATIVE POLICY COMMITTEE MEETING IN TOPEKA, KANSAS, AUGUST 23, 2007.**

Motion--carried Fearey moved that the expenditures be approved. Motion carried 7 to 0.

### **TRAVEL EXPEND.**

### **APPROVAL OF TRAVEL EXPENSES FOR MAYOR BREWER TO ATTEND LEAGUE OF KANSAS MUNICIPALITIES GOVERNING BODY MEETING IN HOISINGTON, KANSAS, SEPTEMBER 13-14, 2007.**

Motion--carried Fearey moved that the expenditures be approved. Motion carried 7 to 0.

### **EXEC. SESSION**

### **EXECUTIVE SESSION**

Motion-- Brewer moved that the City Council recess into Executive Session at 10:30 a.m. to consider: consultation with legal counsel on matters privileged in the attorney-client relationship relating to: legal advice, personnel matters of non-elected personnel, and preliminary discussions relating to the acquisition of real property for public purposes, and that the Council return from Executive Session no earlier than 11:00 a.m. and reconvene in the City Council Chambers on the first floor of City Hall.

--carried Motion carried 7 to 0.

### **RECESS**

The Council recessed at 10:18 a.m.

### **RECONVENED**

The City Council reconvened in the City Council Chambers at 11:05 a.m.

Motion-- Brewer moved to extend the Executive Session for an additional 15 minutes, until 11:20 a.m. Motion carried 5 to 0, (Gray and Skelton absent).

--carried

### **RECONVENED**

The City Council reconvened in the City Council Chambers at 11:25 a.m.

Mayor Brewer

Mayor Brewer announced that the City Council has returned from Executive Session, there was no action taken and there is no action needed as a result of the Executive Session.

# CITY COUNCIL PROCEEDINGS

AUGUST 21, 2007

PAGE 514

**JOURNAL 189**

Motion--carried

Brewer moved to close the Executive Session. Motion carried 5 to 0, (Longwell and Skelton absent).

Motion--carried

Brewer moved to adjourn the Regular Meeting. Motion carried 5 to 0, (Longwell and Skelton absent).

**ADJOURNMENT**

The City Council Meeting was adjourned at 11:26 a.m.

Respectfully submitted,

Karen Sublett, CMC  
City Clerk