



**MINUTES OF MISSION WOODS CITY COUNCIL**  
**January 7, 2014**  
**7:00 p.m.**

The City Council of Mission Woods, Kansas met in regular session on Tuesday, January 7, 2014 at the Westwood City Hall, 4700 Rainbow, Westwood, Kansas.

Council members present: Mayor Robert Tietze  
Councilman John Baenisch  
Councilman Cory Fisher  
Councilman Bill Sanders  
Councilman Charles Bachand

Council members absent: Councilman Bill Dunn, Jr.

Visitors present: Heather S. Esau Zerger and Steven E. Mauer, City Attorney  
Charles Haviland, City Treasurer  
Mary Ann McTigue, President Northwestern Building Corporation  
Spencer Thomson, Thomson Walker, counsel for Pay Hayes and the building ownership group  
Dave White  
Kate Stilley Morgan  
John Wind, Piper-Wind Architects  
Babs McTigue Stilley  
Joe Stilley  
Betsy Stilley  
Ashley and Greg Martin  
Steve Karbank  
Jim Sherman, Building Inspector for Mission Woods  
Various residents of Mission Woods

## **I. Call to Order**

Mayor Robert Tietze called to order at 7:00 p.m. the meeting of the City Council to complete the business before it. A quorum was present.

## **II. Approval of Meeting Minutes**

The first item on the agenda was approval of the December 2013 minutes which were provided to the Mayor and Council by Ms. Heather Zerger in advance of the meeting. Ms. Zerger noted one change to the December minutes related to the approval of the November council minutes. Upon motion by Council member Baenisch and second by Council member Sanders, the December minutes were unanimously approved as amended.

## **III. Approval of Warrants**

The Council reviewed the materials provided. Council member Fisher moved to approve the warrants as presented. Council member Bachand seconded the motion. The Council voted and the motion was approved unanimously.

## **IV. Police Reports**

The Council turned its attention to a review of police reports. Council member Fisher inquired about the increase in patrols. Mayor Tietze indicated that the increase is due, in part, to a request from a particular resident. The department is fully staffed now.

## **V. Review of final CIP**

The Council turned next to the issue of the final Capital Improvement Plan (“CIP”). Mayor Tietze introduced Chet Belcher and he passed out the CIP to the Council. Mr. Belcher thanked the Council for the opportunity to work on this project. Mr. Belcher referenced a report provided to the Council in November. Since that report, certain maintenance costs and another location of pavement failure have been added to the CIP, as well as the mill and overlay and surface replacement within the City limits. The CIP has a year-by-year priority table. Mr. Belcher explained how the report is set up, in particular the Executive Summary. What follows are the reports on the schedule or projects for reports in the City. Mr. Belcher also explained how the priority ranking system was structured. Council member Fisher inquired about the distinction between a couple of the roadway projects and Mr. Belcher referenced the map included in the report. Mr. Belcher evaluated two types of pavement repair and explained those, as well as the difference in useful life with the respective seals.

Mr. Belcher again referenced Exhibit 1 and explained how he broke the City into phases and the manner in which the projects were broken down. He then discussed the priority and projected timeline for each, which totals about \$770,000 in improvement projects.

Mr. Belcher reported that he spoke to John Sullivan and most storm sewer within the City had been replaced relatively recently (in the 1990s) with concrete pipe and the useful life is around 80 years. Mr. Haviland and Council member Bachand did not recall that the storm system had been replaced. Council member Fisher and Mr. Haviland suggested the City confirm that the storm sewer had been replaced with concrete. Council member Bachand recalled that John Sullivan did report he had camera work and we should consult with John Sullivan and find out what he has by way of confirmation of the replacement of the entire system. Mayor Tietze inquired of Mr. Belcher what the cost would be of conducting the video we need. Mr. Haviland asked for a fee quote and Council member Fisher indicated he wanted to at least contact the prior engineer first.

Mr. Belcher also referenced Section 2 of the report, which provides certain “alternate solutions.” There are not alternate solutions for every item. One in particular, related to an exposed pipe and Mr. Belcher explained the possible solutions related to this item, which is one of lower priority.

Mayor Tietze asked if Council members had any other questions. The Council thanked Mr. Belcher for his work. Mayor Tietze asked to defer acceptance until we have a final answer on the video of the storm sewer systems.

#### **VI. Update on Lighting on Church Property – Jim Sherman**

The Council next heard from Jim Sherman who provided an update on the issue with the lighting on the church property that was raised at the December 2013 Council meeting. Mr. Sherman reported that the Church did not add lighting to its property. There is a contract between KCPL and the church. The church pays a monthly fee to KCPL for the exterior lights at issue. Recently one of the lights went out and KCPL replaced not only the light but also the housing. The light on the south is an old, existing light that seems to be original. The light on the north side, about 1/3 of the way back from the church, has a newer fixture. Jim Sherman has placed calls to KCPL but has not yet reached the correct person. The church will apply for a building permit and the issue will go forward to the ARB because it is a significant change to what was previously in place. Jim Sherman also discussed how the new light is somewhat out of character with the surrounding neighborhood, so the ARB will need to address this issue and the process will need to run its course.

Discussion ensued about the possibility of implementing a temporary fix to offer some relief while the process takes place.

Council member Baenisch asked whether the church will be required to fill out the form notifying the neighbors of the issue. The neighbors will need to be notified pursuant to the ordinance. The neighbors are also notified of ARB meetings and are then invited to come to the ARB meeting to express their comments. Some discussion also ensued as to when ARB meetings are called compared to when the ARB Chairperson makes determinations and approvals without a meeting.

Mike Kneirim 2120 W. 51<sup>st</sup> Street. Mr. Kneirim spoke to KCPL after the last meeting and reported that KCPL came out and adjusted the fixture as much as possible and told him that it cannot be adjusted any further. They also stated it is now a 400 amp service, which is much higher than what was previously there. Mr. Kneirim indicated the playground has now doubled in size. Mr. Sherman indicated based on the aerial data, the size of the playground hasn't actually changed; the renovations have allowed the church to use a portion of the playground that was previously washing away. The retaining wall area has increased.

Discussion also ensued about the height at which parking lot lights are to be mounted pursuant to City Ordinance.

Jim Sherman will work with KCPL and try to get the light adjusted until the issue can go before the ARB.

## **VII. Comments on 1968 Shawnee Mission Parkway**

The next item on the Council's agenda was to hear from those with an interest in 1968 Shawnee Mission Parkway, property which the City has expressed its intention of condemning. Chris Henry with Payne & Jones represents Northwestern Building Corporation. Three sisters own the fee. He introduced Mary Ann McTigue to speak on behalf of the fee owner. She thanked the Council for the chance to present the views of her and her two sisters. They own the property, which has been in the family for almost 50 years. Ms. McTigue stated that the property is supposed to stay in the family for the next 50 years too. The property was given to them by their father. She referenced the letter sent to the Council and asked that it be part of the public record. She indicates her family is the "forgotten party" in this issue. She says no one from the City or the Karbanks contacted them about the taking of 1968 SMP. She says property rights are critical and stated that exercise of eminent domain is to obtain property for the common good. She says the common good is not so the Karbank buildings look nicer or to remove competition. She also asked why the City is "partnering" with a private entity to "steal" her property and asked the City Council to reconsider.

Spencer Thomson introduced himself on behalf of the building owner, 2004 Property B, LLC. The principal of the ownership group is primarily Patrick Hayes. He told the Council that if there is some perception that the owners are not sophisticated or cannot undertake the redevelopment of this property, it is in error. Mr. Thomson noted the development credentials of the building owner, noting in particular the redevelopment of the Blue Ridge Mall and the Antioch Mall. Mr. Thomson also brought information regarding the background of the building owner and their developments. Mr. Thomson noted the letters from Mr. Hayes and Mr. Craig and asked that these letters be reviewed as part of the Council's deliberations. Mr. Thomson also thanked the Council for the chance to speak.

Mr. Thomson reported that there has been no contact prior to the condemnation being issued. He claims the lack of contact is very unusual and claims disappointment in the fact that no

communication was undertaken prior. Mr. Thomson also stated there are factual inaccuracies. Mr. Thomson claims the condition of the property is no different than the condition of 1900 or 2000 SMP. The building is structurally sound. The buildings are water tight, with only small leaks in the roof over the years, which is not inconsistent with the age of the building. Mr. Thomson also stated that plans were prepared for renovation prior to the recession, but with the recession, the opportunity was no longer there. The building was acquired for \$700,000 through a 1031 exchange. It was purchased with cash and there is no mortgage on the property. His client has the financial wherewithal to renovate. Mr. Thomson notes that the statements regarding the condition of the building are not supported by any architectural or other professionals.

Mr. Thomson also noted his belief that there is no plan in place to take this property for a public purpose. He claims he does not know whether this property is being taken for a public purpose or because the building is uninhabitable. He sees no need for a public park. He also claims there is also no history of this being a dangerous building or a public problem.

Mr. Thomson referenced Mr. Wind's presence at the meeting and that he is prepared to address issues related to the structure of the building. The building owner's position is that there is no reason to renovate the interior of the building until there is a tenant in place. The tenant can direct the specifics of the tenant improvements. Mr. Thomson also noted that there were two instances of nearly leasing the building, both of which fell through. The current list price is over \$1,000,000, exclusive of the ground. The building has not been leased since the mid-1990s. Mr. Thomson states the building is not ADA compliant, but neither were 1900 or 2000 SMP when they were recently purchased. Mr. Thomson also notes the parking was in compliance at the time the building was built and renovations will address this issue, just like has been addressed with 1900 and 2000 SMP. Mr. Thomson also noted that the ground lease is not unusual, contrary to what he believes was stated previously. Mr. Thomson states the ground lease is not a problem and does not create clouds on the title. He reported that the fee owner and ground lessee have a good working relationship.

Mr. Thomson claims it does not "add up" for the City to allow Mr. Karbank to renovate but not to allow Mr. Hayes to renovate. Mr. Thomson states the only reason this condemnation has become an issue is because Mr. Karbank asked the City to use its power of eminent domain. Mr. Thomson says the City should be in the business of encouraging property development and increasing property taxes and the tax base, rather than removing property from the tax rolls.

Mr. Thomson believes Mr. Karbank is fearful of the competition. Mr. Thomson also claims the owners of 1968 SMP have gone through the process of purchasing glass, which is sitting in storage.

Mr. Thomson also referenced the price paid by Mr. Karbank, which he claims is higher than what the City will want to pay for 1968 SMP. He also claims his client will obtain this price

from the Court if the City presses forward with condemnation. They believe the property is worth well more than 1.5 million. He noted that the building owner would sell its lease to the City for market value but the fee owner will not.

Mr. Thomson asked the City to repeal its prior ordinance and terminate its agreement with Mr. Karbank. He also asked the City to work with them to renovate the property.

At 8:13 p.m., Council member Fisher moved to adjourn into Executive Session in order for the Council to engage in attorney-client privileged communications with its attorneys regarding the potential condemnation of 1968 Shawnee Mission Parkway for the purpose of seeking legal advice and to reconvene in Council chambers at approximately 8:45 p.m. Council member Sanders seconded the motion and it passed unanimously.

The Council met in executive session.

The Council returned from Executive Session at 8:45 p.m.

The Council reconvened in open session and had questions for various members of the group. Council member Fisher inquired about the plans for exterior work and whether there are limits on the amount of improvements allowed to the building. Mr. Thomson stated he is not aware of limits but deferred to Mr. Wind. Mr. Wind introduced himself to the group and discussed the plans he presented for the renovation of the exterior of the building that were prepared in May 2008. There are no solid cost estimates for the proposed improvements and the plans have not been sent out for bid. Mr. Thomson stated the lease agreement does have a provision that limits repairs to \$200,000 without the consent of the owner. Mr. Wind did indicate the plans were prepared in 2008. Council member Sanders asked Mr. Thomson whether Jim Sherman could go inside and inspect the property. Mr. Thomson indicated he did not believe his clients have any objection and that they have nothing to hide. Mr. Wind states there is nothing structurally wrong with the building. Council member Bachand asked about why there was a delinquency of taxes to the City. Ms. McTigue stated the property taxes have now been paid and Mr. Thomson noted that his clients have the right to pay property taxes late.

Mayor Tietze indicated the Council would like to table this issue for 30 days and allow the property owner and lessee time to prepare a comprehensive plan for development of 1968 SMP and return to the Council at that time to present it. Mr. Thomson indicated that 30 days may not be enough but will endeavor to meet the deadline. Mayor Tietze will ask Jim Sherman to inspect the building.

#### **IX. Proposed Eminent Domain Ordinance**

The Council next turned to a proposed ordinance regarding condemnation of 1968 SMP and tabled the ordinance per the above discussion on 1968 SMP.

**X. General Comments**

Mayor Tietze notified the Council about a meeting taking place on Feb. 8, 2014 for 4 hours, with members of various NE Johnson County communities to discuss public safety and ways to deal with economies of scale. Mayor Tietze asked whether any Council members were interested in attending. Council member Sanders indicated his interest and will check his calendar. Council member Baenisch also expressed interest. Mayor Tietze noted there is no preconceived outcome but that the meeting was a good opportunity for discussion.

Council member Fisher noted that the recent confusion about the ARB forms on the website needs to be fixed and he will remove the old form from the website. Council member Baenisch indicated that some neighbors have elected not to sign the notification form for fear that it will be construed as “approval.” Discussion ensued about whether the form is proper or should be revised. Council member Fisher will reach out to David Immenschuh, Chair of the ARB, about forms.

There was no further discussion. The meeting adjourned at 9:03 p.m.

Prepared by: \_\_\_\_\_  
Heather S. Esau Zerger, City Attorney

Approved by: \_\_\_\_\_  
Robert Tietze, Mayor