



**MINUTES OF MISSION WOODS CITY COUNCIL**  
**May 10, 2016**  
**7:00 p.m.**

The City Council of Mission Woods, Kansas met in a special session on Tuesday, May 10, 2016 at the Westwood City Hall, 4700 Rainbow Blvd., Westwood, Kansas.

Members Present: Mayor Tietze  
Council member Bill Dunn, Jr.  
Council member Darrell Franklin  
Council member Cory Fisher  
Council member Joan Ruff  
Council member Amy McAnarney

Visitors Present: Jessica James, City Attorney  
John Martin, City Treasurer  
Eddie McNeil  
Fred Sherman  
Chief O'Halloran  
Dan Himmelberg  
Father Fongemie  
Gene Gorman  
John Riley  
Various residents of the City

**I. Call to Order**

Mayor Tietze called the meeting to order at 7:02 p.m. A quorum was present. The Mayor stated that three Council members requested this special meeting in order to conduct the regular business of the City as a quorum was not present on the date of the originally scheduled Council meeting.

## **II. Minutes of Prior Meeting**

The Council took up the April City Council Meeting Minutes. Mayor Tietze first asked for corrections or additions to the April Council Meeting Minutes. There were none. Council member Fisher moved to approve the Minutes and Council member Franklin seconded the motion, which passed unanimously.

## **III. Warrants**

The Council next turned its attention to approval of the warrants. A question was raised regarding the bill from Zerger & Mauer for legal fees. Mayor Tietze asked John Martin what the itemized bill reflected. Mr. Martin did not have a copy of the itemized bill with him. Mayor Tietze stated the City needed to make sure Mr. Martin was receiving all itemized bills. Council member Dunn moved to approve the warrants and Council member McAnarney seconded the motion, which passed unanimously.

## **IV. Police Report**

The Council then reviewed the police report. Chief O'Halloran reported that fortunately there was nothing significant to report. There were some car burglaries on 50<sup>th</sup> Terrace in Mission Woods, but the cars belonged to Westwood residents or their guests. Mayor Tietze stated an email about the burglaries had been sent out to residents, which several council members appreciated. Council member Ruff asked if overnight parking was allowed on 50<sup>th</sup> Terrace. Chief O'Halloran stated that it was not. Chief O'Halloran also stated that charges had been filed against the suspect responsible for other car burglaries in Mission Woods and neighboring cities.

## **V. Re-Plat of The University of Kansas Hospital property.**

Fred Sherman and Tim Wiswell then introduced the next item on the agenda, the re-plat of the Kansas University Hospital Authority ("KUHA") property. Mr. Sherman stated that this issue was now before the City Council after being approved by the City Planning Commission. Mr. Sherman gave a general description of the current platting on the KUHA property, stating that there are several plats dating back to the early 1900's. The proposed plat will vacate the previous plats that do not accurately reflect the Property's easements and will establish a singular plat with easements accurately depicted. Mr. Sherman further stated the proposed plat will vacate a number of paper streets that were never built and would be impractical to build at this point. Council member Franklin asked about a sidewalk easement on the Property. Mr. Sherman stated that there is not currently a sidewalk easement and typically this would be done in the Right-Of-Way ("ROW").

Mr. Wiswell stated that a number of utilities located on the Property were not accounted for in easements. The proposed plat corrects this and accurately reflects all known utility easements. Council member Ruff asked about access to the cell tower located on the property. Mr. Sherman stated that there was not a specific easement for this. After reviewing the issue, it was determined to be a contractual issue that would need to be negotiated between the relevant parties. However, there was a ROW which provides access to the cell tower. The ownership and entitlements to the tower were being resolved but would not be reflected on the proposed plat. There was an

audience question about who was responsible for requesting the re-plat. Mr. Sherman stated that the request was made by City staff because of the issues caused by the inaccurate plat. Anne Henry, a resident in attendance, stated she believed the City was turning over land to KUHA that was previously dedicated to City streets. Ms. Henry suggested the City request KUHA put in a sidewalk in exchange for this land. Mr. Sherman stated this was a separate issue because the sidewalk would be placed in the ROW and was not appropriately addressed by the proposed plat. There was an audience question about whether the utilities reflected on the proposed plat would be visible. Mr. Sherman stated that almost all the utilities reflected on the proposed plat already exist and the majority are underground. Any future utilities can be placed above or below ground.

Mayor Tietze then asked if there were any other questions. There were none. Council member Dunn made a motion to approve the re-plat of the KUHA property. Council member Ruff seconded the motion, which passed unanimously.

## **VI. Request for the public use of property located at 2216 West 51st Street.**

The next item on the agenda was the request by the St. Rose Phillipine Church on Rainbow Blvd. (“Church”) to use the property located at 2216 West 51<sup>st</sup> Street (“Property”) as a church meeting place. The Mayor introduced the Church’s request as well as Dan Himmelberg, the architect for the Church. Father Fongemie then introduced himself, Jean Gorman, attorney for the Archdiocese, and John Riley, another representative of the Archdiocese.

Mr. Himmelberg then introduced the project by stating the Church has been a resident of Mission Woods for almost five (5) years now and the priests live on the Church property. Mr. Himmelberg gave a general overview of the Property. Including how the Church acquired the property and the general idea and scope of the remodel. Mr. Himmelberg stated the Property was acquired by a parishioner and donated to the Church. The Property was essentially gutted by the previous owner in an attempt to flip the property. When the Church received the Property, it was not habitable and animals were living in the attic. Mr. Himmelberg then discussed renovations to the exterior of the Property. Mr. Himmelberg stated that a new roof had already been installed on the Property, and the proposed materials for the exterior of the house were low maintenance. The proposed materials were presented to the Council. Mr. Himmelberg stated that the site plan includes an open fence to allow for a pedestrian walkway from the Property to the Church, ADA required parking in front of the Property, stonework, and landscaping. According to Mr. Himmelberg, the interior of the Property will contain three (3) meeting rooms, an additional meeting room, two (2) new bathrooms and an enclosure on the backside of the Property for additional living space.

Mr. Himmelberg then clarified that the use of the Property in this context is a permitted use under the City’s Code, but requires presentation to the CPC and approval by the City Council. Mr. Himmelberg then addressed some concerns from the CPC meeting, including: noise, traffic, parking, and the further expansion of the Church. Mr. Himmelberg clarified that there were no additional plans for this Property other than what was being proposed. Mr. Himmelberg then addressed the positive additions this Property would bring to the neighborhood, including:

- 1) increased curb appeal;
- 2) the re-occupancy of a vacant home;

- 3) a large amount of investment into the home by the Church; and,
- 4) a less invasive use.

Mr. Himmelberg then addressed the standards under 12-402(b), including the 65% green space v. 35% hard surface of the property; the inclusion of a 6-foot fence around the backyard; and, the proposed landscaping plan. Mr. Himmelberg stated the Church had complied with the standards under 12-402(b) and should be given approval to use the Property as a meeting place.

Mayor Tietze asked the Council members if they had any questions. Council member McAnarney asked for clarification on the CPC's basis for making a recommendation of denial. David Immenschuh, the Chairman of the CPC, was in attendance, and stated the denial was due to concerns regarding the frequency of the meetings, parking, safety and noise. Mr. Himmelberg stated they had not had any complaints from the City of Westwood regarding parking on residential streets and parishioners would be discouraged from parking on residential streets in Mission Woods.

An audience member stated that she had serious concerns over the number of people attending these meetings and that the meetings could be held up to seven (7) days a week. Another audience member questioned whether the number of people that can be in attendance at any one time is roughly 100. Mr. Himmelberg confirmed that that 100 people could be in attendance but that the plans show only 73. Mr. Himmelberg clarified that it would not necessarily be children in attendance. A good portion of the meetings would be held for adult members of the Church. There was an audience question on whether there were any plans to use the Property as a school. Mr. Himmelberg stated there were no such plans. An audience member commented that the noise from these meetings could be substantial and having meetings seven days a week will decrease property values. Mr. Himmelberg stated that the Church is aware of the City's noise ordinances and plans on fully complying with all ordinances.

Mike Kneirim, a resident in attendance, asked what the plan was for fixing drainage issues on the Church's property. Mr. Himmelberg stated that plans for fixing the drainage issues were with Eddie McNeil (from the City), but had been held up by plans for the Property in question and weather issues.

Ryan Bowden, a resident in attendance, asked how the Church seeks this use, yet still requests the zoning remain residential. Mr. McNeil clarified that this process is specifically provided for in the City Code. Even though it is a permitted use, the Code requires the approval of the City Council based on certain conditions. There was an audience question regarding whether the City's ordinances can be changed to not include this use. Mayor Tietze responded that ordinances can always be changed as long as they comply with all other laws.

An audience member directed a question to the City Attorney regarding what a protected class is. The City Attorney stated she was not familiar with that designation in this context, and agreed to do some research on the subject.

Mayor Tietze then asked how the Council would like to proceed. Council member Ruff stated she would like more information on the protected class issue that was raised. Council member Fisher stated he did not believe the protected class issue is a valid reason for not acting on the application. Council member Fisher stated that some of the standards in 12-402(b) are

subjective. Based on those standards, he did not see how he could approve the use where seventy-five (75) people can access this property seven (7) days a week. Council member Dunn stated he would like to proceed with a vote.

Gene Gorman addressed the Council, stating that although she was not familiar with a protected class in this context, the request use is permitted under the City Code and the Church has satisfied the requirements under 12-402(b). Ms. Gorman also stated if the Church violated any of the City's ordinances they could be cited and dealt with appropriately. Council member Fisher responded that the goal was to proceed in the best interests of the residents, and he did not see how the requested use meets the standards identified in 12-402(b).

Mayor Tietze asked if there were any additional comments. An audience member asked the Council to consider how they would feel if this proposed use was going to be located next to their homes. Mayor Tietze then again asked the Council how they would like to proceed. The Council stated they were ready to proceed with a vote. Council member Dunn made a motion to approve the application. No one seconded the motion. Council member Franklin then made a motion to deny the application. Council member Ruff seconded the motion. All except Council member Dunn voted in favor of denying the application. The Motion denying the application passed.

## **VII. Comments by Kim Scott**

Mayor Tietze next introduced Kim Scott to address the Council. Ms. Scott gave an overview of the residents' meeting in response to the expansion of the KUHA parking lot. Ms. Scott stated that the objective of the meeting was to change the tone of the discussion regarding the parking lot and to move forward on a more positive note. According to Ms. Scott, approximately twenty (20) people attended the meeting, including Council members Ruff and Franklin. Ms. Scott stated she wanted to articulate that the concerns being expressed were not just those of Ingrid and Jay Sidie. Ms. Scott stated several issues were identified at the meeting, including:

- 1) the parking lot is not screened;
- 2) lighting is a nuisance;
- 3) the difference between what was implemented and what was promised;
- 4) the lack of representation on behalf of the residents;
- 5) the lack of fiduciary duty on behalf of leaders;
- 6) how to move forward; and,
- 7) the desire of the residents that the Council and ARB state the parking lot does not meet City standards and renegotiate the issue with KU.

Ms. Scott concluded by stating that if the Council refused to take any action, there had been discussions about pursuing legal recourse.

Mayor Tietze then asked if there were any comments. Council member Franklin stated he believed if the City is going to approach KU again the Mayor would need to be involved in those discussions. Mayor Tietze stated if the Council felt it was beneficial to approach KU again, he would be happy to be involved along with two (2) Council members and the City attorney.

Jay Sidie stated he did not understand why the City had not made KU accept the proposed landscaping plans. Council member Fisher stated he was out of town and unable to attend the residents' meeting, but in the Memo of Understanding ("MOU") agreed to by KU, all of the City's plantings had been accepted. However, this has not been fully accomplished because the City asked KU to hold off on the final plantings after KU's rejection of the proposed berm. Council member Fisher stated the estimated cost for the retaining wall will be \$26,000. There is a question regarding the City's ability to contribute to this cost as it would use City funds on private property. Mr. Sidie stated it was unreasonable that KU was doing this when other properties within the City comply. Mayor Tietze stated KU had complied with the requirements under the Code. Mr. Sidie then made several comments about his desire for the Council to approach KU. Several audience members joined in the discussion. Chief O'Halloran had to call the meeting to order and remind the audience to maintain order.

Council member Ruff stated that the main point from the meeting was how the residents in attendance would like to move forward. She stated that the Council was looking at a number of options regarding the KUHA property, but that these issues take time. Council member Fisher stated that he did not believe there was anything to be gained from approaching KU on the berm again, as this is a non-starter for KU.

There was an audience comment that the parking lot lighting "literally" lights up adjacent residences. Council member Fisher clarified that the MOU required KU to investigate the lighting and report back to the City by the end of June. Council member Fisher stated he believed KU was looking at timers, dimmers, etc. Mayor Tietze stated the City would reach out to KU again to initiate another discussion regarding the lights and landscaping. It was decided that Council members Fisher and McAnarney and the City Attorney would attend the meeting with the Mayor.

#### **VIII. Approval to adopt Section 6-102, Ordinance 207 providing for non-partisan elections in the City.**

The next item on the agenda was Ordinance 207 amending Section 6-102, providing non-partisan elections within the City. Council member McAnarney moved to approve the ordinance. Council member Ruff seconded the motion, which passed unanimously.

#### **IX. Request for contribution to fireworks display**

The Council next turned to the request for a \$500.00 contribution to the fireworks display at Bishop Miede High School. Council member Fisher moved to approve the request. Council member Dunn seconded the motion, which passed unanimously.

#### **XII. General Comments**

The Mayor then opened the floor to general comments. Council member Franklin asked for a recap on how the City would approach KU on the parking lot issues, which Mayor Tietze provided. There was some discussion regarding the continued need for the crossing guard. It

was determined that the crossing guard would not be necessary for the next school year and that a letter should be sent to inform the company that a crossing guard will no longer be needed.

The meeting was adjourned at 9:02 p.m.