



MINUTES
CITY COUNCIL MEETING
7651 E. Central Park Ave, Bel Aire, KS
August 01, 2023 7:00 PM



I. CALL TO ORDER: Mayor Jim Benage called the meeting to order at 7:00 p.m.

II. ROLL CALL

Present were Councilmembers Greg Davied, Tyler Dehn, Emily Hamburg, Justin Smith, and John Welch.

Also present were City Manager Ty Lasher, City Attorney Maria Schrock, City Engineer Anne Stephens, Director of Community Development Jay Cook, and City Clerk Melissa Krehbiel.

III. OPENING PRAYER: Dr. Rob Lindsted provided the opening prayer.

IV. PLEDGE OF ALLEGIANCE TO THE AMERICAN FLAG

Mayor Benage led the pledge of allegiance.

V. DETERMINE AGENDA ADDITIONS: There were no additions.

VI. CONSENT AGENDA

A. Minutes of the July 18, 2023 City Council meeting.

MOTION: Councilmember Smith moved to approve the Consent Agenda as listed and authorize the Mayor to sign. Councilmember Welch seconded the motion. *Motion carried 5-0.*

VII. DISCUSSION AND APPROVAL OF APPROPRIATIONS ORDINANCE

A. Consideration of Appropriations Ordinance 23-14 in the amount of \$965,099.86.

MOTION: Councilmember Davied moved to approve Appropriations Ordinance 23-14. Councilmember Dehn seconded the motion. *Motion carried 5-0.*

VIII. CITY REQUESTED APPEARANCES

A. David Floyd - Special Recognition

Mayor Benage presented a plaque to Mr. Floyd to recognize his 6 years of service on the Planning Commission.

IX. CITIZEN CONCERNS: No one spoke.

X. REPORTS

A. Council Member Reports

Councilmember Dehn reported on upcoming events: the Bel Aire Chamber meets this Wednesday, the K-254 Corridor Association meets on Friday, and National Night Out will be held on August 11th. He briefly reported on a recent conference for the Kansas Chapter of the American Society of Civil Engineers.

Councilmembers Davied and Smith briefly reported on the most recent meeting of the Chisholm Creek Utility Authority (CCUA).

Councilmember Hamburg briefly reported on the public hearing regarding Evergy's proposed rate hike.

B. Mayor's Report

Mayor Benage thanked Councilmember Dehn for communicating with Wichita school district (USD 259) officials on behalf of Bel Aire residents regarding bussing for students who live along Woodlawn. Previously, the school district had notified some residents who live along Woodlawn that bussing services would be discontinued beginning in Fall 2023. Mayor Benage reported that USD 259 has pushed back the changes to January.

He briefly reported on the latest CCUA meeting, the public hearing regarding Evergy's proposed rate hike, and a meeting with the Mayor of DeSoto about his city's preparations for the new Panasonic plant.

He asked the public to support businesses along Woodlawn during the construction project.

C. City Attorney Report

City Attorney Maria Schrock reported that she has been reviewing agreements and policies, and responding to citizen inquiries. She attended a training seminar in Kansas City last week.

D. City Manager Report

City Manager Ty Lasher congratulated Code Enforcement Garrett Wichman for being named the Employee of the Quarter.

Regarding upcoming events, the Bel Aire Ball will be held at the Rec Center on August 4th, and the Hot Dawgs Pool Party will be held at Central Park Pool on August 7th.

Mr. Lasher reported that the number of active water meters grew by about 24% from last year. In the Utility Billing department, the number of move in/ move out procedures completed (for residents moving in or out) has increased by about 48%.

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XI. ORDINANCES, RESOLUTIONS AND FINAL ACTIONS

A. Consideration of An Ordinance Approving The Recommendation Of The Bel Aire Planning Commission Changing The Zoning District Classification Of Certain Lands Located In The City Of Bel Aire, Kansas Under The Authority Granted By The Zoning Regulations Of The City (Zoning Case ZON-23-01).

Before opening discussion, Mayor Benage invited the Councilmembers to disclose any conflicts of interest regarding this matter.

Councilmember Dehn stated that he does not have any conflict of interest in this case. He noted that he did attend the July 13, 2023 Planning Commission hearing as an observer. He has not communicated with any Planning Commission members or City Council members regarding this case.

MOTION: Councilmember Smith moved to go into executive session for the sole purpose of discussing the subject of legal advice, pursuant to the K.S.A. 75-4319 exception for attorney-client privilege. And to invite the City Manager, City Attorney, and Special Counsel. The meeting will be for a period of 5 minutes and the open meeting will resume at 7:27 p.m. Councilmember Welch seconded the motion. ***Motion carried 4-1 with Councilmember Hamburg voting against the motion.***

The Council then held an executive session. At 7:26 p.m. Mayor Benage called the meeting back to order in open session.

Mayor Benage reported that each Councilmember had firmly stated that they do not have a conflict of interest in this case. Therefore, the record should reflect that a quorum is present for the consideration of the case.

Mayor Benage then confirmed that each Councilmember did receive copies of the Unapproved Minutes of the Planning Commission for July 13, 2023 which summarizes the public hearing on the case.

MOTION: Councilmember Hamburg moved to receive and file the Planning Commission Minutes. Councilmember Davied seconded the motion. ***Motion carried 5-0.***

Mayor Benage noted that, by law, having received and had an opportunity to review a complete summary of the Planning Commission's public hearing, recommendation, and findings and factors to support the recommendation, the Council is not obligated to conduct another public hearing. Accordingly, he asked that the applicant and any of the public who wish to speak on the matter limit their presentation to any new information not otherwise presented at the hearing that should be brought to the attention of the City Council.

Mayor Benage invited City staff to speak on the matter. City staff gave brief reports on the application for rezoning, the recommendation of the Planning Commission, communications received both in support and in opposition to the proposed zoning, and the

quasi-judicial role of the Council in this decision. A protest petition was received by the City within 14 days of the Planning Commission's hearing on the case, was found to be sufficient, and was provided to the City Council in the agenda packet prior to this Council meeting. City staff briefly explained the statutory requirements triggered by the protest petition and summarized the choices for City Council action provided under State Statute K.S.A. 12-757[d].

Mayor Benage asked the Councilmembers to disclose any ex-parte communication they may have had regarding this matter.

Mayor Benage disclosed that he met a Planning Commission member by happenstance at a restaurant the previous weekend. The Planning Commission member did make some comments about the Planning Commission meeting, but not in a manner that would influence the Mayor's decision.

Councilmember Smith stated he had a brief conversation with a Planning Commission member, in which the Planning Commission member shared their thoughts on the proceedings.

Councilmember Davied stated he had a similar conversation with a Planning Commission member and a member of a neighborhood association. He stated that he was neutral and hearing all sides.

Councilmember Welch stated that he also had communication with a Planning Commission member about the Planning Commission hearing, that the Commissioner appreciated how well everyone had behaved at the Planning Commission hearing, and that the commissioner did not try to sway his decision.

Councilmember Hamburg stated that she had no ex-parte communication with anyone except for her spouse.

Mayor Benage invited the applicant to present any new information. Phil Myer, Baughman Company, represented the applicant and stated that he had no new information to present.

Mayor Benage then asked if any members of the public wished to share any new information on the matter. He noted that presentation time would be limited to 3 minutes and then he opened the public hearing.

Gary Holly, 7730 E Millstream Rd, Kechi, spoke to the Council. Mr. Holly stated that although it is an exciting time for the area, it is an anxious time for himself and some of the neighbors. They are anxious about how the property will be used. He disagrees with some of the statements in the Planning Commission report, specifically about the character of the neighborhood and the envisioned future use of the property. In the City's 2014 master growth plan the area is identified for mixed residential and commercial use, not M-1 zoning. He mentioned two alternative plans located in the appendix of the Master growth plan. One plan is for medium residential with a small slice of mixed commercial facing 254. The second alternative plan was for mixed commercial in that area. He also

mentioned a graphic on p. 15 of the growth plan that would not allow M-1 around residential areas.

Dean Kunkelman, 7735 E Oak Tree Lane, spoke to the Council. Mr. Kunkelman stated he believes the applicant will be a good neighbor. However, Mr. Kunkelman signed the petition to protect his rights as a property owner should that plan not go through. He stated an objection to the time limit of 3 minutes for public comments, noting that City staff had been allowed more time for their presentations. He cited the previous speaker's comments about the character of the neighborhood. He stated that there has been no competent substantial evidence presented that the property was intended for M-1 zoning. He noted that his neighborhood was already present at the time that the city bought the property. He stated that several Golden Factors cited in the Planning Commission report are being misapplied; specifically the "Extent to which the removal of the restrictions will detrimentally affect the nearby property", "the Suitability of the property for the uses to which it has been restricted", and "the Relative gain to the health, safety and welfare by destruction of value to the applicant's property, if application is denied". He hopes all will remember that the PUD was represented as an important part to protect the neighborhood's values so that they are not detrimentally affected.

Susan Holly, 7730 E Millstream Rd, Kechi, Kansas, spoke to the Council. Ms. Holly asked that the Council consider overriding the Planning Commission vote. She reminded the council that today is not a vote for a PUD but for a permanent zoning. She stated that M-1 was never discussed in any document related to Bel Aire's future. She stated that the maps shown during City staff's presentation did not show the west side of Rock Road from 254 to 37th street. Rock Road is primarily residential zoning with limited commercial zoning, no M-1 zoning. She cited concerns about safety, increased traffic, increased crime, and detrimental effects to the values of homes adjacent to manufacturing.

Ryan Hendricks, 7620 E Oak Tree Lane, spoke to the Council. He has lived in his neighborhood for 30 years and was familiar with the previous property owner. He is concerned for his neighbors. He has spoken with the developer and agents of the applicant and he is not concerned about the applicant's plan. He prefers their plan to other plans such as fast-food restaurants. He is concerned that if the current proposed development is not completed, that other less desirable plans may be pursued. He is concerned about traffic, the condition of the nearby roads and the need for infrastructure improvements. He hopes that if the project is approved, infrastructure improvements will be done in a timely manner. He asked that the Council consider the wishes of the residents.

Seeing no further speakers, Mayor Benage closed the public comment session.

City staff then answered clarifying questions from the Council regarding the PUD process.

MOTION: Councilmember Dehn moved to take a 5-minute recess. Councilmember Hamburg seconded the motion. *Motion carried 5-0.*

Following the recess, Mayor Benage called the meeting back to order in open session. Mayor Benage opened discussion among the councilmembers. The Mayor and each

councilmember in turn provided comments on their review, findings, and decision on the matter. Each Councilmember and the Mayor stated they would support the proposed rezoning. The Councilmembers cited several factors as influential to their individual decisions, including: the comments of the nearby property owners, the city's comprehensive development plan, the zoning of the surrounding properties, the proximity of the property to Highway K-254, the requirements placed on the property owner by the proposed M-1 Industrial PUD, the previous lack of interest in developing the property under the current AG zoning, and no anticipated negative impacts on the public, health, safety, and welfare of the neighbors under the proposed zoning.

MOTION: Councilmember Dehn moved to adopt the findings and factors and recommendation of the Planning Commission on Case No. ZON-23-01 and to approve Ordinance No. 704 changing the zoning classification from the existing classification that was in effect to M-1 Industrial PUD and authorize the Mayor to sign any related documents. Councilmember Hamburg seconded the motion.

Roll Call Vote:

Greg Davied – Aye

Tyler Dehn– Aye

Emily Hamburg– Aye

Justin Smith – Aye

John Welch– Aye

Mayor Jim Benage – Aye

Motion carried 6-0.

B. Consideration of acquiring Right-of-Way from Leonal W. Kilgore Revocable Trust for the 53rd Street Reconstruction Project, sidewalk, storm sewer pipes and drainage ditches.

City staff gave a brief report on the matter and stood for questions from the Council.

MOTION: Councilmember Smith moved to approve the receipt of right-of-way from the Leonal W. Kilgore Revocable Trust for the 53rd Street Reconstruction Project, sidewalk, storm sewer pipes and drainage ditches and authorize the Mayor to sign. Councilmember Davied seconded the motion. *Motion carried 5-0.*

C. Consideration of appointing three (3) voting delegates to the League of Kansas Municipalities 2023 Annual Business Meeting and Convention of Voting Delegates.

MOTION: Councilmember Welch moved to appoint Ty Lasher, Jim Benage, and Emily Hamburg as Bel Aire Voting Delegates to the 2023 League of Kansas Municipalities Annual Business Meeting. Councilmember Smith seconded the motion. *Motion carried 5-0.*

D. Consideration of appointing three (3) alternate voting delegates to the League of Kansas Municipalities 2023 Annual Business Meeting and Convention of Voting Delegates.

MOTION: Councilmember Hamburg moved to appoint Tyler Dehn, Greg Davied, and Justin Smith as Bel Aire Alternate Voting Delegates to the 2023 League of Kansas Municipalities Annual Business Meeting. Councilmember Smith seconded the motion.

Discussion followed. Councilmember Welch proposed a substitute motion.

MOTION: Councilmember Welch moved to appoint Justin Smith, Tyler Dehn, and Maria Schrock as Bel Aire Alternate Voting Delegates to the 2023 League of Kansas Municipalities Annual Business Meeting. Councilmember Davied seconded the motion. *Motion carried 5-0.*

Mayor Benage noted that the substitute motion made by Councilmember Welch had passed and the original motion made by Councilmember Hamburg was now moot.

E. Consideration of accepting the dedication of streets and other public ways, service and utility easements and land dedicated for public use as shown on the Final Plat of Sunflower Commerce Park 3rd Addition (SD-23-04).

City staff gave a brief report on the matter and stood for questions from the Council.

MOTION: Councilmember Welch moved to accept the dedications within the Final Plat for Sunflower Commerce Park 3rd Addition (SD-23-04) and authorize all required signatures. Councilmember Dehn seconded the motion.

Roll Call Vote:

Greg Davied – Aye

Tyler Dehn– Aye

Emily Hamburg– Aye

Justin Smith – Aye

John Welch– Aye

Mayor Jim Benage – Aye

Motion carried 6-0.

XII. EXECUTIVE SESSION: An executive session was not needed at this time and was not held.

XIII. DISCUSSION AND FUTURE ISSUES

A. Workshop – August 8th at 6:30 p.m.?

The Council briefly discussed the agenda for the workshop, which will be held at 6:30 p.m. on August 8th.

XIV. ADJOURNMENT

MOTION: Councilmember Dehn moved to adjourn. Councilmember Smith seconded the motion. *Motion carried 5-0.*