

CITY OF CLEARWATER, SEDGWICK COUNTY, KANSAS

CITY COUNCIL MEETING

MINUTES

April 28, 2009

The regular meeting of the City of Clearwater, Sedgwick County, Kansas, City Council was held on Tuesday, April 28, 2009, at 6:30 p.m., in the Clearwater City Council Chamber, City Hall, 129 E. Ross Avenue, Clearwater, Kansas.

The following members were present: Mike Justice, Mayor, Mike York, Lyle Berntsen, Jim Whitney, and Jim Frischenmeyer, Council Members. Council Member Sandi Keeler was absent. The following staff members were present: Kent Brown, City Administrator; Cheryl Wright, City Clerk; Jodi McBee, Deputy City Clerk; and Janet Amerine, City Attorney. Others present at the meeting were Ernie Misak, Clearwater Public Works; Kim Demars, Clearwater Police Department; Harlan Foraker, Certified Engineering Design; Shae Goodman, Stephanie Barker, Joshua Gilliam, Austin Buller, Alex Criswell, David Marsh, Ethan Hoepfinger, Tony Jeffress, Nick Saunders, Brian Barker, Matt Bradley, Jerad Schneider, Clearwater High School Government students.

Mayor Mike Justice called the meeting to order at 6:30 p.m. Justice gave the invocation, which was followed by the Pledge of Allegiance. The Clerk called the roll to confirm the presence of a quorum.

1. Approval of the Minutes of the Regular Meeting of April 14, 2009

MOTION: Council Member Berntsen made a motion to approve the minutes of the meeting. The motion was seconded by Council Member Whitney and passed unanimously.

2. Mayor's Recommendations

With Council consensus, Mayor Justice accepted the resignation of Melissa Miller from Clearwater Emergency Medical Service.

Mayor Justice with Council consensus appointed Reece Pulliam as an EMT with Clearwater Emergency Medical Service.

With Council consensus, Mayor Justice accepted the resignation of David Coon from the Library Board.

Mayor Justice with Council consensus appointed Scott Lucas to the Clearwater Library Board.

3. Public Forum

No one addressed the Council.

City Administrator Brown requested an item be added to the agenda. With Council consensus, Adjustment to the Utility Contract with Nowak Construction for the Clearwater Business Park was added as the first item on the agenda.

4. Adjustment to the Utility Contract with Nowak Construction for the Clearwater Business Park

City Administrator Brown stated that he and Mayor Justice attended a meeting with Greater Wichita Economic Development Council (GWEDC), Waco Rail Companies, and Steve Martens of Grubb and Ellis Commercial Group, the company marketing the business park. The reason for the meeting was to discuss what it would take to add a rail spur onto the railroad line that runs adjacent to the north of the Clearwater Business Park from both the railroad prospective and city's prospective. During the meeting, it was brought to Brown & Justice's attention that there are a number of requests, about 1 per month, for large area sites of 30 to 100 acres that are near rail service. Currently the Clearwater Business Park is set up in 2-10 acre lots. The GWEDC's recommendation was to get the utilities to the edge of the site but leave the internal part of the park with a clean slate. Because of these project proposals that keep coming in, this leaves the Clearwater Business Park in a unique situation. The business park is a continuous 100+ acre site owned and controlled by a city, next to a rail line, and not directly next to residential. GWEDC stated that this would be the only site of its kind in Sedgwick County. If the City continues with the way the park has been platted, it creates a business park like many others in South Central Kansas. Leaving the site open would allow a prospective buyer to align the land in a manner that suits them. Mayor Justice stated that having the business park in the City's control is advantageous in creating incentives, where parks owned privately cannot offer those incentives. Justice also stated that down the road if marketing the park as a larger site doesn't generate interest, the City could always go back to the original plat design. Justice stated the railroad company seemed very open to assist in getting rail service into the site, even talking about the different types of rail and storage capacity. There are opportunities to get incentives from the Rail Company and also Sedgwick County if large businesses are involved, where we may not have those incentives if smaller businesses were to come to Clearwater. Justice stated he left

the meeting encouraged that the City might have a more valuable piece of property. Brown stated that Steve Martens said that in the past rail service hasn't been important in marketing a property. Transportation and fuel expenses have brought back to people's minds that there needs to be other options.

City Administrator Brown stated the downside to this opportunity is losing the excellent price the City received from Nowak Construction. Brown and Harlan Foraker met with Joe Nowak to discuss what it might take to halt or suspend the utilities project, if that is what the Council wants. Right now, Nowak is just north of the tree line at the edge of the business park. At that location, there is a T in the sewer line; the project could be halted at that location. Nowak stated that a ballpark estimate to quit the project at that location would be \$70,000. Council Member York asked if the current lot plan will stay in effect even if the utilities aren't installed. Brown stated until there is a buyer requesting a specific large acreage, the lot plan will stay as is. Brown continued that the utilities could still be installed according to plan. If there is a buyer for a large site or the entire parcel, the utilities could be built over or torn out, which would be a substantial waste of the time and money that it takes to install the water and sewer lines. Council Member Whitney asked if there are specific buyers for large parcels or is this all speculation. Mayor Justice stated that Brown is gathering information to submit to two prospective buyers right now, one requesting 50 acres and the other requesting the entire parcel. Brown stated that it is part speculation; there is nothing definite at this time, but that is a risk the City might have to take. Whitney stated the land could continue to be farmed while they wait for a buyer since nothing will be in the way. Justice stated that halting the utilities doesn't limit the City in marketing the site; it actually opens the door for a wider variety of opportunities that is unique to Clearwater in the South Central Kansas area. York asked if selling the site in one large piece instead of smaller lots would decrease the City's income stream. Mayor Justice stated that Martens said that the way the City is selling the site on a per acre price scale is advantageous because larger companies are used to purchasing ground on a per square foot level. Council Member Berntsen stated that the long-term income from tax dollars generated from the purchaser of the ground is a bigger concern than whether money is made on the property itself. Justice stated that taxes are another conversation for down the road because buyers are looking for tax abatements. Council Member Frischenmeyer stated that a tax abatement policy should be a priority to help bring the large companies to Clearwater. Justice stated that Brown is already researching what other cities' tax abatement policies are. Whitney asked if the project is halted and later the City decides to go with the original design, would the City have any costs on reengineering. Harlan Foraker, Certified Engineering Design, stated that if the City uses the same configuration, there might be small updating costs, but there would be no charges for reengineering. Justice stated Council needs to make the decision tonight whether to halt or continue the project. Council agreed that they didn't want to burn bridges with the contractor. Justice stated that Nowak had been receptive to the halt proposal and that is why he is comfortable with the recommendation to halt the project. Brown stated

according to the contract, the City would have to submit a written 5 day notice to stop construction.

MOTION: Council Member Frischenmeyer made a motion to give a 5-day written notice to Nowak Construction for a stop order on utilities at Clearwater Business Park. Council Member York seconded the motion and it passed unanimously.

5. **Water Study**

Harlan Foraker, Certified Engineering Design, addressed the Council to review the water study. Foraker explained the study evaluated the City's water supply and the water distribution system. Foraker reviewed the distribution system. Foraker explained that the older part of town had mostly 4-inch water lines, which often create problems with providing the necessary flow and pressure in those areas. The Fire Chief has noted problems in the past with fire hydrants in the areas with 4-inch water lines. Eight-inch water lines are typically what are installed in the new development. Transmission lines are 12-inch lines. Foraker went on to review water usage. In the years 2003-2008, historically the annual water use is approximately 65,960,000 gallons. Foraker explained that he visited the City's comprehensive plan and reviewed what the future growth might be, to look to the future for what the City might need in terms of water rights. Based on average water use figures and population predictions, Foraker is forecasting potential water needs through 2025. Foraker also reviewed the City's current water rights. The City has 85,253,000 gallons in water rights. Foraker stated that he feels the City will need to start looking for more water rights by 2015. With future growth and the prospective of large companies moving into the business park, Foraker recommended applying for more water rights. Foraker contacted the Division of Water Resources Stafford Field Office to see the conditions of applying for more rights on wells 6, 7, & 8 and those areas are closed right now. Water is currently appropriated up to the safe yield, which is the amount that can be drawn out of the aquifer without overtaxing it. Foraker suggested looking into getting a formal determination of that information. Foraker stated he has also contacted a groundwater geologist who has experience acquiring water rights. The geologist is available to assist the City in looking for more water rights in other areas or researching increasing the water quantity that is withdrawn from the aquifer near wells 6, 7, & 8. Foraker stated the cheapest route to go would be to try to acquire more rights at the existing wells because the equipment is already there and they can handle pumping large volumes of water. Council Member York asked if there is anything wrong with approaching the State now to get more water rights instead of waiting 5 or 6 years. Foraker stated now would be the time to start looking into acquiring more water rights because the City can demonstrate the need. Council gave consensus to direct staff to work with Foraker and the geologist to look into getting additional water rights as long as the cost is reasonable.

Harlan Foraker went on to discuss the hydraulic analysis and how water flows through the water system. Water flow and pressure testing was done on existing fire hydrants. One of the results of the testing showed that most of the system pressure was about 40 PSI. In order to meet state requirements, the PSI must be at least a 20. The lowest area of pressure was found at the Girl Scout camp west of town due to the distance the water has to travel and the line to the camp only being a 4-inch line. Foraker stated the testing showed the system is robust enough to support future growth into 2025. Foraker stated that maybe the two areas that could be improved are on Kansas and Hellar. Both those streets are served by north and south water lines and there is no water line running east and west. Foraker suggested installing east and west water lines on those streets in the future to improve flow and pressure. Foraker also pointed out a future connection from Chisholm Ridge Addition to Ross Avenue. Foraker also reviewed fire hydrant coverage. Foraker stated that he would maintain the model used to do the hydraulic analysis, and if any future growth occurs, that can be placed in the model to see how it will affect the water system.

At 7:54, Mayor Justice left the meeting.

6. **Executive Session-Personnel**

MOTION: At 7:55, Council Member Frischenmeyer made a motion to enter into executive session for personnel for 30 minutes. Council Member Berntsen seconded the motion and it passed unanimously. City Administrator Brown and Police Chief Kim Demars were invited into the session. City Attorney Amerine did not attend.

At 8:25, Council returned to regular session with no action taken.

7. **Recommendation for Purchase of a Mower to Replace the JD1145 Mower**

Public Works Director Ernie Misak stated he had test driven several mowers to replace the JD1145 mower. Misak stated there was concern at the previous meeting that a zero radius turning mower wasn't a heavy duty enough mower to mow the ball fields without tearing them up. The Bad Boy mowed the ball diamond with no problems. Misak stated that frame is stronger and that there are less relays on the Bad Boy than the John Deere, therefore less maintenance. Misak recommends the Bad Boy 7200AOS. Misak stated an additional cost of \$495 for rollover protection brings the cost of the Bad Boy mower to \$11,390.

MOTION: Council Member Frischenmeyer made a motion to purchase the Bad Boy 7200AOS mower with rollover protection in the amount of \$11,390. Council

Member Berntsen seconded the motion and it passed unanimously.

Public Works Director Misak also requested that since the budget for the mower is \$30,000, he would like use the balance to purchase a tractor with more horsepower to pull the Landpride mower. He would sell the current tractor and use that money towards the new tractor, as well. Council gave consensus for Misak to pursue some prices on a 60-70 horsepower tractor to present at the next meeting.

Public Works Director Misak stated he has \$20,000 in the 2009 budget for a replacement dump truck. A 2001 Ford 1-ton dump truck with a hydraulic lift with 37,200 miles is available for \$13,000. Misak has reviewed the price and found blue book value to be \$12,000. Misak requested authorization to pursue this truck. Council gave consensus to Misak to pursue the 2001 Ford dump truck.

8. Contract with Paddock Enterprises to Comply with the Virginia Graeme Baker Act (VGBA) at the Aquatic Center

City Administrator Brown stated that the Virginia Graeme Baker Act (VGBA) was passed by the Federal Government and became effective in December 2008. The Act requires swimming pools to install grates on pool drains to prevent suction entrapment of people in the pool. VGBA doesn't specify who will enforce the installation of the grates or the design specifications of the grates. Currently, the answer to having the grates designed comes down to the designer of the pool. The end result in installing the grate is to get a certificate from the designer stating the City is in compliance with the act. Brown stated he has contacted the designer of the Clearwater pool, Don Paddock with Paddock Enterprises. The cost of the grates from Paddock is \$9,930 with installation an additional \$2,400. Brown stated he would like to have Paddock inspect the pool to insure the grates he is proposing will work for the City's pool. This money is not budgeted. There is only \$3,000 in the pool fund for capital items. The money to pay for the grates would have to come from some other area of the budget. Public Works Director Misak stated that when he read the act, he understands that it will never have a specification to the size or design of the grate. The Act only refers to insuring any person cannot totally block the suction mechanism in the pool. Council Member Whitney asked City Attorney Amerine if Paddock issues the City's pool a certificate that the grate he builds meets the intent of the law, is the City covered and Paddock is responsible if the new grate is found not to meet the VGBA later. Amerine stated that the contract says that Paddock's contract states that he will determine if the grate meets the intent of the law and he will provide documentation. Amerine continued that if they come after the City, the City could go after him. Council Member Frischenmeyer questioned a sentence in the contract that reads, "If it is determined that this will not meet the intent of the law, the proposed cost does not include any work necessary to accomplish this." Frischenmeyer stated that "it" is vague and needs some clarification. Does "it" means if he,

as the designer, or the Federal Government, as an inspector, determines the grate doesn't meet the intent of the law? Amerine stated that then she would recommend Brown get some clarification from Paddock on a definition of "it" in the last sentence in the first paragraph of Section 4 of Paddock's contract. Council Member Berntsen asked if there is someone else that could do the work or is the designer of the pool the only person the City can turn to to design the grate. Whitney stated that the problem is no one knows what the government standard is going to be, so no one is willing to step up to design the grates. After a discussion regarding government and industry standards, Council directed staff to contact Paddock to first do a visual inspection of the pool before contracting with him to design and build the grates.

9. **Ordinance Empowering the City of Clearwater to Enter into Lease, Lease Purchase or Installment Purchase Obligations**

City Attorney Amerine stated that the Ordinance empowering the City to enter into lease purchase or installment purchase obligations was discussed at previous meetings. This ordinance just authorizes the City to enter into these types of agreements. City Clerk Wright assigned ordinance number 904.

MOTION: Council Member Berntsen made a motion to adopt Ordinance Number 904 Empowering the City of Clearwater to Enter into Lease, Lease Purchase or Installment Purchase Obligations. Council Member Whitney seconded the motion and it passed on a roll call vote of 4-0.

10. **Request from First State Bank to Block off a Portion of Lee Avenue on May 15th for their Annual Community Appreciation Night.**

City Administrator Brown stated that First State Bank is requesting a portion Lee be blocked off between Ross and Kansas for their annual Community Appreciation Night on May 15th. Council gave consensus to allow the roadblock.

11. **Budget Request for 2010 from Fall Festival Committee for the City of Clearwater to Sponsor Either the Fireworks or Movie Night at a Cost of Approximately \$3,000**

City Administrator Brown stated that Fall Festival Committee is requesting that the Council consider including approximately \$3,000 in the 2010 Budget for either Fireworks or Movie Night during Fall Festival. The year 2010 is the 125th Anniversary of the City of Clearwater and the 25th anniversary of the Clearwater Fall Festival, so the Committee would like to do something extra. After a brief discussion, Council gave consensus to consider the budget item.

12. Agreement for Housing Inmates in Sumner County Detention Facility

City Administrator Brown stated that the Agreement for Housing Inmates in Sumner County Detention Facility is being reviewed to make a policy decision as to whether the City wants to send its prisoners to Sumner County or Sedgwick County. Sumner County Detention Facility will not pay for prisoners' medical treatment because Clearwater is not in Sumner County. It is cheaper to send prisoners to Sumner County rather than Sedgwick County, but the risk is higher. The City's prisoners sent to Sedgwick County jail and need medical treatment can be treated with no cost to the City, but the jail fees are higher. Council agreed having Sumner County to send prisoners to would be a good alternative, but to send prisoners to Sedgwick County primarily. Brown stated that the agreement would still need to be approved by Sumner County, after the Council approves it.

MOTION: Council Member Whitney made a motion to approve the Agreement for Housing Inmates in Sumner County Detention Facility. Council Member Frischenmeyer seconded the motion and it passed unanimously.

13. Consent Agenda

Council gave consensus to pay the invoice from Certified Engineering in the amount of \$46,422 for the design of construction plans and construction specifications for the Clearwater Business Park.

14. Aquatic Center Rates

City Administrator Brown stated that swim prices and lifeguard rates went up last year and staff had no recommendation for changing them for this year. Council agreed not to adjust swim prices or lifeguard pay rates this year.

15. Staff Reports

City Clerk Wright stated that she received a call that the roof is leaking over the baler at the recycle center. Wright called Mike Machart to take a look at it.

City Clerk Wright stated the spring cleanup was the largest the City has had to date. The clean up days are meant for city residents with trash service and people from outside of town are abusing the service. Waste Connection contacted Wright and suggested monitoring the drop site in a stricter manner. They stated that either placing staff at the edge of town to ensure people aren't bringing in trash from outside of town to dump or issuing coupons to each resident that has trash service for drop offs might curb the abuse of the free dump days. Council briefly discussed options to help monitor the dump days, but no solution was agreed

upon for now.

At 9:45, Mayor Justice joined the meeting.

City Administrator Brown had a request from a group to place a fireworks stand on City property between the post office and the old vet clinic. Council Member Whitney stated that there is no parking. Council Member York stated that there is too much grass at that location. Mayor Justice stated the city ordinance would have to be changed to allow a fireworks stand on public property. Council agreed that they weren't interested in allowing the fireworks stand access to public property.

City Administrator Brown stated the Recreation Commission made the decision last night to award the contract to the Clearwater High School Government Class DC trip to run ballpark concession stands this summer. Brown stated that staff is working on getting the food service license for the Sports Complex concession stand.

City Administrator Brown stated he has met with a group several times representing interest in the skate park. The concrete design has been rearranged to better handle the equipment that is being purchased. Council Member Frischemeyer stated he was concerned that no representatives from the skate park had come back to Council to speak about the skate park since the \$25,000 was approved. Council Member Whitney stated that at the Council meeting where the \$25,000 was approved, Council had directed staff to work with the skate board park's representatives to come up with a plan to spend the \$25,000 on concrete and equipment, and the Council wasn't going to be involved in planning the actual skate park equipment.

Council Member Whitney stated the street light at Second and Nancy is flashing off and on.

Council Member Whitney stated there is a vehicle parked in the street at Third and Kansas with two flat tires and no tag.

Council Member Whitney stated that there is a hole in the alley between Tracy and Byers south of Ross. Whitney requested Public Works fill the hole with some rock.

Council Member Whitney stated in Sunday's Wichita Eagle there was an article about City's charging prisoners for their jail fees. Whitney requested staff look into that.

Council Member Whitney requested Public Works spruce up the Sports Complex before the regional softball tournament is held in Clearwater.

Council Member York asked if there was any updates on either of the cell phone towers that have been approved. City Administrator Brown stated he contacted the Verizon Representative and there is a dispute with the property owner that is holding up that project. Brown stated staff has not heard anything from AT&T.

Mayor Justice asked if there has been any contact made with the property owner on First that had a lot of junk in their backyard. Council Member York stated he has had a conversation with the property owner.

Mayor Justice commended the Public Works Department on their work on cleanup weekend.

City Attorney Amerine stated she read up on charging prisoner's their jail fees. Amerine stated that it is up to the Municipal Judge to charge the prisoner jail fees. Amerine suggested City Administrator Brown speak to Judge Hurtig and have Hurtig investigate the issue.

16. Executive Session-Personnel

MOTION: At 10:20, Council Member York made a motion to enter into executive session for 5 minutes for personnel reasons. Council Member Whitney seconded the motion and it passed unanimously.

At 10:25, Council returned to regular session with no action taken.

With Council consensus, Mayor Justice appointed Gene Garcia as Acting Police Chief effective May 1st until Chief Demars returns from medical leave with a \$500 per month pay increase.

17. Adjournment

MOTION: Being no further discussion to come before the Council, Council Member Berntsen moved for adjournment. The motion was seconded by Council Member Whitney and passed unanimously.

CERTIFICATE

State of Kansas }
County of Sedgwick }
City of Clearwater }

I, Jodi McBee, Deputy City Clerk of the City of Clearwater, Sedgwick County, Kansas, hereby certify that the foregoing is a true and correct copy of the approved minutes of the April 28, 2009 City Council meeting.

Given under my hand and official seal of the City of Clearwater, this 12th day of May, 2009.

Jodi McBee, Deputy City Clerk