

**MINUTES OF THE REGULAR COUNCIL MEETING
OF THE CITY OF PAOLA, KANSAS
5:30 O’CLOCK P.M.**

April 24, 2007

**HELD AT THE PAOLA PUBLIC WORKS BUILDING
29370 Old KC Road in Paola**

The Governing Body of the City of Paola, Kansas, met with Mayor Stuteville presiding.

Councilmembers present: Mayor Stuteville and Council Members Pritchard, Dial, Rowlett, and Hamilton.

Council Members absent: None.

Also present: Manager VanderHamm, Clerk Droste, Attorney Tetwiler, Planner Givens, Police Chief Smail, Carol Everhart, Brian McCauley from the Miami County Republic, and others.

PLEDGE OF ALLEGIANCE: Mayor Stuteville invited everyone in attendance to join in the Pledge of Allegiance.

Agenda Item 1 - CALL TO ORDER: The regular council meeting was called to order by Mayor Stuteville.

Agenda Item 2 - ROLL CALL: Mayor Stuteville and Council Members Pritchard, Dial, and Rowlett were all present.

Agenda Item 3 - PETITIONS, REMONSTRANCES, AND COMMUNICATIONS

Mayor Stuteville proclaimed the week of April 15 through 21 as National Volunteer Week and presented representatives of the Swan River Museum, Paola Heartland Group and The Paola Tourism Group with the Proclamation.

Police Chief Smail presented options for site plans for the new Paola Police Station. He also presented a draft of the floor plan for the facility. He indicated that he preferred site plan number 2 which shows the building facing the southwest corner of the property. This option would orient the building so that it could be easily seen from Pearl Street. Chief Smail reported that meetings with the architect were planned for next week where building elevation options would be discussed.

Agenda Item 4 - CONSENT AGENDA

- a. Approval of minutes of the meetings of April 10, 2007

- b. Approval of Salary Ordinance number 07-07
- c. Approval of Appropriation Ordinance No. 603

Councilmember Hamilton made a motion to approve the Consent Agenda and authorize the Mayor to sign. Councilmember Rowlett seconded the motion and all voted aye.

Agenda Item 5a – Public Hearing to consider the petition to vacate a portion of Diamond and Iron Streets in Block 58 in the City of Paola.

Councilmember Rowlett made a motion to open the Public Hearing to consider the petition of Mr. Robert Zoller, requesting the vacation of the easterly 34 feet of Diamond Street and the westerly 34 feet of Iron Street adjacent to Block 58 in the City of Paola. The motion was seconded by Councilmember Rowlett and all voted aye.

Clerk Droste presented the petition of Robert Zoller requesting the vacation of the easterly 34 feet of Diamond Street and the westerly 34 feet of Iron Street adjacent to Block 58 in the City of Paola. He reported that the public hearing notice was published in the March 28th edition of the Miami County Republic, 20 days in advance of tonight's hearing. The notice is also posted on the City's website. Additionally, notices were mailed directly to all adjoining property owners, Kansas City Power & Light, Southwestern Bell Telephone/AT&T, Suddenlink Cable TV, Kansas Gas Service, Miami County EMS, Paola Fire Chief, Paola Public Works Director, and Paola City Planner. Clerk Droste reported that Kansas City Power & Light did respond in writing and has requested that any easements be retained as there currently are utility lines along Iron Street. No other written responses were received.

Mr. Jack Rhea, owner of the property to the west, addressed the Council and expressed concerns that if half of the right-of-way of Diamond Street were vacated, it would restrict future access to his property. After discussing this concern, Manager VanderHamm suggested that the Council could retain a 50 foot right-of-way for Diamond Street and vacate the easterly 18 feet instead of the easterly 34 feet as petitioned. The petitioner agreed that this was an acceptable solution.

The right-of-way for Iron Street to the east was also discussed. Manager VanderHamm indicated that retaining a 34 foot street right-of-way would be practically useless for the City and he suggested that the entire right-of-way could be vacated.

Councilmember Rowlett made a motion to close the Public Hearing. The motion was seconded by Councilmember Pritchard and all voted aye.

Councilmember Dial made a motion to approve the petition of Robert Zoller, requesting the vacation of the easterly 18 feet of Diamond Street and all of Iron Street adjacent to Block 58 and Block 55 in the City of Paola, Kansas, as amended, provided however, that the City of Paola, reserves for itself, and its assigns, the right to erect, install, operate, replace, repair and maintain any and all water lines, sewer lines, gas lines, telephone lines, electrical utility lines, and cable TV lines presently located, if any under, through, over, along and across the described portion of the street so vacated; and that all costs associated with this action be

paid by the petitioners. The motion was seconded by Councilmember Rowlett and all voted aye.

Agenda Item 5b - Consider an Ordinance vacating a portion of the right-of-way of Diamond and Iron Streets in Block 58 of the City of Paola.

Clerk Droste presented an Ordinance vacating a portion of the right-of-way of Diamond and Iron Streets in Block 58 and recommended that Section 1 amended to read as follows:

That in accordance with the provisions of K.S.A. 12-504 through 12-506 and 12-509, all of the easterly 18 feet of Diamond Street lying along and adjacent to the Westerly line of Block 58, City of Paola, Miami County, Kansas; and all of Iron Street lying along and adjacent to the Easterly line of Block 58 and the Westerly line of Block 55, City of Paola, Miami County, Kansas; be and the same is hereby vacated and said portion of the alley shall revert to the owners of the real estate thereto adjacent and immediately abutting thereon in proportion to the frontage of such real estate upon said vacated street right-of-way; PROVIDED HOWEVER, that the City of Paola, reserves for itself, and its assigns, the right to erect, install, operate, replace, repair and maintain any and all water lines, sewer lines, gas lines, telephone lines, electrical utility lines, and cable TV lines presently located, if any under, through, over, along and across the described portion of street so vacated.

Councilmember Rowlett made a motion to approve AN ORDINANCE VACATING A PORTION OF THE RIGHT-OF-WAY OF DIAMOND STREET AND IRON STREET IN BLOCK 58, IN THE CITY OF PAOLA, KANSAS as amended. The motion was seconded by Councilmember Pritchard and all voted aye. Clerk Droste assigned No. 2942 to the Ordinance.

Agenda Item 5c - Consider approval of the preliminary and final plat for Block 58 in the City of Paola.

Planner Givens presented the preliminary and final plat for Block 58 in the City of Paola. He indicated that the Council's previous action would require amendments to the plat as the westerly boundary of the property has now changed. He also reported that the Planning Commission approved the plat at their April 17th meeting with the following conditions:

- 1) Corrected Preliminary Plat
 - a. Show applicable zoning districts.
 - b. Show conformation of easements referenced in the title policy.
 - c. Show the proposed use of the land.
- 2) Corrected Final Plat
 - a. Show applicable zoning districts.
 - b. Show a statement that the cost of upgrading the streets may be assessed to the property owners, as provided by Kansas law, and the right to protest the establishment of a benefit district is waived.

After discussing the plat, Councilmember Rowlett made a motion to approve the preliminary and final plat for Block 58 in the City of Paola, with the amendment to the westerly property line and the conditions as presented. The motion was seconded by Dial Councilmember and all voted aye.

Agenda Item 5d - Consider approval of the preliminary and final plat for Hidden Meadows.

Councilmember Rowlett stated that since he was a partner in the development of Hidden Meadows, it was his desire to recuse himself from all discussion regarding the development and he left the Council meeting room.

Planner Givens presented the preliminary for all of Hidden Meadows and final plat for Phase 1 of Hidden Meadows. He reported that the Planning Commission reviewed and approved the plat for Hidden Meadows at their meeting on April 17th subject to the following conditions:

- 1) Approval of a variance from a 60' right-of-way to 50'.
- 2) Proper re-platting of the undeveloped portion of Prairie Place.
- 3) An approved stormwater detention plan that meets the APWA 5600 standard.
- 4) An approved landscaping plan.
- 5) Proper transfer of City right-of-way for the access road.

Open space requirements were discussed. Planner Givens reported that the proposed nature park, identified as Tract B on the plat, contains 2.64 acres which exceeds the 2.5 acre open space requirement. The nature park will be maintained by the Homeowners Association.

Councilmember Pritchard questioned the building setbacks throughout the development. Dick Allenbrand stated that the setbacks will be 35 feet with the exception of for 6 lots in the northwest corner of the development which will be 25 feet. This will allow for a transition from the 10 foot setbacks in Indian Hills along Redbud Drive.

After discussing the plats, Councilmember Pritchard made a motion to approve the preliminary plat for Hidden Meadows and the final plat for Phase I of Hidden Meadows as presented. The motion was seconded by Councilmember Dial. Councilmembers Pritchard, Dial, and Hamilton all voted aye. Councilmember Rowlett was not present and did not vote.

Agenda Item 5e - Consider approval of a Conditional Use Permit for Longhorn Trailer Sales.

Councilmember Rowlett returned to the meeting room and took his seat with the Council.

Planner Givens reported that Erica Smith and Chad Wiswell have applied for a Condition Use Permit for a Heavy Retail Use at 803 Baptiste Drive in the Thoroughfare Access district. Mr. Wiswell originally approached staff and inquired about locations in or around Paola for his newly formed trailer sales business. A site was selected on Baptiste next to the existing Dodge Dealership. The business has been open as it is also a retail sales store for Western

Décor and Accessories. The applicants were given permission to temporarily store trailers, for less than 24 hours, on the site and worked out an arrangement with the neighboring property to store trailers for an extended period. The dealership has approval for outdoor storage.

Planner Givens indicated that the Heavy Retail Use and the outdoor storage of sale items or materials are listed as a conditional use in the LDO. The area is zoned retail and the sale of trailers blends with the neighboring property. Section 21.220 of the LDO provides standards for the Planning Commission to consider when making a recommendation to the City Council. Those standards are as follows:

“Approval of a conditional use application by the Planning Commission shall be dependent upon finding that the proposed use fully complies with the Land Development Ordinance. The following additional standards shall be met:

- A. The proposed use shall be consistent with the Comprehensive Plan’s purposes, goals, objectives, and policies, including standards for building and structural intensities and densities, and intensities of use.
- B. The proposed use shall be compatible with the character and land in the immediate vicinity.
- C. The proposed use’s design shall minimize adverse effect, including visual impact of the proposed use on the adjacent lands.
- D. The proposed use shall minimize adverse impacts on the environment, traffic and congestion, infrastructure, or governmental services.”

Planner Givens stated that the use would be encouraged under the Comprehensive Plan in that it uses existing business land to help promote retail business in the community and that the business provides a service or product that is not currently available in the area. Several businesses in the area have outdoor storage of goods including the property adjacent to the building, the Dodge Dealership, and across the street, the Family Center. This proposed use would have no more adverse impact than that of its neighbor. The area for the proposed use is in a commercial district and all services are in place. The area is also undergoing extensive work on the roads to help improve traffic. This use would not add to the any congestion that there might be in the area.

Planner Givens reported that a public hearing was conducted at the March 20, 2007 Planning Commission meeting. At that time, no site plan was presented and several citizens had questions about the activities that would be allowed on the property. The public hearing was continued until the April 17, 2007 Planning Commission meeting. On April 17, 2007, the Planning Commission did reconvene the Public Hearing. At that time, the Planning Commission was presented a Site Plan and Conditions for Use. No members of the public presented any concerns about the business and its plans. The Planning Commission agreed that the Site Plan as presented met or exceeded the standards required in the LDO.

Following the Public Hearing, the Planning Commission did recommend the approval of the Conditional Use Permit based on the following conditions:

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- 1) A maximum of 15 trailers on lot – including overflow trailers stored on adjacent property with approval from property owner. Longhorn Ranch and New Century have an agreement in place that will allow for excess trailers to be stored on the New Century lot.
- 2) Hours of Operations limited to Monday – Saturday 7am to 7 pm.
- 3) An approved Landscaping Plan to be installed prior to the 1 year CUP review, including Street Trees.
- 4) An approved Signage Plan provided to staff prior to any sign permits being issued.
- 5) Parking Lot to be paved 30 days after the completion of the Baptiste Drive Project.
- 6) The Conditional Use Permit shall be reviewed after one year.

Planner Givens state that the owners and applicants had requested that they be given a year before completing the paving. There was significant discussion about the paving requirement. The Planning Commission felt that to be consistent with previous requests and LDO requirements that this business should be given some time to comply with LDO requirements but one year was too long. The Planning Commission concluded that 30 days after the completion of the Baptiste Drive project would be a sufficient timeline.

Manager VanderHamm presented a copy of an e-mail request from Mr. Bill Gregoric, one of the owners of the property, requesting that he be given 18 months to comply with the paving requirement for the parking lot. Manager VanderHamm indicated that the concern is that in 12 or 18 months, the trailer sales business could move off of the property and the Conditional Use Permit would expire without the lot being paved.

The paving issue was discussed in detail. Councilmember Rowlett indicated that this situation is identical to other businesses in town such as Miami County Import Auto and D&J Motors and that the rules should be uniformly enforced.

Bill Gregoric stated that it was his intention to pave the parking lot, however, the timing for doing so was poor. He indicated that there had been no previous mention of the requirement except that the building inspector had mentioned that a 12 month extension could be obtained. Councilmember Rowlett asked Mr. Gregoric if he was told that he needed to visit with the Planning Department regarding the proposed use of the property.

Manager VanderHamm clarified that the applicants operate two businesses at the subject property. The western wear retail business is a conforming use and does not require a CUP. However, their trailer business does require the CUP because of the outdoor storage of the trailers and it is this change in use that requires that the parking lot be paved.

Mayor Stuteville asked if there was any further discussion regarding the Conditional Use Permit.

Councilmember Rowlett made a motion to approve CONDITIONAL USE PERMIT 07-CUP-03 - AN ORDINANCE RELATING TO ZONING: AUTHORIZING A CONDITIONAL USE PERMIT FOR CERTAIN PROPERTY, as recommended by the Planning Commission.

Mr. Smith indicated that he would not have rented the building if he had known that he would be required to pave the parking lot. He felt that he was led to believe that a 12 month waiver would be easily obtained as they have been granted in the past.

The use of the building was discussed. Planner Givens indicated that when the cable TV office vacated the property and the owners began parking vehicles on the lot, this constituted a change in use and a CUP would be required including the requirement to pave the lot.

Councilmember Pritchard expressed concerns that if the motion was approved that a business would be forced to leave town.

Clerk Droste stated that there is a motion on the floor, still waiting for a second. The motion was seconded by Councilmember Dial.

Mayor Stuteville called for a vote on the motion. Councilmembers Hamilton and Pritchard voted nay and Councilmembers Rowlett and Dial voted aye. Mayor Stuteville voted aye to break the tie and the motion passed by a vote of 3 to 2. Clerk Droste assigned No. 2943 to the Ordinance.

Agenda Item 5f - Consider a correcting Ordinance levying the ¼ % sales tax that was approved by the electors on April 3rd.

Clerk Droste reported that after the April 10th City Council meeting, he contacted the Kansas Department of Revenue (DOR) regarding the certification and collection of the new ¼ cent sales tax beginning July 1, 2007. The DOR advised that a 90 day advance certification was required prior to the collection of any new tax and that new tax collections begin on the first day of each calendar quarter. Therefore, the collection of the tax could not begin until October 1, 2007.

After further discussions with Mary Carson, legal counsel, and the DOR, it was determined that a correcting Ordinance would be required indicating that “The retailers’ sales tax shall take effect on July 1, 2007, or on the earliest date thereafter that the Kansas Department of Revenue can begin collecting such retailers’ sales tax, and shall continue for a period of 10 years, unless repealed by an ordinance of the City.”

After discussing the Ordinance, Councilmember Dial made a motion to approve/not approve AN ORDINANCE LEVYING A CITY RETAILERS' SALES TAX IN THE AMOUNT OF ONE-QUARTER OF ONE PERCENT (.25%) WITHIN THE CITY OF PAOLA AND

REPEALING ORDINANCE NO. 2491. The motion was seconded by Councilmember Pritchard and all voted aye. Clerk Droste assigned No. 2944 to the Ordinance.

Agenda Item 5g - Consider amendments to the fee schedule for Lake Miola.

Mayor Stuteville stated that the recent changes to the fee schedule for camping at Lake Miola had created a little bit of controversy. The Lake Miola Committee met to reconsider the fees and recommended that the camping fees be amended as follows:

CAMPING FEES	<i>Per day</i>
Residents of Paola City Limits	\$5.00
Miami County Residents	\$7.00
Non County Resident	\$12.00

Councilmember Rowlett made a motion to approve the amended fee schedule for Lake Miola as presented. The motion was seconded by Councilmember Dial and all voted aye.

Agenda Item 5h - Consider a request to temporarily close First Street between Silver and Gold Streets at Ray's Power Sports.

Clerk Droste presented a request from Ray Minden at Ray's Power Sports to temporarily close First Street between Silver and Gold Streets on Saturday, May 19th. He is hosting a charity motorcycle ride and has requested that the city provide barricades to close the street from 9:00 am to Noon on that day to accommodate registration for the event.

After discussing the request, Councilmember Rowlett made a motion to approve the temporary closing of First Street between Silver and Gold Streets from 9:00 am and Noon on Saturday, May 19th. The motion was seconded by Councilmember Pritchard and all voted aye.

Agenda Item 5i - Report from Carol Everhart, Executive Director of the Paola Chamber of Commerce on economic development activities.

Carol Everhart reported that the Miami County Economic Development Board has recommended that a "coordinator" be hired in lieu of a "director" for county-wide economic development efforts.

She presented a report on economic development activities for the city: Subjects discussed included a billboard on 169 Highway at 167th Street, advertising at Studio 30 Theaters, Destination Packages, parking on the square after hours for business owners, and benches and tables on the sidewalks in front of businesses. She also discussed upcoming events: Sidewalk sale and late night shopping on June 15th, Dedication of the Veterans Memorial on May 28th, Eastern Kansas Business Appreciation Awards Ceremony and Luncheon on June 5th, and the Chamber of Commerce Annual Dinner on June 18th.

Mrs. Everhart indicated that efforts to get business directory signage on 169 Highway have been frustrating. Kansas Logo Signs, Inc. and KDOT have not been responsive to efforts to expedite the installation of the signs.

Councilmember Rowlett reported that Don Moler with the League of Kansas Municipalities wants to change the LKM Board meeting in Paola from September to June 7 and 8. He indicated that this is an opportunity for Paola to make a big impression with the LKM Board.

Agenda Item 6 -NEW BUSINESS

Manager VanderHamm reported that the Master Gardner's requested consideration of public land for a "community garden" at our April 10th meeting. One suggestion was the area on the southwest end of Industrial Park Drive across from the soccer fields. He asked if the Council had any other ideas for the location of the garden. Councilmember Rowlett suggested that the property known as Southwest Park could be considered. Manager VanderHamm agreed to discuss the locations with the Master Gardeners.

Manager VanderHamm advised the Council that notices were mailed this past week regarding the January water samples that were not delivered to Kansas Department of Health and Environment (KDHE) by UPS. Ironically, we received this email from KDHE day the notices went out on April 16th:

Mr. Bieker

We received 3 routine samples (1198357, 1198356, and 1198358) today via UPS delivery that were collected in January 2007. The UPS ground tracking number for these samples is 1Z 999 A9R 03 9586 6851. The large delivery label (which I assume to be the original label) does not have the date of shipment on it, but there is a smaller second shipping label with the same tracking number that is dated April 13, 2007 in very small print. Although the address should have been sufficient to deliver to our facility, I might recommend that whomever ships the samples make sure the UPS staff types our address exactly as our return labels indicate. There will be no replacement samples generated since these samples were in transit so long. If there's any further shipping or delivery questions, please feel free to contact our lab at the number below.

Becky Martin, MT (ASCP) SM
Kansas Dept. of Health & Env.
Forbes Field, Building 740
Topeka, KS 66620-0001

Manager VanderHamm reported that Planner Givens has been working with the architect on the Softball Association's new concession and bathroom building. However, there has been no further communication regarding the project.

Manager VanderHamm discussed information received from KDOT regarding the application process for local transportation projects for 2010 and 2011. Applications are due July 2, 2007.

Manager VanderHamm advised that staff has been working diligently with KMIT, our Workers Comp provider, to establish an on-going safety program that will result in fewer claims and lower premiums. For the past several years, we have reached the “bronze” level which provides for a 1% discount. According to the letter from Renee Rhodes, currently we appear to have improved to the “gold” level which will entitle us to a 5% discount this year. He congratulated members of the Safety Committee for their hard work.

Manager VanderHamm read aloud the following statement:

April 18th, 2007

Dear Mayor Stuteville and Paola City Council:

First of all, Paola is an excellent community with a bright future. My brief time here has been filled with exciting challenges that will positively shape this community for years to come, and it has been an honor being the City Manager. However, due to an almost unbelievable opportunity, I have accepted the position of Finance Director for the City of Edmond, Oklahoma. My resignation, per my contract, calls for a 30 day notice, and so my last day will be Friday, May 18th, 2007.

Secondly, Paola is blessed to have very dedicated, hard working employees that really care about doing a good job. It has been a pleasure working with them!

Finally, I want to thank each of you for your commitment to Paola. I have appreciated your support and look forward to watching Paola succeed and prosper under your leadership.

*Sincerely,
Ross A. VanderHamm*

Mayor Stuteville stated that she and the Council reluctantly accepted Mr. VanderHamm’s resignation.

Councilmember Hamilton asked about the reproofing project at Prairie Place Apartments. Planner Givens reported that the Building Inspection Department had noted some problems with that project and that a stop work order has been issued.

Councilmember Pritchard reported that he had received several positive comments about the improvements at Whitaker Park.

Councilmembers Rowlett and Dial had no new business to discuss.

Mayor Stuteville nominated the following individuals to serve additional terms as follows: Tree Board - Steve Haffener; Planning Commission - Roy Rhodes and Les Smith; Paola Housing Authority – Eugenia Ackerley and Violet Burnett; Paola Library Board – Stacy Banks; Convention and Tourism – Kathy Luft and Sam Parkins.

Councilmember Dial made a motion to approve the nominations as recommended by Mayor Stuteville. The motion was seconded by Councilmember Hamilton and all vote aye.

Agenda Item 7 - EXECUTIVE SESSION - K.S.A. 75-4319(B)(1) and K.S.A. 75-4319(B)(2) are the authorities for this recess.

Councilmember Rowlett made a motion to adjourn to Executive Session, to include the Mayor, Council, City Manager, City Clerk, and City Attorney, for 30 minutes for the purpose of discussing personnel matters of non-elected personnel and for the purpose of a consultation with an attorney for the governing body which is deemed privileged in the attorney-client relationship; the regular meeting to reconvene at 9:00 p.m. The motion was seconded by Councilmember Dial and all voted aye.

Councilmember Pritchard made a motion to reconvene the adjourned meeting. The motion was seconded by Councilmember Hamilton and all voted aye.

Agenda Item 13 – ADJOURNMENT.

With no additional business to come before the Council, Councilmember Hamilton made a motion to adjourn the meeting. Councilmember Pritchard seconded the motion and all voted aye.

Artie Stuteville, Mayor

ATTEST: (seal)

Daniel G. Droste, City Clerk