

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

November 27, 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, Council Members Pritchard, Dial, Rowlett, and Hamilton.

Council Members absent: None.

Also present: Manager Wieland, Clerk Droste, Attorney Tetwiler, Police Chief Smail, Public Works Director Bieker, Planner Givens, Brian McCauley with the Miami County Republic, and others.

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, Rowlett, and Hamilton were all present.

Clerk Droste reported that the City Attorney has requested that an Executive Session be added to the Agenda after Item 6 – New Business. The Executive Session would be for the purpose of a consultation with an attorney for the governing body which is deemed privileged in the attorney-client relationship. K.S.A. 75-4319(B)(2) is the authority for this recess.

Agenda Item 3 - PETITIONS, REMONSTRANCES, AND COMMUNICATIONS
No one addressed the Council.

Agenda Item 4 - CONSENT AGENDA

- a. **Approval of minutes of the meetings of November 13, 2007.**
- b. **Approval of Salary Ordinance number 07-21 & 07-22.**
- c. **Approval of Appropriation Ordinance No. 617.**
- d. **Approval of the renewal of a Retail Liquor License for County Seat Liquor.**

Councilmember Hamilton made a motion to approve the Consent Agenda and authorize the Mayor to sign. Councilmember Dial seconded the motion and all voted aye. The motion passed 4 to 0.

Agenda Item 5a – Public Hearing for the purpose of considering a request to waive the restriction for selling any alcoholic beverage within 500 feet of a park, school or church for Cactus Jack’s at 602 N Pearl.

Councilmember Pritchard made a motion to open the public hearing. The motion was seconded by Councilmember Hamilton and all vote aye. The motion passed 4 to 0.

Clerk Droste reported that the Public Hearing was being held for the purpose of considering a waiver for the restriction for selling alcoholic beverages within 500 feet of a park, school or church for Cactus Jack’s at 602 N Pearl. The owner of Cactus Jack’s has applied for a Drinking Establishment License and the restaurant located across the street from Pearl Street Baptist Church. The proper notice was published in the official city newspaper 10 days in advance of the Public Hearing.

No one addressed the Council in regard to the request for the waiver.

Councilmember Pritchard made a motion to close the public hearing. The motion was seconded by Councilmember Dial and all vote aye. The motion passed 4 to 0.

Councilmember Rowlett made a motion to approve a waiver of the restriction for selling any alcoholic beverage within 500 feet of a park, school or church for Cactus Jack’s at 602 N Pearl. The motion was seconded by Councilmember Pritchard and all vote aye. The motion passed 4 to 0.

Agenda Item 5b - Consider approval of a new Drinking Establishment License for Cactus Jack’s.

Clerk Droste reported that Cactus Jack’s currently holds a Cereal Malt Beverage License that expires on December 31st. The owner has applied for a new Drinking Establishment License pending the issuance of a State Liquor License. The Cereal Malt Beverage License would not be renewed and the restaurant has passed the required fire safety inspection.

Councilmember Dial made a motion to approve a new Drinking Establishment License for Cactus Jack’s subject to the receipt of a copy of a State Liquor License and the surrender of the existing Cereal Malt Beverage License. The motion was seconded by Councilmember Hamilton and all vote aye. The motion passed 4 to 0.

Agenda Item 5c - Consider approval of a new Drinking Establishment License for Applebee’s Restaurants Kansas, LLC doing business as Applebee’s Neighborhood Grill & Bar.

Clerk Droste reported that the corporate ownership change for Applebee’s International to Applebee’s Restaurants Kansas, LLC is nearing completion. An application has been received for a new Drinking Establishment License from the new corporate ownership as the existing license is not transferable. The restaurant has passed the required fire safety inspection and is not within 500 feet of a park, school or church.

Councilmember Pritchard made a motion to approve a new Drinking Establishment License for Applebee's Restaurants Kansas, LLC doing business as Applebee's Neighborhood Grill & Bar at 1301 Kansas Drive subject to the receipt of a copy of a State Liquor License and the surrender of the existing Drinking Establishment License. The motion was seconded by Councilmember Dial and all vote aye. The motion passed 4 to 0.

Agenda Item 5d - Consider bids for asbestos removal from the old KDOT building.

Manager Wieland presented bids for asbestos removal from the KDOT building as follows:

Asbestos Removal & Maintenance Inc.	\$6,240.00
Allstate Specialty Construction Inc.	\$11,720.00

After discussing the bids, Councilmember Pritchard made a motion to approve the bid in the amount of \$6,240.00 from Asbestos Removal and Maintenance, Inc. to remove asbestos from the old KDOT building. The motion was seconded by Councilmember Hamilton and all vote aye. The motion passed 4 to 0.

Agenda Item 5e -Consider approval of the K-68 Partnership Agreement.

Planner Givens presented the second of two agreements with the Kansas Department of Transportation for the K-68 Highway study. He reported that the first agreement had been approved by the Council at a previous meeting.

After discussing the scope of the project, Councilmember Dial made a motion to approve the K-68 Partnership Agreement and authorize the Mayor to sign. The motion was seconded by Councilmember Hamilton and all vote aye. The motion passed 4 to 0.

Agenda Item 5f - Consider the renewal of a Conditional Use Permit for 103 N Pearl.

Planner Givens reported that In June of 2006, the Paola Planning Commission did approve a Conditional Use Permit for 103 N. Pearl for Pet Grooming Services. Originally, Robin Keith applied for the permits as Pampered Pets. At this time the applicant, Kathie Mendenhall, who will own and operate The Paw Spa has requested that the CUP be renewed. Conditional Use Permits are issued to properties for a specific use and are not exclusive to the business that originally applies for the permit. In this case, a new business has opened under the original Conditional Use Permit (CUP).

The original CUP listed 12 conditions, which would govern the pet grooming services use at this location as follows:

- 1) Adequate ventilation shall be provided between adjoining structures.
- 2) Prior to receiving a permit, the applicant must submit copies of approvals from all regulatory agencies having jurisdiction over pet grooming services.
- 3) All pet waste shall be disposed of in an approved manner.
- 4) Noise levels shall be limited so as not to disturb surrounding properties.

- 5) All chemicals used in the grooming process shall be non-destructive to the public sanitary sewer system.
- 6) No overnight boarding of pets is permitted.
- 7) Hours of operation are limited to 7am – 7pm Monday through Friday and 8am – 5pm on Saturday.
- 8) Grass over sidewalk be eliminated.
- 9) One street tree be installed along Piankishaw prior to the one-year renewal.
- 10) Parking stalls be defined by adequate painting or marking tape.
- 11) After one year, the conditional use permit shall be reviewed by the Planning Commission to ensure compliance. The property owner shall be responsible for notifying adjoining property owners (as identified by the abstractor's search for the original CUP request) by regular mail two weeks in advance of the Planning Commission's review. If the owner will be requesting an amendment to the CUP, the notification shall follow the same procedures as the original CUP notification. Adjoining property owners will have an opportunity to comment on compliance to the conditions of the CUP. This would be June of 2007.
- 12) At any time, the City may institute revocation of the conditional use permit for violations of the conditions of approval, expiration, or the reasons specified in Section 21.225 of the Land Development Ordinance. The City shall provide notice to the landowner and public in the same manner as was provided for the establishment of the conditional use permit.

Of these stipulations, only items 8 and 9 have not yet been complied with. The business operator has agreed to resolve these issues.

At their November 20, 2007 meeting the Paola Planning Commission did consider the application for renewal. After hearing from staff and the owner, the Planning Commission did vote 6-0 to recommend the CUP be renewed.

Councilmember Dial made a motion to approve CONDITIONAL USE PERMIT 06-CUP-05 AN ORDINANCE RELATING TO ZONING: RENEWING A CONDITIONAL USE PERMIT FOR CERTAIN PROPERTY. The motion was seconded by Councilmember Pritchard and all vote aye. The motion passed 4 to 0. Clerk Droste assigned No. 2961 to the Ordinance.

Agenda Item 5g - Consider an amendment to the Zoning Map.

Planner Givens reported Mesa Development, the owners of Pinnacle Point, a subdivision located on West Ottawa has requested a zoning change. The property is currently zoned NC-R2 and the owners are requesting the property be rezoned to NC-R3 to allow for a proposed 18 unit multi-family apartment complex. This rezoning coincides with the recent text amendments for the NC districts that allow for multi-family housing.

He reported that in evaluating a request for a Zoning Map Amendment, the Planning Commission considered the following standards:

- A. The proposed change is consistent with the City's Comprehensive Plan and the purposes of this Ordinance. In areas of new development, consistency with the Comprehensive Plan shall be considered to meet the standards in B., C., and D. below, unless the proposed amendment would threaten public health, safety, and welfare if so designated as planned in the Comprehensive Plan.

Staff feels that this re-zoning request would allow for the type of housing that is encouraged by the Comprehensive Plan.

- B. The proposed change is consistent with the character of the neighborhood.
The neighboring areas are currently zoned NC-R3 and have a mixed use of housing type.

- C. The extent to which the property is consistent with the zoning and use of nearby properties.

The proposed use for this property would be multi-family housing and this use would blend within the area

- D. The suitability of the property for the uses to which it has been proposed or restricted.

While no definite site plan has been presented to staff, a conceptual plan shows that the building design will maximize the buildable space and minimize any impacts to the floodplain.

- E. The extent to which the proposed use would substantially harm the value of nearby property.

There are several single-family houses in the area as well as multi-family government assisted housing developments. The proposed use will be for market-based multi-family apartments and should not have a negative impact on the areas property value.

- F. The length of time a property has remained vacant as zoned, where the zoning is different from nearby developed properties.

This property has been zoned NC-R1 and NC-R2. Prior to the recent text amendments, no development had occurred of this property in the previous two zoning classifications. If approved the new classification will allow for a use that will maximize the property's value for development.

- G. The gain, if any, to the public health, safety and welfare due to denial of the proposed amendment as compared to the hardship imposed upon the landowner, if any, as a result of denial of the proposed amendment.

The re-zoning should not have any impact on public health, safety or welfare and the proposed land use plan would work to minimize any impacts into the flood plain that may negatively affect the public. Additionally, by developing a mix of uses and housing types in the area, a more diverse neighborhood is created.

- H. Recommendations of permanent or professional Staff.

Staff feels comfortable with recommending the property to be re-zoned and feels that it is consistent with the Comprehensive Plan and LDO.

Planner Givens reported that at their November 20, 2007 meeting the Paola Planning Commission did consider the request and voted 6-0 to recommend the change.

The request was discussed in detail and Councilmembers Rowlett and Pritchard expressed concerns over the flood zone and Mayor Stuteville expressed concerns over parking for the residents.

Councilmember Pritchard made a motion to approve AN ORDINANCE CHANGING THE ZONING CLASSIFICATION OF CERTAIN LAND LOCATED IN THE CITY OF PAOLA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE LAND DEVELOPMENT ORDINANCE OF THE CITY OF PAOLA, KANSAS. The motion was seconded by Councilmember Dial and all vote aye. The motion passed 4 to 0. Clerk Droste assigned No. 2962 to the Ordinance.

Agenda Item 5h - Consider an Ordinance assessing special taxes on properties at Rockwood Estates, Phase III.

Clerk Droste reported that the petition for the benefit district for Rockwood Estates Phase III requested that the costs for sanitary sewer and water lines to be assessed to each lot equally and the costs for the streets, storm sewer and sidewalks to be assessed based on the total square foot area of each lot. The assessment role for each individual property in the benefit district was presented.

Clerk Droste reported that in review of the accounting of the costs of the project, he noted that there are only 31 lots in the benefit district creating a relatively large individual assessment for each lot. Assessing these costs over a 10 year period would create a substantial annual assessment payment. This fact was discussed with the developers, our Bond Attorney and our Financial Advisor. After considering the circumstances, Clerk Droste recommended that 15 years be considered to lower the annual assessment payments for these lots. A 15 year payment schedule would greatly improve the market appeal of the properties versus a 10 year schedule. Although the City's infrastructure policy states that costs are "usually" financed over a 10 year term, this detail is left to the discretion of the Council.

Councilmember Hamilton made a motion to approve AN ORDINANCE OF THE CITY OF PAOLA, KANSAS, LEVYING SPECIAL ASSESSMENT TAXES ON CERTAIN REAL PROPERTIES IN THE CITY, TO PAY A PORTION OF THE COSTS OF CERTAIN INTERNAL IMPROVEMENTS BENEFITING THAT PROPERTY; PROVIDING FOR THE GIVING OF NOTICE OF THE SPECIAL ASSESSMENT TAXES; AND PROVIDING FOR THE COLLECTION OF SUCH SPECIAL ASSESSMENT TAXES (ROCKWOOD PHASE III). The motion was seconded by Councilmember Rowlett and all vote aye. The motion passed 4 to 0. Clerk Droste assigned No. 2963 to the Ordinance.

Agenda Item 5i - Receive and award bids on General Obligation Bonds.

Clerk Droste introduced Greg Vahrenberg with Piper Jaffray who presented the summary of the bids that were received at 2:00 pm today for the bond issue. Mr. Vahrenberg explained that the size of the bond issue was adjusted to reflect last minute changes in the structure of the bonds. The final principal amount was increased from \$2,805,000 to \$2,840,000. The bids for the bonds ranged from 4.290866% to 4.478979%. The low bid was presented by Wachovia Securities, LLC.

The bond issue includes funds for the Baptiste Drive improvements, the traffic light at the Baptiste Drive and North Silver Intersection, and the Benefit District for Rockwood Phase III. Clerk Droste explained that the repayment schedule for the bonds was structured to mature in 2025 to manage the City's annual debt payment obligations. Greg Vahrenberg was instrumental in providing advice in this regard.

Councilmember Rowlett requested that the Council be provided with a summary of the City's bonded indebtedness.

After discussing the bond issue, Councilmember Dial made a motion to accept the bid from Wachovia Securities, LLC for 4.2908667% to purchase General Obligation Bonds, Series A, 2007, in the principal amount of \$2,840,000 from the City of Paola. The motion was seconded by Councilmember Hamilton and all vote aye. The motion passed 4 to 0.

Agenda Item 5j - Consider an Ordinance authorizing the issuance of General Obligation Bonds.

Mary Carson presented an Ordinance authorizing the issuance of General Obligation Bonds pursuant to the terms that were accepted from Wachovia Securities, LLC.

After discussing the Ordinance, Councilmember Dial made a motion to approve AN ORDINANCE AUTHORIZING ISSUANCE OF THE CITY OF PAOLA, KANSAS GENERAL OBLIGATION BONDS, SERIES A, 2007, IN THE PRINCIPAL AMOUNT OF \$2,840,000, FOR THE PURPOSE OF FINANCING COSTS OF CERTAIN CAPITAL IMPROVEMENTS IN THE CITY; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX TO PAY THE BONDS; AUTHORIZING OTHER DOCUMENTS AND ACTIONS AND MAKING CERTAIN COVENANTS RELATED TO SUCH BONDS. The motion was seconded by Councilmember Pritchard and all vote aye. The motion passed 4 to 0. Clerk Droste assigned No. 2964 to the Ordinance.

Agenda Item 5k - Consider a Resolution authorizing the issuance of General Obligation Bonds.

Mary Carson presented a Resolution authorizing the issuance of General Obligation Bonds pursuant to the terms that were accepted from Wachovia Securities, LLC.

After discussing the Resolution, Councilmember Hamilton made a motion to approve A RESOLUTION PRESCRIBING THE FORM AND DETAILS OF GENERAL OBLIGATION BONDS, SERIES A, 2007, IN THE PRINCIPAL AMOUNT OF \$2,840,000, OF THE CITY OF PAOLA, KANSAS, PREVIOUSLY AUTHORIZED BY ORDINANCE NO. 2964 OF THE CITY; MAKING COVENANTS AND AGREEMENTS TO PROVIDE

FOR THE PAYMENT AND SECURITY OF THE BONDS; AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS CONNECTED TO THE BONDS AND AMENDING RESOLUTION NO. 2005-016. The motion was seconded by Councilmember Dial and all vote aye. The motion passed 4 to 0. Clerk Droste assigned No. 2007-017 to the Resolution.

Agenda Item 51 - Consider an Ordinance authorizing the issuance of Bonds for the Paola, Kansas Public Building Commission and authorizing a lease agreement and other documents related to the new Paola Justice Center.

Mary Carson presented an Ordinance authorizing the Public Building Commission bonds and the lease agreements and other documents between the City and the Public Building Commission for the Paola Justice Center.

After discussing the Ordinance and the lease agreements and other documents, Councilmember Dial made a motion to approve AN ORDINANCE OF THE CITY OF PAOLA, KANSAS, APPROVING THE ISSUANCE OF \$3,750,000 AGGREGATE PRINCIPAL AMOUNT OF THE PAOLA, KANSAS PUBLIC BUILDING COMMISSION REVENUE BONDS, SERIES 2007 TO PAY THE COSTS OF CONSTRUCTING, ACQUIRING AND EQUIPPING A POLICE STATION; AUTHORIZING THE EXECUTION OF A LEASE OF THE POLICE STATION BY THE CITY FROM THE PUBLIC BUILDING COMMISSION; AUTHORIZING THE EXECUTION OF A BOND PURCHASE AGREEMENT AND OTHER NECESSARY DOCUMENTS RELATED TO THE TRANSACTIONS AUTHORIZED HEREIN. The motion was seconded by Councilmember Rowlett and all vote aye. The motion passed 4 to 0. Clerk Droste assigned No. 2965 to the Ordinance.

City Attorney Tetwiler suggested that the Council consider adjourning this meeting for 15 minutes to hold the Paola, Kansas Public Building Commission meeting. This would be done for the convenience and consideration of the City's Bond Counsel and Financial Advisor who are in attendance to present information at the Public Building Commission meeting.

Councilmember Rowlett made a motion to adjourn this meeting for 15 minutes to reconvene at 7:00 pm. The motion was seconded by Councilmember Pritchard and all voted aye. The motion passed 4 to 0.

At 7:00 pm, Councilmember Hamilton made a motion to reconvene the adjourned meeting. The motion was seconded by Councilmember Dial and all voted aye. The motion passed 4 to 0.

Agenda Item 6 – NEW BUSINESS.

Public Works Director reported that he has received calls regarding residents raking leaves into the street. He will coordinate with the newspaper to print an article advising residents that this is not acceptable.

Clerk Droste reminded the Council of the LKM Regional Supper that will be held at the Olathe Fire Headquarters on November 28th at 6:00 pm. He also reported that final edits to

the City's personnel manual have been received from the attorney and the document will be discussed at the next Work Study meeting. The City of Paola Christmas Party is scheduled for Monday, December 10th at 6:00 pm at Evergreen Events.

Manager Wieland complimented staff on the time and effort spent on drafting the revisions to the personnel manual. He also reported that a meeting was held with the architects on the Fire Station and that the final modifications to the plans were being incorporated. The pre construction conference with the contractor on the new Justice Center is scheduled for December 6th at 10 am.

Councilmember Rowlett reported that he attended a KACIR meeting where studies on sales tax and property tax were presented and discussed. He indicated that state wide the property tax base had eroded to the point that residential real estate taxes now make up 60% of all property taxes. There are four times more sales tax exemptions in the State of Kansas than there are non-exemptions. There are concerns about the ability to raise additional revenues for taxing authorities state wide.

Mayor Stuteville commented on Don Moller's article in Kansas Government Journal regarding public buildings.

Councilmember Rowlett made a motion to adjourn to Executive Session for 30 minutes for a consultation with an attorney for the governing body which is deemed privileged in the attorney-client relationship; the regular meeting to reconvene at 7:10 p.m. The motion was seconded by Councilmember Pritchard and all voted aye. The motion passed 4 to 0.

At the conclusion of the Executive Session, Councilmember Dial made a motion to reconvene the adjourned meeting. The motion was seconded by Councilmember Pritchard and all voted aye. The motion passed 4 to 0.

No action was taken pursuant to the Executive Session

Agenda Item 7 – 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. The motion passed 4 to 0.

Artie Stuteville, Mayor

ATTEST: (seal)

Daniel G. Droste, City Clerk