

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

January 10, 2006

**HELD AT THE MIAMI COUNTY COMMISSIONERS CHAMBERS
IN THE MIAMI COUNTY ADMINISTRATION BUILDING**

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

Councilmembers present: Mayor Stuteville, Council Members Shields, Rowlett, Moulder, and Pritchard.

Council Members absent: None.

Also present: Manager VanderHamm, Clerk Droste, City Attorney Tetwiler, Engineer/Planner Faust, Public Works Director Bieker, Police Chief Smail, a representative from the Miami County Republic, and others.

The regular council meeting was called to order.

Agenda Item 1 - ROLL CALL: Mayor Stuteville and Council Members Shields, Moulder, Rowlett, and Pritchard were all present.

Agenda Item 2 - PLEDGE OF ALLEGIANCE: Mayor Stuteville invited everyone in attendance to join in the Pledge of Allegiance.

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 December 13, 2005**
- b. **Approval of Salary Ordinance number 05-24 and 05-25**
- c. **Approval of Appropriation Ordinance No. 573**

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

Agenda Item 5 – REPORTS OF OFFICERS, BOARDS, AND COMMITTEES.

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 Zarco 66 Inc. at 1005 N Pearl.

Councilmember Pritchard made a motion to open the public hearing. The motion was seconded by Councilmember Rowlett and all voted aye.

Clerk Droste explained that the public hearing was required as an application for a Cereal Malt Beverage License had been received from Zarco 66 at 1005 N Pearl Street. The business is located adjacent to Whitaker Park and a waiver of the restriction for selling any alcoholic beverage within 500 feet of a park, school, or church would be necessary before the Council could take action on the license. Droste introduced Mr. Scott Zaremba, owner of the Zarco 66.

Mayor Stuteville asked if there was anyone in attendance who wished to address the Council in regard to the request for the waiver of the restriction for selling any alcoholic beverage within 500 feet of a park, school, or church for Zarco 66. No one in attendance addressed the Council.

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

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 Zarco 66, Inc. at 1005 N Pearl. The motion was seconded by Councilmember Pritchard. Councilmembers Pritchard, Rowlett, and Shields voted aye, and Councilmember Moulder voted nay. The motion passed 3 to 1.

Agenda Item 5b - 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 In Good Spirits at 1001 N Pearl.

Councilmember Pritchard made a motion to open the public hearing. The motion was seconded by Councilmember Rowlett and all voted aye.

Clerk Droste explained that the public hearing was required as an application for a Retail Liquor License had been received from In Good Spirits at 1001 N Pearl Street. The business is located adjacent to Whitaker Park and a waiver of the restriction for selling any alcoholic beverage within 500 feet of a park, school, or church would be necessary before the Council could take action on the license. Droste introduced Mr. Colby Stanchfield, owner of In Good Spirits.

Mayor Stuteville asked if there was anyone in attendance who wished to address the Council in regard to the request for the waiver of the restriction for selling any alcoholic beverage

within 500 feet of a park, school, or church for In Good Spirits. No one in attendance addressed the Council.

Councilmember Rowlett made a motion to close the public hearing. The motion was seconded by Councilmember Moulder and all voted aye.

Councilmember Pritchard 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 In Good Spirits at 1001 N Pearl. The motion was seconded by Councilmember Rowlett. Councilmembers Pritchard, Rowlett, and Shields voted aye, and Councilmember Moulder voted nay. The motion passed 3 to 1.

Agenda Item 5c - Consider approval of a new Cereal Malt Beverage License for Zarco 66, Inc. and a new Retail Liquor License for In Good Spirits.

Clerk Droste reported that a Cereal Malt Beverage License had been received from Zarco 66, Inc. at 1005 N Pearl and that the facility had passed the required fire safety inspection.

Droste also reported that he had received an application for a Retail Liquor License from In Good Spirits at 1001 N Pearl. Droste indicated that the Mr. Stanchfield is in the process of buying the property at 1001 N Pearl and that he wanted to know that the license would be issued prior to purchasing the property. The property would be remodeled prior to the opening of the new business; therefore the required fire safety inspection could not be completed until after remodeling is complete. Droste indicated that action on the application would be subject to a satisfactory completion of a fire safety inspection and the receipt of a copy of the State of Kansas Retail Liquor License.

Councilmember Pritchard made a motion to approve a new Cereal Malt Beverage License for Zarco 66, Inc. and a new Retail Liquor License for In Good Spirits, subject to the receipt of a copy of a State Liquor License and the satisfactory completion of a fire safety inspection. The motion was seconded by Councilmember Rowlett. Councilmembers Pritchard, Rowlett, and Shields voted aye, and Councilmember Moulder voted nay. The motion passed 3 to 1.

Agenda Item 5d - Receive and review a Regional Watershed Study prepared by George Butler Associates, Inc.

Engineer Planner Faust presented the final draft of a Regional Watershed Study of the area surrounding the intersection of Hedge Lane and Baptiste Drive and beyond. The report was prepared by George Butler Associates, Inc. Faust indicated that a copy of the report had been provided to Mr. J.T. Turnbough.

In presenting the study, Faust reported that there was an error on page 2 of 6 of the cost estimate for Option 3A. He indicated that the line item "East of Hedge Lane- Open Channel" should be \$1,071,000 instead of \$1,713,600 and the total should be \$3,360,120 instead of \$4,389,000.

Faust indicated that George Butler Associates were recommending either option 3A, 3B, or 3C which involves utilizing water detention on the Queen property, on the Ursuline property, or a combination of the two. Details of the options were discussed. Manager VanderHamm stated that the City would not dictate which option would be utilized to manage the storm water for development in the area, it was up to the developers to choose an option that best suits the development and satisfies the City's requirements for storm water control.

Engineer Planner Faust indicated that the purpose of the discussion this evening was to present the plan and that there was no decision to be made at this time. When the development plans are presented for this area, an appropriate option would need to be pursued to resolve the storm water issue for the area.

Heidi Bacon asked if the Queen's sell or develop their property and connect to City sewer and water, would they be required to be annexed into the City? Also, if a benefit district is already in place at the time that it is annexed, would they be required to become a part of the benefit district and would they be responsible for benefit district payments at that point? Engineer Planner Faust indicated that it is true that the property would have to be annexed if City services (sewer and water) were provided to the site. Manager VanderHamm stated that the benefit district laws in the State of Kansas are very specific, and the property cannot be included in a benefit district if it is not in the city limits. However, the cost associated with the benefit district once the property is annexed, would have to be addressed up front at the time that the benefit district is formed.

Agenda Item 5e - Consider a Resolution authorizing the Mayor and City Clerk to execute Agreement No. 161-05 between the City and the Kansas Department of Transportation for the Baptiste Drive reconstruction project.

Engineer Planner Faust presented a Resolution authorizing the Mayor and City Clerk to execute Agreement No. 161-05 between the City and the Kansas Department of Transportation (KDOT) for the Baptiste Drive reconstruction project.

Councilmember Shields asked if a letter was sent to KDOT requesting that the intersection of Angela & Baptiste be reevaluated for a stop light. Faust indicated that the letter was sent and KDOT responded and indicated that a change in the plans at this time would have a major impact on the scheduling of the project. Councilmember Shields stated that she wanted to go on record as stating that for four years she has been asking for a stop light with pedestrian cross walks be considered at this intersection. Shields indicated that she was in favor of initiating the study of the intersection even if it resulted in a delay of the project.

Councilmember Rowlett made a motion to approve a RESOLUTION RELATING TO BENEFITS OBTAINABLE BY CITIES UNDER PROGRAM FOR FEDERAL AID ON HIGHWAY CONSTRUCTION. The motion was seconded by Councilmember Pritchard. Councilmember Moulder asked if passing the resolution would eliminate the possibility of placing a stop light at the intersection of Angela and Baptiste in the future. Engineer Planner Faust indicated that it would not. After discussing the issue, the Mayor called for a vote.

Councilmembers Rowlett and Pritchard voted aye, Councilmembers Shields and Moulder voted nay, and Mayor Stuteville voted aye. The motion passed 3 to 2 The Resolution was assigned number 2006-001.

Agenda Item 5f - Consider proposals for updating the City of Paola Comprehensive Plan.

Engineer Planner Faust indicated that the Comprehensive Plan for the City was last updated in 1983, and an update was needed. Each year following the adoption of the Plan, and in conformance with State Statutes (K.S.A.12-747), the City of Paola should review its Comprehensive Plan. The review process helps ensure that the Plan remains current, reflecting not only recent development trends, but also changing community goals and objectives.

He presented costs associated with proposals from James M. Kaup, PA and Planning Works, LLC. A proposal was also solicited from Bucher Willis & Ratliff Corporation. Faust recommended that James M. Kaup, P.A. be selected to update the Comprehensive Plan.

Mr. James Kaup addressed the Council and answered questions regarding the Comprehensive Plan and the City's current Land Development Ordinance. Kaup explained that the process would involve public meetings seeking the input from citizens in the community on the development of the plan.

Councilmember Rowlett made a motion to approve the proposal from James Kaup, P.A. to update the Comprehensive Plan for an amount not to exceed \$40,000.00. The motion was seconded by Councilmember Shields and all voted aye.

Agenda Item 5g - Consider approval of the Waste Water Treatment Plant Construction Draw #7.

Clerk Droste presented construction draw number 7 for the new waste water treatment plant in the amount of \$952,244.18 for approval.

Councilmember Shields made a motion to approve construction draw #6 in the amount of \$952,244.18 for the new waste water treatment plant. The motion was seconded by Councilmember Moulder and all voted aye.

Agenda Item 5h - Consider a Letter of Engagement with Agler & Gaeddert for the 2005 audit.

Clerk Droste presented a Letter of Engagement from Agler & Gaeddert for the 2005 audit for the City of Paola. Droste reported that the 2004 audit that was performed by the same firm in the amount of \$12,950 plus \$633.06 for out of pocket expenses. The letter of engagement for 2006 is in the amount of \$13,000 plus out of pocket expenses. Councilmember Moulder asked if this service should not be competitively bid. Clerk Droste and Manager VanderHamm indicated that there is some importance in familiarity with the audit firm and the client that they are auditing.

Councilmember Pritchard made a motion to approve the Letter of Engagement with Agler & Gaeddert for the 2005 audit in the amount of \$13,000.00 plus out of pocket expenses. The motion was seconded by Councilmember Shields and all voted aye.

Agenda Item 5i - Consider options to update the City of Paola web site.

Clerk Droste presented a summary of the information that was discussed at the Council Work Study Session in November, 2005. Droste indicated that the discussion at the Work Study Session concluded with preference toward hiring the services of CivicPlus or utilizing the resources at the Paola High School Business Department.

Councilmember Moulder asked if funds were available in the budget for this expenditure. Manager VanderHamm indicated that he did include up to \$9,000 in the 2006 Budget for this. Councilmember Shields asked if funds from the Transient Guest Tax could be used to pay for this expense. Manager VanderHamm indicated that the Council makes the ultimate determination as to how the Transient Guest Tax funds are spent.

Councilmember Rowlett made a motion to approve CivicPlus to redesign the City's website in the amount of \$4,400 for set up/design expenses plus \$440 in monthly charges. The motion was seconded by Councilmember Moulder and all voted aye.

Agenda Item 5j - Discuss the proposal to eliminate personal property taxes by Governor Sebelius.

Manager VanderHamm reported that Governor Sebelius is considering a proposal to eliminate personal property taxes. Her proposal would negatively affect the City's budget by as much as 7%. After discussing the issue, the Council instructed the Manager to draft a letter to Governor Sebelius expressing concerns over her proposal.

Agenda Item 5k - Discussion of the use of Eminent Domain for Economic Development Purposes.

Manager VanderHamm presented a discussion regarding the Council's position on the use of Eminent Domain for Economic Development. Following the US Supreme Court's decision to uphold the power of a local government to use Eminent Domain for Economic Development, it is important for the Council to take a position on this issue. Economic successes such as the Kansas Speedway in Wyandotte County were discussed.

After discussing the issue at length, the majority of the Council agreed that Eminent Domain should never be used for the purpose of Economic Development.

Agenda Item 5l - Discuss the possible closing of 295th Street at Hedge Lane.

Engineer Planner Faust reported that Staff is working with Mr. Dennis Doherty and Allenbrand-Drews & Associates to plat approximately 132 acres immediately north and east of Rockwood Estates (north side of 295th). This development will consist of 253 homes, more or less, and is in the Suburban zoning district.

A major consideration for this property is the future status of 295th Street. During a recent work study session with the Paola Planning Commission, the topic of possible closure of the road was discussed. There are several reasons that the topic of closing a portion of 295th was raised. These include:

- The proximity of the intersection of 295th and Hedge Lane to the at-grade railway crossing. As Paola continues to grow northward, this intersection will experience increased traffic volumes. As Hedge Lane will be a major arterial between K68, the new development to the north, and commercial/USD368 to the south; a new 'underpass' to eliminate the at-grade rail crossing is an improvement that will be needed. The timing for upgrades to the rail crossing are not known (5yrs – 25yrs), however planning for this eventuality does have merit.
- Proximity of buried high pressure gas main to the intersection.
- Flooding conditions (overtopping of 295th) during storm events. This overtopping occurs along the east property line of Rockwood Estates. This is not a new condition however it is a life-safety issue that will become more critical as traffic volumes increase. This high flow also impacts property to the south by creating soggy conditions/ponding water and eroding fairways.

In order for this development to move forward through the platting process, the city needs to provide direction to the developer and his professional engineers on the future of 295th. Options include:

- 1) Leave 295th open between Old KC Road and Hedge Lane (no closure – road remains unchanged).
- 2) Leave 295th open between Old KC Road and the last residence to the east (this would close the eastern ½ of 295th Street)
- 3) Leave 295th open between Old KC Road and the entrance to Rockwood Estates (this would result in the closure of the majority of 295th)

Faust requested guidance to allow forward movement of the Northridge Estates plat. Faust recommended that 295th be closed (once the main road through Northridge is constructed) east of the 3 residences. Access for these homes will be from 295th (west to Old KC Road) and through Northridge Estates. This option does not land lock the tract immediately east of the County Club.

After discussion the options, Councilmember Shields stated that she attended the Planning Commission Meeting where this issue was discussed and she stated that she was shocked that the Council had never discussed this issue in the past. Shields indicated that she had reviewed previous Council Minutes and could find only two references to the City Manager discussing the realignment

of 295th Street to the north without mention of closing it. She expressed concern over closing 295th and questioned where the idea came from.

Engineer Planner Faust stated that if an underpass were built, the “cut” to begin the under pass could be as far north as 1,200 feet of the rail road crossing which is near the location of the proposed road within the development.

Councilmember Shields stated that 295th is an arterial road from Old KC Road to Hedge Lane. She indicated that she has talked with many individuals about this issue and she had not found one person who agreed with closing the road and she was adamantly against it. After discussing the issue, Engineer Planner Faust stated that perhaps the use of the word “closure” is incorrect, as the minutes do refer to the “realignment” of 295th to the north. The proposed plan is in effect a “realignment” of the roadway.

Councilmember Rowlett asked the homeowners in the audience if the proposed closure or realignment would work for them. Mr. Medlin indicated that it could work but was reluctant to commit prior to seeing a final plan in writing. Mr. Doherty clarified that the underpass is the driving force in realigning or closing 295th not his development. He stated that he is trying to work with the City to resolve the issue.

After further discussion, Councilmember Rowlett made a motion to accept Option number 2 as presented to the Council, as a viable solution to the closing of 295th and rerouting traffic through the collector streets in Northridge to Hedge Lane subject to approval of the homeowners along 295th street and the Planning Commission. The motion was seconded by Councilmember Moulder. Councilmembers Rowlett, Moulder, and Pritchard voted aye. Councilmember Shields voted nay. The motion passed 3 to 1.

There was additional discussion about including the residents of Rockwood Estates in the discussions about the plan.

Agenda Item 6 - NEW BUSINESS

City Manager VanderHamm reported that he talked with Representative Vickrey about the proposed ¼% sales tax legislation for residential street work and infrastructure improvements. Representative Vickery suggested the legislation be generic enough to allow some flexibility by the city council, perhaps providing for funding of Capital Improvements through our CIP. The ballot question would then specify the actual purpose. Representative Vickery will talk to Senator Apple to decide who carries the ball.

Manager VanderHamm reported that he had been advised by Bond Counsel Mary Carson that we are able to “amend” the ½% sales tax ballot question that passed in November and add the fire station. The only legal alternative would be to submit a new question to the voters that would include the fire station as originally planned. Obviously, the risk is that if it failed, we would not be able to “fall back” on the November results and we would lose the ½% sales tax funding for all improvements.

There was some discussion about including the new Fire Station in the ¼ cent sales tax initiative. Councilmember Moulder expressed concerns about including the Fire Department in the tax and not having funds available for infrastructure improvements.

Manager VanderHamm reported that City Hall has some electrical panel problems that need to be addressed very soon. Matt Farmer took thermal imaging pictures of all the electrical panels to identify the hot spots that need to be addressed. One of our Public Works employees is a certified electrician and he will be doing most of the work. The objective, other than to make it safer, is to salvage as much of the materials as possible for our eventual City Hall remodel.

December Sales Tax was approximately 2.2% above last year's December receipts. We exceeded our original 2005 Budget by over \$207,000 and the Revised Budget by slightly more than \$38,000.

Manager VanderHamm reported that the 2005 Budget is closed and he has assessed the ending cash balances. The General Fund ended with an unaudited balance of \$993,326 or \$150,397 more than the revised budget called for. The GF expenditures were 100.53% of the revised budget and the GF revenues were 105.53% above the revised budget.

All funds met or exceeded the budgeted carryover with the exception of the following funds:

	Rev. Budget C/O	Actual C/O	Deficit
Employee Benefits Fund	\$ 38,900	\$ 35,018	\$ 3,882
Water Fund	\$429,302	\$423,936	\$ 5,366
Storm Water Fund	\$192,382	\$169,397	\$22,985

Manager VanderHamm indicated that it is his goal is to spend not more than 95% of the budget and receive 105% of the budgeted revenues. If this can be done on a regular basis, our ending cash balances will increase and allow for greater flexibility in dealing with those constant "unbudgeted" surprises.

Manager VanderHamm reported that the new Human Resources Manager is Vicki Belt. She will start January 25th.

Manager VanderHamm indicated that bid packets for our insurance coverage have been mailed to interested parties and the invitation to bid has been advertised. Bids are due March 1st, 2006.

A "Notice of Public Nuisance" has been issued for the house at 206 W. Piankishaw and a copy was presented to the Council.

Manager VanderHamm reported that the Consumer Price Index for Urban Wage Earners and Clerical Workers through November was 2.55% - the same rate in 2004 and up from 2.24% in 2003.

Manager VanderHamm reported that on Friday and Saturday, January 20th & 21st, he would be presenting the Finance MLA sessions with Don Osenbaugh in Cheney and Chanute.

The Council will meet with the Library Board at the February 7th Study Session at 6:30 p.m. The Library Board will have their regular board meeting beginning at 7 p.m. After meeting with the Library Board, the Council will review all of the city's current rates and fees for 2006, including a close look at our water and sewer rates.

Tuesday, January 24th, 2006 at noon is the deadline for City Council candidate filing.

Councilmember Shields asked about the Transient Guest Tax and requested that this issue be included on the agenda soon.

Councilmember Rowlett nothing additional to discuss.

Councilmember Moulder reported that the City was not successful in being awarded the CDBG Grant. He reported that he has contacted Donna Crawford and she indicated that she would pursue the grant again next year without additional charge to the City. Manager VanderHamm reported that the Miami County Republic had obtained the scoring information from the State and he would make copies for the Council.

Councilmember Moulder asked about the status of the Miami County Medical Center building and their tax exempt status. City Attorney Tetwiler indicated that he had drafted a letter that was provided to the Council in November on this subject. Manager VanderHamm would provide the Council with another copy of that correspondence.

Councilmember Pritchard asked about the plans for the County to remodel the administration building. Manager VanderHamm indicated that we would need to move Council Meetings to the Community Center during that remodeling. He had also offered the use of the Community Center to the County should they need to use it.

Mayor Stuteville reported that the Lake Miola Committee had met and suggested that the pit toilets be removed. Councilmember Rowlett made a motion to remove the pit toilets at Lake Miola. The motion was seconded by Councilmember Pritchard and all voted aye.

Agenda Item 7 - EXECUTIVE SESSION - Executive Session 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.

Councilmember Rowlett made a motion to adjourn to Executive Session for 25 minutes 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 Pritchard and all voted aye.

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

Agenda Item 7 – ADJOURNMENT.

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

Artie Stuteville, Mayor

ATTEST: (seal)

Daniel G. Droste, City Clerk