

CITY COMMISSION MINUTES March 14, 2006

The Newton City Commission convened in regular session on March 14 at 7:00 p.m. in the City Commission room at 201 East 6th Street. Attending were Mayor Heck, Vice Mayor Nightingale, Commissioners Harris, Scott and Treaster. Also attending were City Manager Heinicke, City Attorney Myers, City Engineer/DPW Loomis, Director of Finance/City Clerk Ahsmuhs, Community Development Director Johnson and Deputy Clerk Duerksen.

Pastor Doug Ingmire, Newton Christian Church, provided the invocation. The Mayor then led in the Pledge of Allegiance to the US Flag and presided over the items of business.

CONSENT AGENDA

- 1. Review minutes of February 28, 2006 meeting.**
- 2. Consider a Resolution granting a six-month extension to Standridge Color Corporation for their tax abatement.**

This Resolution extends the time for the completion of certain tax abatement proceedings on behalf of Standridge Color Corporation, is assigned G-948, which is contained in Volume F of General Resolutions.

MOTION: Commissioner Treaster moved and Vice Mayor Nightingale seconded to approve the Consent Agenda as presented. Motion carried 5-0.

REGULAR AGENDA

- 3. Citizen's Forum.**
 - A. Receive award from Heart to Heart Child Advocacy Center for Supporter of the Year.**

T-Walton, Newton Police Department, presented Mayor Heck with an award from Heart to Heart Child Advocacy Center for the City being selected Supporter of the Year. Since opening the center in Newton, nearly 300 children have come through.

- 4. Manager's Update.**
 - To help prepare for severe weather season, Tornado Rules and Frequently Asked Questions are posted on the City's website.
 - The initial two weeks of recycling have gone well.

- Rolling Hills area has had a bad batch of pine tree disease. Homeowners have asked the City to help notify property owners in the area with dead trees that they should be removed.
- The LEAB and Diversity Committee met jointly and have agreed to consolidate into one committee. The organizational model will be brought back to the Commission for formal approval.
- Mayor Heck reported REAP continues to review the progress of affordable airfares. They have also spent a considerable amount of time with the workforce alliance. City Attorney Myers reported on the progress of the South Central Kansas Water Coalition. They are also looking at hosting another water conference in late summer or early fall.
- A proclamation declaring the week of March 14-20, 2006 as Newton High School Girls Basketball Week was considered. **MOTION:** Vice Mayor Nightingale moved and Commissioner Scott seconded to approve the proclamation as presented. Motion carried 5-0.

5. Consider a request from Asbury Park, Inc., for the annexation of a tract adjacent to the Asbury Park Planned Unit Development, and consider an Ordinance annexing the property as requested.

An Ordinance including and incorporating certain land within the limits and boundaries of the City of Newton, Kansas was considered.

MOTION: Commissioner Treaster moved that this Ordinance, assigned 4571-06, be approved as presented. Vice Mayor Nightingale seconded the motion which carried 5-0. (This Ordinance is contained in Volume Y of Ordinances.)

6. SW 14th Infrastructure

A. Receive petitions, plans and specifications for water, sewer and street improvements along SW 14th Street.

City Engineer/DPW Loomis reported that the sewer is at its capacity in this area and in order for the Asbury Park improvements to take place, the SW 14th Street infrastructure improvements need to happen. Improvements will also include the extension of water main lines to the area and necessary street improvements.

City Attorney Myers noted these were the same water and sewer projects that were on the agenda a couple meetings ago. At that time, the petitions presented by the owner of the Rock Shore Lake Addition had that Addition as the entire benefit district, not including any other properties. Those petitions were then tabled to the last meeting. By that time staff had updated the project cost estimates and circulated to the owners of both the Rock Shore Lake Addition and the Asbury Park PUD new petitions, which also included both additions in the benefit district as being benefited by those improvements. Those petitions also included a petition for the required street improvements as well. No response to these petitions was received from the Rock Shore Lake owner, and since

the prior petitions were still on the table, the Commission took action and rejected those petitions due to the recited cost estimates not being correct.

Since that time, KDOT has provided information as to the portion of the Rock Shore Lake property which they will be taking for intersection improvements at Highway 50 and Anderson. With that information, staff has revised the benefit districts. Reserve areas, street right-of-ways and roadways are not included in the benefit district, including the portion of the west end of the Rock Shore Lake property which KDOT will be taking for additional highway right-of-way. The additional land, which Asbury Park has acquired along SW 14th Street and which was annexed in the prior action, has now also been included in the benefit district. While it is benefited by these improvements, it was not included previously since it was not in the city limits. The owners of the Asbury Park property have signed these petitions which are before the Commission this evening, although the Rock Shore Lake owner has not. However, since the Asbury Park property constitutes 50.68% of property in the benefit district, with the Rock Shore Lake property constituting the other 49.32%, the petitions can be approved on the consent of the Asbury Park owners.

Myers noted that he received a letter today from the attorney for Solomon Investments, owner of the Rock Shore Lake property, stating objections to these petitions. Copies of that letter have been circulated to the Commissioners. He noted that their attorney is present and may wish to speak to these matters.

Brad Stout, attorney for Solomon Investments, then addressed the Commission, and noted a few weeks ago they did request petitions for water and sewer which were denied. At that time they had an agreement to develop part of the Rock Shore Lake Addition. They also asked for a curb cut on Anderson Road to access Anderson Court, which was denied by City staff. They were informed by staff that they could do nothing with any of the property that KDOT identified for access control. They no longer have a deal. He noted that the plat is no longer valid and will need to be replatted. Not allowing the South Anderson Court to be developed has greatly reduced their opportunity to develop the property. He stated SW 14th Street will become a major artery and will be heavily used but not because of what they will be doing. He questioned whether the benefit district was accurate or that City staff's calculations of the square footage is correct. He felt precluding property KDOT might need in the future was not fair. They have visited with KDOT and been informed they have no money for the intersection improvement. He stated there is a thin line between 50.68% and 49.32% and asked that the Commission deny the petitions and come up with a more equitable plan.

City Attorney Myers stated that Mr. Stout's client has known about the Anderson improvements even prior to the submission of the prior petitions, so the situation today is the same as it was when Solomon Investments proposed being the sole benefit district. When Mr. Loeb sack was the owner of the property, the City kept him informed about the Anderson issue and that same courtesy was passed on to Mr. Solomon when he first began advising Mr. Loeb sack on development plans and then after he acquired ownership of that property. This included information about KDOT's planned acquisition of access control along Anderson and the consequent need for the west end of the

development to be replatted. Also, when Mr. Solomon presented the petitions for water and sewer improvements, he was again informed of the issues with Anderson.

Myers stated the Rock Shore Lake property has not been rendered undevelopable by the planned intersection project. Rather, the west end will simply have to be replatted, and can still be accessed by an entry road coming off of SW 14th. This just simply adds an additional step. However, the property is still readily developable. As far as the benefit district being fair, Myers noted that State statutes do not require the precision in the method of assessing benefits, but only that a reasonable, good faith effort be made to define the benefits conferred. He felt this was a very reasonable benefit district. Myers also noted that Solomon Investments will be better off under this scenario and will pay approximately \$150,000 less than they would have with the petitions they presented a few weeks ago.

Commissioner Treaster questioned if another methodology could be used to determine the benefit district. He also questioned the carving out of the benefit district property targeted by KDOT for their use. Myers noted that KDOT has told us they are taking the property that was carved out regardless of how quickly they have funding for the intersection project. While the ultimate roundabout intersection project may not occur for a number of years, KDOT has said that they are going to take all of the right-of-way now for that eventual project so they will be able to proceed at such time as funding becomes available. The taking will occur, and KDOT is in the process of doing that now. Since this property will not be able to be used for development, it will not be benefited by the improvements and thus should not be included in the benefit district.

City Engineer/DPW Loomis confirmed that she has received correspondence from KDOT stating they were moving forward with right-of-way acquisition. She also clarified that, while the roundabout project isn't funded, the project to construct acceleration and deceleration lanes as an interim measure is funded, and they will commence that project after all of the additional right-of-way has been acquired. Thus there will be an intersection project constructed there this year.

Commissioner Treaster requested that Loomis provide the Commission with figures as to how the exclusion of the property KDOT intends to acquire affects the percentages of the benefit district ownership. Loomis stated she would have to go perform some computations but could provide that information. While that was being done, the Commission tabled further discussion of this agenda item until later in the meeting, and proceeded with the next agenda item.

9. Receive Chamber annual report on the Central Business District.

Virgil Penner, CEO of the Chamber of Commerce, presented the annual report for the Central Business District. Penner indicated that there were 273 businesses in the "heart of Newton", but only three empty buildings. There are 12 events planned for the downtown area this year.

10. Presentation of 2007 Historic Preservation Work Plan.

Virgil Penner, CEO of the Chamber of Commerce, presented the Historic Preservation Commission's work plan for 2007. The Commission is in the process of completing oral history interviews.

The Commission then returned to consideration of Agenda Item No. 6. City Engineer/DPW Loomis reported that if the portion of the Rock Shore Lake Addition, which was eliminated from the benefit district as additional highway right-of-way to be taken by KDOT, was instead included in the benefit district, then the Rock Shore Lake property would constitute just over 50% of the benefit district.

MOTION: Commissioner Treaster moved and Vice Mayor Nightingale seconded to recess to executive session for 10 minutes to consult with the City Attorney regarding these matters under attorney/client privilege. Motion carried 5-0.

The Commission recessed to executive session at 8:30 p.m. The Commission reconvened at 8:40 p.m. Mayor Heck announced no decisions were made and no action was taken.

B. Consider a Resolution finding advisable and authorizing the water improvements.

A Resolution finding advisable and authorizing the construction of a water line extension to serve property in and adjacent to Asbury Park Planned Unit Development and Rock Shore Lake Addition was considered. The estimated cost of the improvement is \$195,765.28 with 90.63% to be assessed against the improvement district and 9.37% to be paid by the City at large.

MOTION: Commissioner Treaster moved that this Resolution, assigned I-1057, be approved as presented. Vice Mayor Nightingale seconded the motion which carried 5-0. (This Resolution is contained in Volume F of Improvement Resolutions.)

C. Consider an Ordinance creating Water District 4-K.

An Ordinance creating Water District 4-K in the City of Newton, Kansas was considered.

MOTION: Commissioner Harris moved that this Ordinance, assigned 4572-06, be approved as presented. Commissioner Scott seconded the motion which carried 5-0. (This Ordinance is contained in Volume Y of Ordinances.)

D. Consider a Resolution finding advisable and authorizing the sewer improvements.

A Resolution finding advisable and authorizing the sewer improvements for property adjacent to the Asbury Park Planned Unit Development and Rock Shore Lake Addition was considered. The estimated cost of the improvement is \$300,573.53 with 94.23% to be assessed against the improvement district and 5.77% to be paid by the City at large.

MOTION: Commissioner Harris moved and Commissioner Scott seconded that this Resolution, assigned I-1058, be approved as presented. Motion carried 5-0. (This Resolution is contained in Volume F of Improvement Resolutions.)

E. Consider an Ordinance creating Sewer District 14-E.

An Ordinance creating Sewer District 14-E in the City of Newton, Kansas was considered.

MOTION: Commissioner Scott moved and Commissioner Treaster seconded that this Ordinance, assigned 4573-06, be approved as presented. Motion carried 5-0. (This Ordinance is contained in Volume Y of Ordinances.)

F. Consider a Resolution finding advisable and authorizing the street paving, grading, drainage and related items for SW 14th.

A Resolution finding advisable and authorizing the extension of street pavement, curb and guttering in and adjacent to Asbury Park Planned Unit Development and Rock Shore Lake Addition was considered. The estimated cost of the improvement is \$1,305,161.60 with 89.63% to be assessed against the improvement district and 10.37% to be paid by the City at large.

MOTION: Vice Mayor Nightingale moved and Commissioner Treaster seconded that this Resolution, assigned I-1059, be approved as presented. Motion carried 5-0. (This Resolution is contained in Volume F of Improvement Resolutions.)

G. Set date and time to receive bids (March 28, 2006 at 10:00 a.m.).

MOTION: Commissioner Treaster moved and Vice Mayor Nightingale seconded to receive bids on March 28 at 10:00 a.m. Motion carried 5-0.

7. Asbury Park infrastructure

A. Receive petitions, plans & specifications for water, sewer, storm water drainage and street improvements to serve Asbury Park

City Engineer/DPW Loomis stated these projects would not be possible without the approval of the previous improvements. She asked that the street and drainage items be tabled until the next meeting due to an error in the calculation sheet.

Travis Krehbiel, 501 SW 11th, read a prepared letter. They can not support the paving improvements. They felt the sewer improvements will benefit their neighbors and are willing to help pay for those costs even though they do not have sewer problems. Adding the paving improvement will be difficult to afford. They purchased their home two years ago. With the sewer and street assessments, they will pay 40% more than their mortgage.

B. Consider a Resolution finding advisable and authorizing the water improvements.

A Resolution finding advisable and authorizing the construction of a water line to serve property in and adjacent to Asbury Park Planned Unit Development was considered. The estimated cost of the improvement is \$53,950.00 with 100% to be assessed against the improvement district and 0% to be paid by the City at large.

MOTION: Vice Mayor Nightingale moved and Commissioner Treaster seconded that this Resolution, assigned I-1060, be approved as presented. Motion carried 5-0. (This Resolution is contained in Volume F of Improvement Resolutions.)

C. Consider an Ordinance creating Water District 12-C.

An Ordinance creating Water District 12-C in the City of Newton, Kansas was considered.

MOTION: Commissioner Harris moved and Commissioner Scott seconded that this Ordinance, assigned 4575-06, be approved as presented. Motion carried 5-0. (This Ordinance is contained in Volume Y of Ordinances.)

D. Consider a Resolution finding advisable and authorizing the sewer improvements.

A Resolution finding advisable and authorizing the construction of sanitary sewer lines to serve property in and adjacent to Asbury Park Planned Unit Development was considered. The estimated cost of the improvement if \$99,944.00 with 100% to be assessed against the improvement district and 0% to be paid by the City at large.

MOTION: Vice Mayor Nightingale moved and Commissioner Treaster seconded that this Resolution, assigned I-1061, be approved as presented. Motion carried 5-0. (This Resolution is contained in Volume F of Improvement Resolutions.)

E. Consider an Ordinance creating Sewer District 24-O.

An Ordinance creating Sewer District 24-O in the City of Newton, Kansas was considered.

MOTION: Commissioner Scott moved and Vice Mayor Nightingale seconded that this Ordinance, assigned 4576-06, be approved as presented. Motion carried 5-0. (This Ordinance is contained in Volume Y of Ordinances.)

F. Consider a Resolution finding advisable and authorizing the street improvements.

MOTION: Commissioner Treaster moved and Vice Mayor Nightingale seconded to table items F and G until the next meeting. Motion carried 5-0.

G. Consider a Resolution finding advisable and authorizing the storm water drainage improvements.

H. Set date and time to receive bids (March 28, 2006 at 10:00 a.m.).

MOTION: Commissioner Scott moved and Vice Mayor Nightingale seconded to receive bids on March 28, 2006 at 10:00 a.m. Motion carried 5-0.

8. Sales Tax

A. Receive recommendation from Task Force on the sales tax.

City Manager Heinicke presented the Sales Tax Task Force recommendation. They acknowledged that citizens have told the City that the very most important services offered are responding to fire, police and ambulance calls, maintaining high quality drinking water, and disposing of sewage and solid waste in an environmentally safe manner. The Task Force feels the City needs to focus existing resources on these services and do an efficient and effective job of service delivery. They feel the sales tax should be used to make Newton a better place to live. They identified three areas in which to utilize the revenues: 1) Property tax relief (50%); 2) Big ticket infrastructure improvements (25%). This would include Sand Creek, Main Street resurfacing, etc.; 3) Job creation and economic development (25%). This would include I-135 corridor development, recruiting and retaining businesses, growth of housing, etc.

MOTION: Commissioner Treaster moved and Commissioner Scott seconded to accept the recommendation of the Task Force on the sales tax.

Discussion followed. The interlocal agreement does not incorporate the recommendations on how the money is to be spent. A separate Resolution would need to be passed to designate and dedicate the funding as is recommended.

Call of the question: Motion carried 5-0.

B. Consider an Interlocal Agreement on the sales tax.

The interlocal agreement has been well received in the other cities and Harvey County approved the agreement at the Monday meeting. The agreement incorporates the concept of Newton receiving its fair share of the county sales tax based on population. An election date has been set for June 23.

MOTION: Vice Mayor Nightingale moved to adopt the interlocal agreement as presented. Commissioner Treaster seconded the motion which carried 5-0.

C. Consider a Resolution authorizing a sales tax election.

A Resolution to submit to the qualified electors of the City of Newton, Kansas, the proposition of levying a one percent (1%) retailers' sales tax in the City of Newton, Kansas, for the purposes of providing property tax relief, financing the cost of needed public infrastructure improvements, and funding job creation and economic development initiatives was considered. This Resolution does not lock the City into a city sales tax, but gets the clock running should things not go through the legislature or the interlocal agreements not get approved.

Mayor Heck questioned if a mixed message would be sent by adopting this resolution. Vice Mayor Nightingale responded the County has known from the beginning the City would act on their own should the efforts fail at the County level. Adopting this is only a contingency.

Commissioner Harris noted this a long term commitment the City is making and questioned why the push to get it done so quickly.

MOTION: Commissioner Treaster moved that this Resolution, assigned G-949, be approved as presented with the understanding that this is only a contingency, not the goal to have a city sales tax. Commissioner Scott seconded the motion which carried 4-1 with Commissioner Harris voting nay. (This Resolution is contained in Volume F of General Resolutions.)

11. Consider a Resolution authorizing the execution of an engineering services agreement with Professional Engineering Consultants, P.A., for the design and for related engineering services as to Phase 2 of the Southwest Interceptor Sewer project.

A Resolution authorizing the execution of an agreement with Professional Engineering Consultants, P.A., in relation to engineering services for a sanitary sewer interceptor project for the City of Newton, Kansas was considered. With all the interest in development of land both north and south of 24th Street, there will be a demand for this sewer interceptor in the near future. This is a major design effort which will take time to develop the layout and acquire right-of-way. Executing the engineering agreement will get that process started.

MOTION: Commissioner Treaster moved that this Resolution, assigned G-950, be approved as presented. Commissioner Scott seconded the motion which carried 5-0. (This Resolution is contained in Volume F of General Resolutions.

12. Receive bids and award contract for Sand Creek Bike Path and Railroad Park.

DPW/City Engineer Loomis noted that bids were over the engineer's estimate so she had to go back to the funding partners (North Newton and Bethel College) to have them increase their dollar amount for this project. Newton's share (\$216,600.11) will also increase but was within our funding authority by resolution. KDOT has also agreed to increase their cost share. Loomis recommended awarding the contract to the low bidder Cornejo & Sons.

BIDDER	BID AMOUNT
Cornejo & Sons, Inc.	\$1,302,854.95
Vogts Construction	\$1,323,598.70
LaFarge North America	\$1,660,726.10
Engineer's Estimate	\$1,008,560.00

MOTION: Commissioner Scott moved to accept the bids and award the contract to the low bidder, Cornejo & Sons, in the amount of \$1,302,854.95. Commissioner Treaster seconded the motion which carried 5-0.

13. Receive bids and award contract for Sand Creek Station Streets.

City Engineer/DPW Loomis recommended awarding the contract to the low bidder, Kansas Paving.

BIDDER	BID AMOUNT
Kansas Paving	\$ 723,284.20
Vogts Construction	\$ 723,931.90
Cornejo & Sons	\$ 790,805.19
LaFarge North America	\$ 900,006.45
Engineer's Estimate	\$ 863,912.50

MOTION: Commissioner Treaster moved to accept bids and award the contract to the low bidder, Kansas Paving, in the amount of \$723,284.20. Commissioner Scott seconded the motion which carried 5-0.

14. Old business.

Vice Mayor Nightingale questioned the funding for the soccer fields that are to be built by the Rec Commission. He was informed the City is working with the Rec Commission on this and that the City's contribution is \$100,000 to help build the fields. The remainder of the money will come from the Rec Commission.

15. New business.

City Manager Heinicke noted he was asked to speak in Fort Scott regarding how the Wholesale Water District was formed.

16. Adjournment.

There being no further business to come before the Commission, the meeting adjourned at 9:45 p.m.

Mayor

ATTEST:

City Clerk