

CITY COMMISSION MINUTES
August 22, 2006

The Newton City Commission convened in regular session on August 22, 2006 in the City Commission room at 201 East 6th Street. Attending were Mayor Nightingale, Vice Mayor Heck and 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, PIO McDaniel, and Deputy City Clerk Duerksen.

Father Floyd McKinney of Our Lady of Guadalupe 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 August 8, 2006 meeting.
2. Receive financial reports for July 2006.
3. Wheatridge 2nd improvements, Phase 2:
 - A. Receive petitions for water, sewer and street improvements to sewer Wheatridge 2nd.
 - B. Consider a Resolution finding advisable and authorizing the extension of water lines to serve Water District 4-L.

This Resolution finds advisable and authorizes the construction of a water line extension to serve Water District 4-L in Wheatridge Second Addition. The estimated cost of the improvement is \$139,000 with 100% of the cost to be assessed against the improvement district and 0% to be paid by the city at large, is assigned Res. I-1078, which is contained in Volume D of Improvement Resolutions.

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

This Ordinance creates Water District 4-L in the City of Newton, Kansas, is assigned Ord. 4587-06, which is contained in Volume Y of Ordinances.

- D. Consider a Resolution finding advisable and authorizing the extension of sewer lines to serve Sewer District 30-A6.

This Resolution finds advisable and authorizes the construction of a sanitary sewer line to serve Sewer District 30-A6 in Wheatridge Second Addition. The estimated cost of the improvement is \$139,000 with 100% of the cost to be assessed against the improvement district and 0% to be paid by the city at large, is assigned I-1079, which is contained in Volume D of Improvement Resolutions.

- E. Consider an Ordinance creating Sewer District 30-A6.

This Ordinance creates Sewer District 30-A6 in the City of Newton, Kansas, is assigned 4588-06, which is contained in Volume Y of Ordinances.

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

This Resolution finds advisable and authorizes the extension of street pavement, curb and gutter in Wheatridge Second Addition. The estimated cost of the improvement is \$636,000 with 94.3% to be assessed against the improvement district and 5.7% to be paid by the city at large, is assigned I-1080, which is contained in Volume D of Improvement Resolutions.

G. Consider an Engineering Agreement with Ruggles & Bohm.

4. Consider an Ordinance adopting the 2006 edition of the Uniform Public Offense Code.

This Ordinance amends Section 17-101 of the Code of the City of Newton, Kansas, to adopt the 2006 Edition of the Uniform Public Offense Code for cities; repeals section 17-101 of the Code of the City of Newton, Kansas, as previously amended by Section 1 of Ordinance No. 4538-05; and repeals Section 1 of Ordinance 4538-05, is assigned Ordinance No. 4589-06, which is contained in Volume Y of Ordinances.

5. Consider an Ordinance adopting the 2006 edition of the Standard Traffic Ordinance.

This Ordinance amends Section 21-101 of the Code of the City of Newton, Kansas, to adopt the 2006 Edition of the Standard Traffic Ordinance for Kansas cities; repeals Section 21-101 of the Code of the City of Newton, Kansas, as previously amended by Section 1 of Ordinance 4539-05; and repeals Section 1 of Ordinance No. 4539-05, is assigned 4590-06, which is contained in Volume Y of Ordinances.

6. Consider a Resolution of Support for the KDOT Safe Routes to School funds.

This Resolution declares the eligibility of the City of Newton, Kansas to submit an application to the Kansas Department of Transportation for use of Safe Routes to Schools funds set forth by SAFETEA-LU for the Safe Routes to Schools Planning Project in the City of Newton, Kansas and authorizes the Mayor to sign the application therefor, is assigned Resolution No. G-955, which is contained in Volume F of General Resolutions.

7. Approve final cost statements for completed project and establish date to conduct public hearing on proposed assessments (September 12 at 7:00 p.m. is suggested):

- | | |
|--------------------------------------|--------------------------------------|
| A. Industrial Park Street | G. Washington Rd SD 13-J (Pizza Hut) |
| B. Windward Drive East | H. Stucky's Addition - Streets |
| C. Cottonwood Heights SD 35-B | I. Stucky's Addition WD 11-E |
| D. Wheatridge Dr./Ct Phase V | J. Stucky's Addition SD 10-T |
| E. Windward Park SD 32-D | K. Stratford Phase 7 - WD 19-G |
| F. Westhaven 4 th SD 10-S | L. Stratford Phase 7 - SD 31-G |

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| M. Stratford Phase 7 - Streets | U. Ragsdale water - WD 2-C |
| N. Wheatridge 2 nd - WD 4-A3 | V. SCS Phase 1 water - WD- 24-B |
| O. Wheatridge 2 nd - SD 30-A5 | W. SCS Phase 1 sewer - SD 15-A |
| P. Victoria Centre stormwater | X. NLS sewer - SD 33-C |
| Q. SCS Phase 1 - WD 24-A | Y. NLS water - WD 22-A2 |
| R. SCS Meadowbrook paving | Z. SCS Phase 1 - streets |
| S. Windward park sewer - SD 32-E | AA. SCS \$2,400 per lot |
| T. Ragsdale sewer - SD 1-B | |

8. Consider a Resolution of Support for residential tax credit application for MRV, Inc.

This Resolution of Support is for a federal housing tax credit application by MRV to construct a 36 unit, multi-family development to be located at the west end of Phase I and Phase II of South Park Apartments, is assigned Resolution No. G-956, which is contained in Volume F of General Resolutions.

MOTION: Commissioner Harris moved and Commissioner Scott seconded to approve the Consent Agenda as presented. Motion carried 5-0.

REGULAR AGENDA

9. Citizen's Forum.

- A. Receive request to close Main Street from 7th Street to 12th Street on September 27 for the homecoming parade.**

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

- B. Receive request to close Broadway from Main to Poplar on September 4 from 1:00-5:00 p.m. for the 1st Annual Band Blow-out and car show.**

Tricia Wells, Mokas, requested to close Broadway from Main to Poplar for a band blowout and car show on September 4 from 1:00-5:00 p.m. If the event goes well, they will continue to do it every year. They have a number of cars and bands already lined up.

MOTION: Commissioner Treaster moved and Commissioner Scott seconded to approve the closure of Broadway on September 4. Motion carried 5-0.

- C. Receive request from the Chamber of Commerce for financial assistance for Taste of Newton.**

Virgil Penner, Chamber CEO, noted the Taste of Newton has become a very expensive event to put on. Last year, the Chamber absorbed a loss of \$1,966 for the event and projects a loss of \$1,400 for the 2006 event. Insurance costs of have gone up as well as electricity costs. The Chamber has doubled the cost a vendor pays for use of electricity, but they are still short. He requested \$1,200 from the City to help cover the costs for this year's event. Bethel College is paying for sound and staging, entertainment as well as the advertising.

MOTION: Vice Mayor Heck moved and Commissioner Scott seconded to approve the request for \$1,200 as presented. Motion carried 5-0.

10. Manager's Update.

- Newton Fire/EMS was recently inspected by the Kansas Board of EMS and received an excellent review.
- The pedestrian bridge at Centennial Park has now been set.
- The League's legislative issues for 2007 include reinstating demand transfers, flexible use of eminent domain, oppose TABOR, protect ability of cities to manage rights-of-way and maintain franchise agreements, and oppose mandated participation in state one-call program.
- The PBC met August 16 and approved the amended maintenance budget. They will meet on the 23rd to approve bids for the irrigation for the athletic fields.
- National Night Out had five neighborhood parties.
- Documentation is in order for the ExTech building at the airport. They will begin their operations in 6-8 months.

11. Receive 2005 audit report.

Jack Blazer, Knudsen Monroe Co., reviewed the 2005 audit report.

MOTION: Vice Mayor Heck moved and Commissioner Harris seconded to approve the 2005 audit report. Motion carried 5-0.

12. Consider the following Ordinances in relation to the operation of natural gas services through the city rights-of-way:

- A. Consider an Ordinance establishing a franchise requirement and payment of franchise fees for the transportation, distribution and sale of natural gas or other energy through the pipelines or distribution systems of others in the public rights-of-way.**

An Ordinance establishing a franchise requirement and a franchise fee for the transportation, distribution and sale of natural gas or other energy through pipelines or distribution systems in the City of Newton, Kansas was considered. City Attorney Myers noted brokers buy capacity on existing natural gas distribution systems and barter sales to individual customers. This diverts sales which the franchised natural gas company would otherwise be making, and circumvents our franchise fee requirements. This Ordinance will create a requirement that natural gas brokers have a franchise and pay a franchise fee to the City as to sales of brokered natural gas to customers in Newton utilizing the natural gas distribution system of others in the public right-of-way. Tim Richards, Community Relations Manager with Kansas Gas Service, was present to answer questions.

MOTION: Commissioner Scott moved that this Ordinance, assigned 4591-06, be approved with the City Attorney given the authority to make technical changes. Commissioner Treaster seconded the motion which carried 5-0. (This Ordinance is contained in Volume Y of Ordinances.)

- B. Consider an Ordinance granting to Kansas Gas Service, a Division of ONEOK, Inc., a franchise to operate a natural gas transmission and distribution system in the City.**

An Ordinance granting to Kansas Gas Service, a division of ONEOK, Inc., its successors and assigns a franchise to operate a system for the transmission and distribution of natural gas within the City of Newton, Kansas; prescribing the terms for said franchise; and repealing Ordinance No. 3845 was considered. This Ordinance is necessary for Kansas Gas Service to operate their natural gas distribution system in Newton utilizing public rights-of-way. The new franchise fee will be 5% of their gross receipts. The Ordinance also authorizes KGS to collect and remit to the City the franchise fee from brokers who are utilizing their system.

MOTION: Commissioner Harris moved that this Ordinance, assigned 4592-06, be approved with the City Attorney given the authority to make technical changes. Commissioner Scott seconded the motion which carried 5-0. (This Ordinance is contained in Volume Y of Ordinances.)

13. Planning Commission

- A. Receive the recommendation of the Newton/North Newton Area Planning Commission for the final plat for Springlake Addition.**

Community Development Director Johnson presented the final plat for Springlake Addition. At the last meeting, the Planning Commission approved the final plat contingent upon the application satisfactorily meeting several requirements, which the developer has met.

- B. Consider approval of a development agreement between Harder Real Estate Development, LLC and the City of Newton.**

The development agreement spells out the commitment of the developer to donate 10.3 acres of land and sidewalk/bikepath to the City for park and recreation land. The developer will also be responsible for the engineering design and cost of construction of the lake/pond in Reserve C and D. Finally, the agreement states the City would pave Old Main to 24th Street at no cost to the Springlake Addition. Some cost would be assessed, however, to the east side of Old Main in Stratford Place Addition. The remainder would be paid by the city at large.

City Manager Heinicke noted staff needed direction from the Commission regarding the paving of Old Main north from Springlake Addition to Turkey Red Addition. With the closure of the Old Main intersection at US-50, extending Old Main south to 24th Street would seem like a timely project and would be another way for traffic to get out. This project could be funded with the revenue from the infrastructure/economic development portion of the sales tax. Right-of-way would need to be obtained for the north quarter mile of paving, but is being dedicated through the development agreement on the south quarter mile. Commissioners felt there needed to be another access and exit point for this area. Consensus was to pave Old Main from its current terminus, all the way south to 24th Street.

MOTION: Vice Mayor Heck moved and Commissioner Scott seconded to approve the Development Agreement as presented. Motion carried 5-0.

C. Consider approval of the final plat for Springlake Addition.

MOTION: Commissioner Scott moved and Commissioner Harris seconded to approve the final plat for Springlake Addition. Motion carried 5-0.

- 14. Consider a Resolution requesting the Planning Commission rezone the Axtell Clinic property from a C-2 (General Business District) to a C-3 (Central Business District) zoning classification.**

A Resolution requesting the Newton-North Newton Area Planning Commission to conduct a public hearing and submit to the governing body of the City of Newton, Kansas, recommendations regarding the rezoning of certain property owned by the City of Newton was considered. Staff is requesting the Axtell Clinic property be rezoned from the current C-2 (General Business District) to a C-3 (Central Business District). Currently, the property does not meet the parking requirements under the C-2 zoning classification.

MOTION: Commissioner Treaster moved and Commissioner Scott seconded this Resolution, assigned G-957, be approved as presented. Motion carried 5-0. (This Resolution is contained in Volume F of General Resolutions.)

- 15. Consider an Ordinance naming the street running parallel to the railroad right-of-way from East 9th Street to East 12th Street as "Old Trail Road."**

An Ordinance designating the name of a certain street in the City of Newton, Kansas, as "Old Trail Road" was considered. There are currently no buildings addressed on this segment of road within the City limits. Changing the name of the road would match the official name of the road once it gets out of the City into Harvey County.

MOTION: Commissioner Harris moved this Ordinance, assigned 4593-06, be approved as presented. Commissioner Scott seconded the motion which carried 5-0. (This Ordinance is contained in Volume Y of Ordinances.)

- 16. Receive a request from Jim Roupp for an exception to a Commission-adopted street paving policy in relation to the proposed development of a tract at 903 North Elm.**

Dick McGlauchlin, realtor, reported Jim Roupp has a contract for sale on this property but has run into a problem because of the street paving policy. In order to build on this property, the street must be paved before issuing a building permit. He also noted no one in the neighborhood wants this street paved.

Steve McCullough, Midwest Land Specialist, noted his client is interested in buying this land near the bike path. There was a snag in the contract because of the paving requirement. They have been told the estimated cost to pave the street would be \$48,000. The cost of this being assessed to the one lot makes the lot economically unusable for housing.

Staff presented options for the Commission to consider: waive the paving requirement; have the City pay 100% of the costs; have the City and Mr. Roupp split the cost based on land

area; let Mr. Roupp pay 100% of the costs. The other lot owners in the area have no interest in signing a petition. The street assessments cannot be forced on the other property owners in this situation. Advantages of paving include: enable productive use of the lot, gets another gravel street paved, promotes infill development, more property taxes and water/sewer revenue for the City, and better public access to Sand Creek. Commissioners inquired the general amount a lot pays for street paving. The typical amount is \$5,000-\$10,000. Commissioners felt \$6,000 for the paving of this street would be a reasonable amount for the owner to pay.

MOTION: Commissioner Treaster moved and Commissioner Scott seconded to direct staff to develop a paving agreement with \$6,000 being the max levied to the property owner for the paving of 903 N. Elm. Motion carried 5-0.

17. Consider a Charter Ordinance amending prior Charter Ordinance No. 35 regarding the exemption of certain public improvement bond financing projects from certain bond election procedures.

A Charter Ordinance of the City of Newton, Kansas, amending Section 2 of Charter Ordinance No. 35 which exempted the City from the provisions of K.S.A. 13-1024a relating to general improvements and the issuance of bonds therefor and provided substitute and additional provisions relating thereto was considered. Certain projects, such as industrial buildings at the airport, can only be financed under a specific statutory provision. The City's bond limit is set at \$750,000 for these projects. Deleting the dollar amount without limitation will alleviate the City from maxing out on projects each year, and place the funding of projects with the judgment of the City Commission instead of an arbitrary limit.

MOTION: Commissioner Treaster moved and Commissioner Scott seconded to approve Charter Ordinance 47. Motion carried 5-0. (This Ordinance is contained in Volume A of Charter Ordinances.)

18. Receive bids and award contract for Asbury Park street and drainage.

City Engineer/DPW Loomis recommended awarding bids to the low bidder, Vogts Construction.

Vogts Construction	\$280,973.80
Kansas Paving	\$304,118.00
Cornejo & Sons	\$338,401.00
Paver's Inc.	\$391,215.00
LaFarge North	\$424,789.43
Engineer's Estimate	\$345,347.95

MOTION: Commissioner Treaster moved and Commissioner Scott seconded to accept the bids and award the contract to Vogts Construction in the amount of \$280,973.80. Motion carried 5-0.

19. Receive bids and award contract for Asbury Park drainage.

Loomis recommended awarding the bid to the low bidder, Hwa-Davis.

Hwa Davis Construction	\$45,631.00
Vogts Construction	\$50,927.40
Dondlinger & Sons	\$62,373.00
Paver's Inc.	\$82,205.50
Engineer's Estimate	\$53,489.50

MOTION: Vice Mayor Heck moved and Commissioner Treaster seconded to accept the bids and award the contract to Hwa-Davis Construction in the amount of \$45,631.00. Motion carried 5-0.

20. Receive bids and award contract for SW 14th Street paving.

Loomis recommended awarding the bid to the low bidder, Kansas Paving.

Kansas Paving	\$1,101,362.30
Vogts Construction	\$1,199,288.20
Cornejo & Sons	\$1,233,706.25
Paver's Inc.	\$1,286,912.90
LaFarge North America	\$1,570,876.82
Smoky Hill	\$1,735,746.41
Engineer's Estimate	\$1,177,483.50

MOTION: Commissioner Harris moved to accept the bids and award the contract to Kansas Paving in the amount of \$1,101,362.30. Vice Mayor Heck seconded the motion which carried 5-0.

21. Old business.

Mayor Nightingale inquired about the handicap parking stalls at Fischer Field. Staff stated two additional spaces can be put in each parking lot. This will be put on the work schedule.

22. New business.

City Manager Heinicke asked the Commission to let staff know if they will be attending the League meeting in October.

Director of Finance/City Clerk Ahsmuhs asked the 2006 special assessments to be certified to the Harvey County Clerk be brought up as a new business item.

MOTION: Vice Mayor Heck moved and Commissioner Treaster seconded to take up the certification of special assessments under new business. Motion carried 5-0.

Annually, certification of payments due on special assessments and uncollected weed mowing charges and sidewalks must be submitted to the County Clerk for collection. The amounts will appear on the 2006 tax rolls and will be received as 2007 revenue to the City.

MOTION: Vice Mayor Heck moved and Commissioner Scott seconded to approve the specials for certification. Motion carried 5-0.

Commissioner Harris inquired if staff could look at a program for paving the dirt streets and the cost for such a program.

23. Adjournment.

There being no further business to come before the Commission, the meeting adjourned at 8:35 p.m.

Mayor

ATTEST:

City Clerk