



**CALL TO ORDER** - The Governing Body met in regular session and the following commission members were present: Mayor Larry Dedede, Mayor Pro-Tem Nancy Bauder, Commissioners Mark Preisinger, Charles Raney and Lisa Weakley.

**Others present:** City Manager Paul Kramer, Assistant City Manager Taylour Tedder, Public Works Director Mike McDonald, Deputy Director Public Works Mike Hooper, City Planner Julie Hurley, Police Chief Pat Kitchens, Finance Director Ruby Maline, Public Information Officer Melissa Bower, City Attorney Tom Dawson, and City Clerk Carla Williamson.

Mayor Dedede opened the meeting with the pledge of allegiance lead by Boy Scouts from Pack 3174, followed by silent meditation.

**PRESENTATIONS AND PROCLAMATIONS:**

**Proclamation:**

**Military Retiree Appreciation Day, October 29, 2016:** Norman Greczyn was present to accept the Proclamation.

**OLD BUSINESS:**

**Consideration of Previous Meeting Minutes** – Commissioner Bauder moved to approve the October 11, 2016 Regular Meeting minutes as presented. Commissioner Raney seconded the motion and was unanimously approved.

**Bids for Demolition of 724-726 Pottawatomie and 728-730 Pottawatomie – Contract No 2016-15 (tabled from February 23, 2016 and September 27, 2016 meetings)** – City Planner Julie Hurley presented for consideration the bids for the demolition of two 4-plex buildings. Staff recommends acceptance of the low bid by Midland Wrecking for \$20,200.00. Bids were as follows:

<u>Company</u>	<u>Bid</u>
Diversified Builders and Developers	\$38,700.00
Remco Demolition	\$21,640.00
Dale Brothers	Not Read Incomplete
Fredrick Excavating	\$38,825.00
Madget Demolition	\$34,000.00
Midland Wrecking	\$20,200.00

Commissioner Preisinger asked City Attorney Tom Dawson if all legal action is complete and ready to move forward. Mr. Dawson said that there was one action set to be dismissed by the court at any time.

Commissioner Preisinger moved to accept the bid from Midland Wrecking for \$20,200.00 for the Demolition of 724 and 726 and 728 and 730 Pottawatomie to remove this blight from the City immediately. Commissioner Raney seconded the motion and was unanimously approved.

**NEW BUSINESS:**

**Citizen Participation:**

Mike Bednarz - 2410 24<sup>th</sup> Street

- Discuss the ordinance not allowing RV and boats in a person’s own driveway

- His boat is smaller than his pickup and not feasible to store it and get it out each week
- Ask that the ordinance be repealed
- Other option to modify the ordinance
  - Allow boats to be parked in driveway or on one's personal property
  - Allow the boats to be kept on property during the summer months/boating season, March – October
- The law does not make any sense
- Has had the boat on his property for 4 years and this is the first time notified of the violation

Mayor Dedek asked the members of the Commission if there is a consensus to bring this back to the Commission to revisit the regulation.

There is a consensus by the Commission to bring this back for further discussion

Police Chief Pat Kitchens

- The American Veterans Traveling Tribute – Vietnam Wall will be at Ray Miller Park October 27-30, 2016
- Wednesday, October 26, 2016 the Patriot Guard will escort the traveling wall to Ray Miller Park
- The tribute will be open 24 hours a day every day from noon on Thursday October 27<sup>th</sup> through Noon on Sunday October 30<sup>th</sup>
- There will be one official ceremony each day
- Home depot donated \$4,600.00 in building materials for walkways

**Resolutions:**

**Resolution B-2151 PHA 2017 Annual Plan (Leavenworth Housing Planters II)** – City Manager Paul Kramer presented for consideration a resolution adopting and submitting the 2017 PHA Annual Plan and Capital Fund Program Annual Statement/Performance and Evaluation Report for the Leavenworth Housing Authority to the US Department of Housing and Urban Development for the operation of Planters II and Section 8.

Commissioner Bauder moved to approve the 2017 PHA Annual Plan by Resolution B-2151 and authorize its submission to HUD. Commissioner Weakley seconded the motion and was unanimously approved.

**Bids, Contracts and Agreements:**

**Consider Lease of City-Owned Property** – City Manager Paul Kramer presented for consideration an agreement between the City of Leavenworth and Don and Sherry Brown owners of The Depot restaurant. The Browns approached the City earlier in the year about purchasing some City owned property adjacent to the south side of their property to be used by their tenant at The Depot restaurant for special events. Since the property is in a floodplain it is not advisable to sell the property but that a lease would be appropriate. A 5-year lease is proposed subject to mutual renewals. They would still have to come back to the City for approval. Attachment A. provided in the agenda packet was incorrect and a corrected copy of Attachment A of the Lease agreement was provided to the City Commission and replaced with the final agreement.

Comments from the Browns:

Sherry Brown

- They found the owner of the property on the west side and they agreed to sell the property to the Browns
- Not sure how many have walked that property; it is most definitely in the flood zone
- Would like to clean up the years of debris and would like to turn it into a park like setting to host community events
- Concerned about the language regarding a 5 year lease
- In 5 years there could be another commission that would not be in favor of continuing the agreement

- If allowed to purchase would allow the City access to the property as needed
- Specific items in the agreement that are concerns:
  - Paragraph 4(i) says the contour could not be changed
  - Paragraph F – no food vendor sales
- The Depot is on the historic register
- They have no plan to and would not put up a fence on the property
- Would like to put in benches and tables

Don Brown

- Clearing and excavating estimates \$12,000 -\$15,000
- Mound of asphalt more than 20 feet high on the property to remove
- Maybe \$20,000 to bring it to the level of appearance that they are looking for
- Language in the lease; City could revert the lease back to the City with 90 day notice
- Understands the risk of flooding
- Would like to purchase the land without the risk of being moved off the property
- Concerned about a different Commission having a different opinion

City Manager Kramer stated that the City's normal procedure is to purchase flood plain properties as they come available and keep them because of the risk associated with floods. The food vendor item of the contract can be removed.

Mayor Dedeke

- Since the City does not own the adjoining property doesn't know why the City would keep it
- Shorter term leases make it difficult to make improvements

Commissioner Preisinger asked about previous properties that are in the floodplains.

Public Works Director McDonald said that we have sold other properties in floodplains. If the property is sold and we have a creek project then the City is open to damages for anything the Browns have improved. Any removal of items from the creek and any plans the Browns have would need to be reviewed and approved.

Mr. Kramer stated that as a default plan, the City does not sell property in a floodplain. But it could be sold.

Attorney Tom Dawson does not believe that the City has to take bids to sell property.

Mayor Dedeke asked for a motion to table the items for further discussion.

Commissioner Weakley moved to table this item and bring it back for further discussion. Commissioner Bauder seconded the motion and was unanimously approved.

### **First Consideration Ordinances:**

**First Consideration Ordinance Special Use Permit – Child Care Center 936 Osage** – City Planner Julie Hurley presented for first consideration on ordinance for a Special Use Permit at 936 Osage for a Child Care Center. The Planning Commission held a public hearing at their October 3, 2016 meeting and voted unanimously to recommend approval of the issuance of the Special Use Permit.

There was a consensus by the City Commission to place on first consideration.

**First Consideration Ordinance Special Use Permit – Communications Tower Olive Street** - City Planner Julie Hurley presented for first consideration on ordinance for a Special Use Permit on Olive Street for a Communications Tower.

The Planning Commission held a public hearing at their October 3, 2016 meeting and voted unanimously to recommend approval of the issuance of the Special Use Permit. Neighboring property owners spoke in opposition of the granting of the Special Use Permit at the Planning Commission meeting. The Development Regulations require a minimum 105-foot setback for a 100 foot tower. The setback would not be met if the tower is erected at the proposed site but an exception can be made.

Mayor Dedeke asked for clarification in a recent issue with the County regarding a cell tower. A federal law prevented them from stopping the action.

City Attorney Tom Dawson stated that he would need to do some further research on the federal laws regarding cell towers.

Mayor Dedeke asked for comments from the public:

Comments in Favor:

Scott Goble – applicant representing the owner of the property:

- Clarify the minutes from the PC minutes – T-Mobile is on an existing tower and that existing tower is at capacity and overcapacity; this proposed tower would offload the current density that is being experienced.
- One of the concerns is that one of the adjoining properties is on the National Historical Registry
- They have taken this under consideration and that the tower will not affect the historic property
- One of the regulatory criteria is that they must get a letter from the Kansas State Historical Preservation Office
- Tower cannot be built without the letter from the Kansas State Historical Office
- Concerns about the alley and construction
- Owner is agreeable to relocating the access to the tower site; a map handout was provided to the City Commission showing the new proposed access point
  - Could use Railroad Avenue as the access to the cell site.
- A lot of activity for about 30 days during construction after that there will be minimal traffic to the tower site

Comments Opposed:

Dr. William Allen owner of 714 S Broadway

- Property is on the National Register of History Places and it is important that approval is not just from Kansas but from the National Registry of Historic Places
- Concerned with the radiation that would come from this type of structure
- Concerned that his property could be subjected to radiation

Bernie Bristow owner of 784 Spruce Street

- Provided documents and collected signatures from other property owners in opposition
- Glad Mr. Goble has considered an alternate access to the site
- Set back is not all that is involved; Criteria item #3 also discusses the fall zone and value of other property
- This will increase the chance of co-location
- Public Right of way is in the fall zone
- Alley is used by residents to walk; all in the fall zone
- Property Values; Realtors Magazine- buyers less interested or would pay less for anything near a cell tower
- Cell tower is in revitalization area; why put at risk values of homes in the revitalization area
- County issue and cell tower; this is what got him involved; county was unable to block the cell tower
- Respectfully ask that the commission deny this permit

Mayor Dedeke asked Mr. Bristow if he would still be opposed if it met the setback and fall zone.

Mr. Bristow replied that he would still be opposed because of the property values.

Pernell Peters owner of 722 Broadway

- New to the area just bought his house
- Loves Victorian homes; paid a premium for a Victorian home in a historic neighborhood
- Does not want a cell tower that will affect the property

Commissioner Preisinger would like to see the one thing and that is the requirements for the Historical letters. Does not think we should get involved until we know if it could even happen.

Commission agreed that they want to know more about the legislation regarding cell towers.

Commissioner Preisinger moved to table the items for further information. Commissioner Bauder seconded the motion and was unanimously approved.

**First Consideration Ordinance Consideration of Ordinance requiring two considerations** – City Clerk Carla Williamson presented for first consideration on ordinance regarding passing of ordinances. At the October 4, 2016 Study Session there was a consensus by the City Commission to formally adopt an ordinance requiring two considerations except for emergencies. The proposed ordinance states that an emergency would be determined and declared by a majority vote of the Governing Body.

There was a consensus by the City Commission to place on first consideration.

**CONSENT AGENDA:**

Claims for October 8, 2016 through October 21, 2016 in the amount of \$936,561.26; Net amount for Pay #21 effective October 14, 2016 in the amount of \$299,240.09 (No Fire & Police Pension). Commissioner Raney moved to approve the consent agenda, as presented. Commissioner Preisinger seconded the motion and was unanimously approved.

**Other Items:** none

**Adjourn** – Commissioner Preisinger moved to adjourn the meeting. Commissioner Raney seconded the motion and was unanimously approved.

Time Meeting Adjourned 8:27 p.m.

Minutes taken by City Clerk Carla K. Williamson, CMC