

**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
May 6, 2013**

The City Council of Prairie Village, Kansas, met in regular session on Monday, May 6, 2013, at 7:30 p.m. in the Council Chambers of the Municipal Building.

ROLL CALL

Council President Dale Warman called the meeting to order and roll call was taken with the following Council members present: Ashley Weaver, Ruth Hopkins, Steve Noll, Michael Kelly, Andrew Wang, Laura Wassmer, Brooke Morehead, Charles Clark, David Morrison, Ted Odell and David Belz.

Also present were: Wes Jordan, Chief of Police; Keith Bredehoeft, Interim Public Works Director; Katie Logan, City Attorney; Quinn Bennion, City Administrator; Dennis Enslinger, Assistant City Administrator; Lisa Santa Maria, Finance Director , Danielle Dulin, Assistant to the City Administrator and Joyce Hagen Mundy, City Clerk.

Dale Warman led all those present in the Pledge of Allegiance. Mr. Warman announced that Mayor Shaffer is unable to attend this evening's meeting due to a family emergency.

PUBLIC PARTICIPATION

Chuck Dehner, 4201 West 68th Terrace, expressed his loss of confidence in the City Council and government. He believes government should serve the needs of the residents and not the elite developers. Mr. Dehner repeated earlier challenges to the statement made by Lane4 in regard to both the CID developments at Corinth Square and Prairie Village Shopping Centers. He opposes the funding they are receiving through the CID agreement and feels they are in breach of this agreement and that the City should bring legal action. Mr. Dehner asked

that his comments be included as part of the official record; however, written comments were not submitted to the City Clerk.

With no one else to address the Council Public Participation was closed at 7:45 p.m.

CONSENT AGENDA

Charles Clark moved the approval of the Consent Agenda for May 6, 2013:

Approve the Regular Council Meeting Minutes - April 15, 2013

Approve Claims Ordinance 2905

Ratify the Mayor's appointment of Dianne Pallanich to the Parks & Recreation Committee with her term expiring in April 2015

Approve the following contracts for VillageFest 2013; Chris Cakes for the pancake breakfast (\$3.25/plate), American Waste Systems for the stage (\$827.00) and A-Z Exotic Animal Entertainment for the petting zoo and pony rides (\$1,950.00)

Authorize the Mayor to execute the following proclamations:

May 1, 2013 - Cold War Victory Day

May 5-11, 2013 - Municipal Clerk's Week

May 12-18, 2013 - National Police Week

Approve the bid award for swimming pool chemicals to Edwards Chemical, Inc.

Approve the request to have KCP&L install a new street light at 8136 Ash Street

A roll call vote was taken with the following members voting "aye": Weaver, Warman, Hopkins, Noll, Kelly, Wang, Wassmer, Morehead, Morrison, Clark, Odell and Belz.

MAYOR'S REPORT

There was no Mayor's Report as Mayor Shaffer was absent due to a family emergency; however, he noted the Mayor's active involvement in the community as is reflected in his report at each meeting.

COMMITTEE REPORT

Council Committee of the Whole

COU2013-17 Consider Contract with Little Joe's Asphalt, Inc. for 2013 Street Repair Program

On behalf of the Council Committee of the Whole, Charles Clark moved the City Council authorize the Mayor to execute the construction contract with Little Joe's Asphalt, Inc. for Project P5001: 2013 Street Repair Program in the amount of \$173,000. The motion was seconded by Ruth Hopkins and passed unanimously.

Planning Commission

PC2013-111 Consider Final Plat for Prairie Village Shopping Center

Dennis Enslinger reported that on April 2nd, the Planning Commission reviewed and approved the preliminary and final plats for the Prairie Village Shopping Center subject to seven conditions. The new plat does not include the UMB Bank and Service Station properties. With the withdrawal of these properties, the vacation will only be for Mission Lane between Prairie Lane and Mission Road. Prairie Lane and a portion of Mission Lane will remain public streets. The owner of the Prairie Village Center, through a separate agreement with the City to be considered under New Business, will maintain the public right-of-way for Prairie Lane and the small portion of Mission Lane not being vacation under the plat.

Mr. Enslinger stated the plat has been approved and the Council action is only the acceptance of the easements and rights-of-way reflected on the plat and the vacation of Mission Lane.

Laura Wassmer asked for clarification on the construction of the trail/sidewalk. Mr. Enslinger responded the plat has an 8-foot easement per the Planning Commission conditions, but noted this does not require the construction of an 8-foot sidewalk. The construction of the sidewalk is governed by the site plan which has already been approved by the Planning Commission and is a variable width sidewalk that will all fall within the platted 8-foot easement.

Michael Kelly asked for clarification on the Mission Lane vacation. Mr. Enslinger noted at one point in time Mission Lane was part of Mission Road and as such designated as a public street. The City does not feel it should be responsible for street located within a private development. The intent of the CID agreement was to remove the City from any responsibility for maintenance of this currently public street. Since the entire street cannot be vacated on the plat, the property owners have agreed to an agreement with the city whereby they will be responsible for the maintenance of the portion to remain public.

Laura Wassmer confirmed that includes any reconstruction. Mr. Enslinger noted that once the proposed improvements to Mission Lane are finished any further maintenance or improvements cannot be submitted under the CID agreement.

Brooke Morehead asked if Starbucks has a signed lease for the new retail building. Mr. Enslinger responded that as of last week it did not. He noted the conditional use permit for the drive-thru has been approved and is a separate issue unrelated to the plat approval.

Mrs. Morehead asked if the developer will be constructing an 8-foot trail. Mr. Enslinger responded the Planning Commission has approved a proposed variable width sidewalk as part of the approved site plan. Staff has attempted to work with the applicant and designed a possible 8-foot trail throughout. Staff has concerns with the maintenance of a 2-foot landscape area. He noted the construction of an 8-foot trail throughout could be done at no greater cost.

Michael Kelly questioned why the developer is not in violation of the CID agreement when the intent of the agreement was for the construction of an 8-foot trail throughout. Mr. Enslinger responded the provisions of the CID agreement do not specifically state an 8-foot trail is to be constructed, it states a pedestrian trail. Mr. Kelly noted he felt the CID agreement was not negotiated in good faith by the developer and noted the only reason to accept the 8-

foot easement is to provide for possible future construction of an 8-foot trail as the plat stays with the land regardless of ownership.

Ruth Hopkins stated there has been a lot of discussion on sidewalks and trails by the Council with the Council not consistently building 8-foot sidewalks. She feels it would be hypocritical to hold the developer to a higher standard than the city.

Laura Wassmer stated the trail system was part of the Parks Master Plan. She noted the Park & Recreation Committee does not support the construction of 8-foot trails at all locations. She stated she continues to hear residents asking for more green space, not more concrete sidewalk.

David Morrison questioned how there is not a breach of the CID agreement when all of Mission Lane is not being vacated. City Attorney Katie Logan responded the purpose of the vacation was to remove the city from responsibility for maintenance and this will be accomplished by the proposed maintenance agreement.

Ted Odell stated he believes the plat should show an 8-foot easement.

Curtis Petersen, with Polsinelli Shughart, 6201 College Blvd. representing the ownership group, requested the City Council remove condition #2 requiring an 8-foot trail easement to be shown on the east side of Mission Road. He stated their objection is not related to cost acknowledging that adding additional concrete would cost less than maintaining planting landscape and trees as proposed. He noted their sidewalk design reflects what they feel is the best option given the overall development puzzle for this project. He noted that 7 to 8-foot sidewalks make up more than half of the proposed sidewalk. The construction of 8-foot pedestrian limits their landscaping potential for the project. He feels the proposed trail width will sufficiently address pedestrian needs. When the city's tree board reviewed their landscape plan last week, they recommended having more green space. They are requesting a revision

to the plat trail easement from 8-feet to 6-feet or stated that they would file a separate agreement designating the trail easement as they plan to construct the trail and not reflect the easement on the plat.

Laura Wassmer asked what the downside was of having an 8-foot easement. Mr. Petersen responded an 8-foot easement would severely limit what could be placed in the green space and in the patio area could not be constructed over the easement.

Michael Kelly asked if it was not a cost issue, why they were not willing to construct the 8-foot pedestrian trail as intended by the CID agreement. Mr. Petersen noted the importance of the parking for Hen House customers and the tension created in the overall project. Mr. Kelly noted the loss of parking and tension is being created by the expansion of the Hen House.

Ted Odell asked if the Council changed the recommendation if the plat would need to go back to the Planning Commission. Mr. Enslinger responded the Council could make the changes as it is the body that accepts easements. He added staff has offered a lot of alternatives to the developer that would accommodate an 8-foot pedestrian trail. If something other than an 8-foot easement is approved, there could not be an 8-foot trail constructed in the future. This is the city's only opportunity to ensure that option in the future and is the strong recommendation of staff.

David Belz noted if the developer does not have to build an 8-foot trail, why they are requesting the easement be removed. Mr. Petersen stated they believe theirs is the best design for the project.

Laura Wassmer questioned the benefit of an 8-foot easement when the site plan has already approved the construction of the proposed trail which is less than 8 feet. Dennis Enslinger responded the Council directed staff to look at options for an 8-foot trail. These have

been presented to the developer. The designation of an 8-foot easement does not limit the proposed designed sidewalk. Approving the plat as recommended will not change the design. However, he noted the development and ownership of this property will change over the years and if the City ever wants an 8-foot pedestrian trail, now is the time to include an easement on the plat that would allow for future construction.

Brooke Morehead stated she is bothered visually by the proposed variable width trail and would prefer to see a single width. Mr. Enslinger noted staff is doing what it has been asked to do in representing the best interest of the City.

Andrew Wang asked if landscaping would not be provided if an 8-foot easement was required. Mr. Petersen stated they will do what the city wants for landscaping; however, he noted a bigger issue is the impact on the construction of the patio area in the new retail building as you cannot construct a permanent structure over an easement.

Charles Clark moved the City Council authorize the Mayor to execute the Final Plat for the Prairie Village Shopping Center at 71st Street and Mission Road accepting easements and rights-of-way subject to the following conditions: 1) that the trail easement for Tomahawk Road be noted as Section 7.04 of the CID Agreement to be shown on the plat as it was on the previous plat, 2) that an eight-foot Trail Easement be shown on the east side of Mission Lane, 3) that the KCP&L line running across Lot 2 be installed underground, 4) that Tract A be dedicated as a utility and cross access easement in the text of the plat, 5) that the text on the UMB lot be removed, 6) that the applicant submit the Final Plat to the Johnson County survey for review and 7) that the Final Plat as approved be revised and three copies submitted to the City for their records. The motion was seconded by David Morrison.

Laura Wassmer asked if a 7-foot easement would remove the problems with the outdoor patio.

Owen Buckley with Lane4 stated they did not feel two feet more or less of sidewalk would be noticeable in the big picture of the project. They want to have the luxury of the addition space for landscaping.

Michael Kelly stated he would be voting no and questioned the ability of the City to enforce its own agreement. Mr. Enslinger responded the proposed plat represents the best interests of the City. If it is not approved, the city will have no ability to secure an 8-foot pedestrian trail now or in the future.

Ted Odell reminded the Council they are looking at the plat only and that they do not know what will be on that property 50 years from now.

David Belz stated he would be voting in support to provide the city the option for a future 8-foot pedestrian trail.

Laura Wassmer does not supporting limiting the current project for future possibilities.

Ruth Hopkins agreed with Ms Wassmer and noted the width of the pedestrian trail was not specifically addressed in the agreement. Mr. Enslinger responded the CID agreement was negotiated based on assumptions noting that most of the pedestrian sidewalks within the center are 8 feet in width or greater. He added the plat has been approved, the issue before the Council is the acceptance of easements and rights-of-way. If this motion is defeated there will be no easements or vacation of rights-of-way included on the approved plat.

The motion was voted on and failed due to a lack of a majority with a 6 to 6 tie with the acting chair voting as a Councilmember which is allowed by City Code.

Laura Wassmer moved to authorize the Mayor to execute the Final Plat for the Prairie Village Shopping Center at 71st Street and Mission Road accepting easements and vacation of rights-of-way subject to the following conditions recommended with condition #2 being

amended to reflect a 6-foot trail easement instead of an 8-foot trail easement. The motion was seconded by Ruth Hopkins. The motion was voted on and failed by a 3 to 9 vote.

Dennis Enslinger stated that failure to approve the plat places the City in violation of the CID agreement which required the vacation of Mission Lane.

Curtis Petersen stated the developer needs action this evening and stated they were willing to accept the 8-foot easement with the Council directing staff to investigate options for the construction of the patio. Dennis Enslinger state staff would look at alternatives, but noted the City Council cannot alter an approved site plan. Michael Kelly asked it the application would go back to the Planning Commission. Mr. Enslinger stated on minor issues staff works with the applicant; however, if an agreement cannot be reached that meets the intent of the original approval, the application would be sent back to the Planning Commission.

Charles Clark moved reconsideration of the original motion with the additional direction that staff works with the applicant on options for the construction of the outdoor patio for the new retail building. The motion was seconded by David Belz and voted on with the motion passing by a 7 to 5 vote. *Note: this vote was later revisited.

STAFF REPORTS

Public Safety

- Chief Jordan announced that the police officers will be participating in Tip-a-cop next Thursday, May 16th at Johnny's to raise funds for Special Olympics
- 2013 Citizen's Police Academy will begin September 18th and continue for 11 weeks on Wednesday evenings.
- The department will have emergency vehicle training at the Speedway in May and July. Council members were invited to attend and participate.

Public Works

- Crews are filling the pools in preparation for their opening at the end of the month.
- There is currently construction work on 63rd Street by WaterOne and Kansas Gas is also replacing a line. The city will begin its project when their work is complete.
- Bids will open this Friday for the 2013 Paving, CARS and Storm Drainage Projects.

Administration

- Dennis Enslinger reported that work has begun on the Mission Lane Project.
- There will be several large construction projects underway this summer including work at Indian Hills Middle School, Kansas City Eye Clinic, St. Ann's Expansion as well as continuing work at the shopping centers.
- Standees is planning to open Memorial Day weekend.
- KOMA training is being offered by the District Attorney's office on June 6th.
- The State Legislature is back in session -the primary focus will be the adoption of a budget.
- The Planning Commission will hold a public hearing on the Mission Valley project tomorrow evening, May 7th at 7 o'clock at The Village Church. In anticipation of a lengthy hearing, the hearing will be continued to the June 4th meeting of the Commission for action.
- Danielle Dulin announced that the city has still not hired a synchronized swim coach.
- Lisa Santa Maria reviewed the first quarter financial report for 2013 reporting that revenue was at the anticipated level.
- The budget simulator is now on-line. 45 people have used the simulator reflecting that they are satisfied with current status. The demonstration of the simulator scheduled for this evening will be done at a later meeting.
- Katie Logan reminded the Council of the importance of their not taking a position on the upcoming zoning issue and to remain open and objective. Any Council member who has openly pre-judged or declared how they will vote should recues themselves from action when the issue comes before the Council. Ms Logan stated to do otherwise places the decision made by the Council in jeopardy during a legal challenge.
- Ms Logan will review at the next meeting the recently adopted gun House Bill 8052. The provisions of the bill do not become effective until July 1, 2013. She noted the city can exempt from metal checks, but there must be other procedures in place.

Brooke Morehead suggested individuals sign in at the reception station when they enter City Hall and indicate who they are meeting with.

Chief Jordan responded the police department is currently working a security analysis of the building. He noted the biggest challenge is the large number of people in the building for court procedures. Staff will be discussing this item in the near future.

- Quinn Bennion announced congratulations to Deputy City Clerk Jeanne Koontz on her recent graduation from KU with her MPA degree.
- Notify JoCo is up and running. The city has posted several messages through the system. If council members are not signed up, they are missing messages.
- Committee assignments have been made by the Mayor and distributed. These assignments begin immediately.
- The Public Works Director Search is underway. Council members will be contacted by Mr. Mercer for their input.

OLD BUSINESS

Reconsideration of PC2013-111 Final Plat for Prairie Village Shops

The City Attorney advised that the motion to reconsider made earlier in the meeting was invalid as a motion to reconsider needs to be made by an individual on the prevailing side of the motion. Mr. Clark voted in favor of the motion which failed for failure to secure a majority vote. The motion needs to be made by an individual voting in opposition to the original motion.

Ruth Hopkins confirmed that a different motion could be made on the issue.

Ruth Hopkins moved the City Council authorize the Mayor to execute the Final Plat for the Prairie Village Shopping Center at 71st Street and Mission Road accepting easements and rights-of-way subject to the following conditions: 1) that the trail easement for Tomahawk Road be noted as Section 7.04 of the CID Agreement be shown on the plat as it was on the previous Final Plat, 2) that a separate document be filed showing the easement as the trail has been proposed to be constructed by the developer, 3) that the KCP&L line running across Lot 2 be installed underground, 4) that Tract A be dedicated as a utility and cross access easement in the text of the plat, 5) that the text on the UMB lot be removed, 6) that the applicant submit the Final Plat to the Johnson County surveyor for review and 7) that the Final Plat as approved be revised and three copies submitted to the City for their records. The motion was seconded by Laura Wassmer.

Steve Noll confirmed that those would be the permanent easements on the plat.

The motion was voted on and failed by a vote of 3 to 9.

Ruth Hopkins moved the City Council authorize the Mayor to execute the Final Plat for the Prairie Village Shopping Center at 71st Street and Mission Road accepting easements and rights-of-way subject to the following conditions: 1) that the trail easement for Tomahawk Road be noted as Section 7.04 of the CID Agreement be shown on the plat as it was on the

previous Final Plat, 2) that an eight foot Trail Easement be shown on the east side of Mission Lane, 3) that the KCP&L line running across Lot 2 be installed underground, 4) that Tract A be dedicated as a utility and cross access easement in the text of the plat, 5) that the text on the UMB lot be removed, 6) that the applicant submit the Final Plat to the Johnson County surveyor for review and 7) that the Final Plat as approved be revised and three copies submitted to the City for their records. The motion was seconded by David Belz and passed by a vote of 7 to 5.

NEW BUSINESS

Consideration of Request by PV Retail Partners, LLC to enter into a Right-of-Way Maintenance Agreement to comply with the intent of the Prairie Village Community Improvement District Development Agreement.

Ruth Hopkins moved the City Council authorize the Mayor to execute the Right-of-Way Maintenance Agreement provided for by PV Retail Partners, LLC. The motion was seconded by Charles Clark and passed by an 8 to 4 vote.

ANNOUNCEMENTS

Planning Commission (6641 Mission Road)	05/07/2013	7:00 p.m.
Parks & Recreation Committee (Porter Park)	05/08/2013	6:00 p.m.
JazzFest Committee (3304 W. 71 st Street)	05/09/2013	7:00 p.m.
Sister City Committee	05/13/2013	7:00 p.m.
Prairie Village Arts Council	05/15/2013	7:00 p.m.
Council Committee of the Whole	05/20/2013	6:00 p.m.
City Council	05/20/2013	7:30 p.m.

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The Prairie Village Arts Council is pleased to announce a photography exhibit by Jacia Humiston in the R.G. Endres Gallery for the month of May. The reception will be held on Friday, May 10th from 6:30 to 7:30 p.m.

Recreation memberships are on sale in the City Clerk’s Office. The pool opens on Saturday, May 25th at 11:00 a.m.

The City offices will be closed on Monday, May 27th in observance of the Memorial Day Holiday. Deffenbaugh also observes this holiday so trash pick-up will be delayed one day.

ADJOURNMENT

With no further business to come before the City Council, the meeting was adjourned at 9:50 p.m.

Joyce Hagen Mundy
City Clerk