

**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
August 3, 2015**

The City Council of Prairie Village, Kansas, met in regular session on Monday, August 3, 2015 at 7:30 p.m. in the Council Chambers at the Municipal Building, 7700 Mission Road, Prairie Village, Kansas.

ROLL CALL

Mayor Laura Wassmer called the meeting to order and roll call was taken with the following Council members present: Ashley Weaver, Jori Nelson, Ruth Hopkins, Steve Noll, Andrew Wang, Brooke Morehead, Sheila Myers, Dan Runion, David Morrison, Ted Odell and Terrence Gallagher.

Staff present was: Tim Schwartzkopf, Chief of Police; Keith Bredehoeft, Public Works Director; Katie Logan, City Attorney; Quinn Bennion, City Administrator; Wes Jordan, Assistant City Administrator; Nolan Sunderman, Assistant to the City Administrator; Lisa Santa Maria, Finance Director and Joyce Hagen Mundy, City Clerk. Also present was Chris Brewster, City Planning Consultant.

Mayor Laura Wassmer led all present in the Pledge of Allegiance.

INTRODUCTION OF STUDENTS & SCOUTS

Mayor Wassmer welcomed Boy Scouts from Troops 234 and 91 attending the meeting to earn a Citizenship badge.

PUBLIC HEARING - 2016 Budget

Adoption of the 2016 Budget for the City of Prairie Village

Finance Director Lisa Santa Maria reviewed the process followed in the preparation of the City's 2016 budget. The proposed budget of \$29,173,409 reflects the following goals: 1) maintain high quality services and programs, 2) maintain quality streets, parks and infrastructure, 3) continue strong financial condition, 4) maintain AAA bond rating, 5) increase financial transparency and 6) Increase citizen participation in budget issues.

The 2016 budget is balanced with the existing mill levy rate of 19.493 and maintains the same level of services with enhancements to 1) Capital Infrastructure Program to \$4.09 million; 2) Increased Parks & Grounds fund by \$10,000 for tree removal and maintenance and 3) Converted seasonal Codes Enforcement Officer position to full time. There is a nominal overall increase in the 2016 General Fund department budgets of 1.5%.

The stormwater utility fee rate remains at the current rate of \$0.040/square foot of impervious area and the annual household assessment for Solid Waste Management services remains the same at \$174.00. A 5.1% increase for property & casualty Insurance and a 6.7% increase for worker's compensation insurance. Fuel costs decreased from \$3.75 per gallon to \$3.25 per gallon. The employee merit pool remained at 3.5%. The anticipated ending fund balance is 25% with a general contingency fund of \$500,000.

The 2016 budget includes a transfer of \$4.09 million from the General Fund to the Capital Improvement Program (CIP). The total CIP budget for 2015 is \$7,172,521.

Ms. Santa Maria reviewed a chart reflecting the taxes paid by the average Prairie Village household in 2015 reflecting that of the taxes assessed only 16% were for the City of Prairie Village for an annual cost of \$522.

A comparison of the city's mil levy with other Johnson County cities was also presented. The 2016 budget needs to be approved and submitted to the County Clerk by August 25th.

Mayor Wassmer opened the public hearing for questions from Council members and comments from the public.

Dan Runion asked when the current bonds were expected to be paid off. Mrs. Santa Maria replied they would be paid off in 2021. A resident asked for clarification of the stormwater utility fund. The public hearing was closed at 7:40 p.m.

Steve Noll moved the City Council adopt the 2016 budget as presented in the amount of \$29,173,409. The motion was seconded by Andrew Wang and passed unanimously.

PUBLIC PARTICIPATION

David Wooldridge, 2115 Somerset, began to speak regarding the Planning Commission application before the City Council. Mayor Wassmer advised him that item would be discussed later in the meeting.

Doris Bricks, 4909 West 79th Terrace, asked if the City was providing any support to residents regarding trees with Emerald Ash Bore. Keith Bredehoeft reviewed the city program for trees on city property and right-of-way. There is no program to address trees on private property. The city does have information.

With no one else wishing to address the Council, public participation was closed at 7:45.

Mayor Wassmer welcomed Michelle DeCicco and Karen Torline, municipal judge appointees who provided a brief background of their experience to the Council.

CONSENT AGENDA

Council President Brooke Morehead moved for the approval of the Consent Agenda for August 3, 2015:

1. Approve regular City Council Minutes - July 20, 2015.
2. Approve Claims Ordinance #2931
3. Ratify the Mayor's appointment of the following City Officials:

Michelle A. DeCicco	Municipal Judge
Karen L. Torline	Pro Tem Municipal Judge/Prosecutor

A roll call vote was taken with the following members voting "aye": Weaver, Nelson, Hopkins, Noll, Wang, Myers, Morehead, Runion, Morrison, Odell and Gallagher.

COMMITTEE REPORTS

Council Committee of the Whole

COU2015-30 Consider approval of a resolution setting the date for a public hearing for the creation of a redevelopment district (TIF District) for the Meadowbrook Project

On behalf of the Council Committee of the Whole, Council President Brooke Morehead moved the City Council approve Resolution 2015-02 setting the date for a public hearing on the creation of a Redevelopment District (TIF District) for the Meadowbrook Project. The motion was seconded by Andrew Wang and passed unanimously.

Planning Commission

PC2015-08 Consider a request for the rezoning of 7930 State Line Road from R-1b and C-0 to CP-1 "Planned Restricted Business District"

Chris Brewster, City Planning Consultant, stated that at its regular meeting on June 2, 2015, the Planning Commission held a public hearing on the request for rezoning of the property at 7930 State Line Road from R-1B Single-Family Residential District and C-0 Office Building District to CP-1 Planned Restricted Business District.

This property is located south of the Panda Express which was rezoned to CP-1 in 2007. The property is currently occupied by an office building. The parcel has 100 feet of frontage on State Line Road and has a depth of 651 feet along the south property line. The parcel has an irregular boundary and contains approximately 1.37 acres. The site plan is laid out to account for the limited size and irregular shape of the parcel. The plan has added additional landscape area and fencing over what exists, which will allow for more landscaping to provide more screening for adjacent residents as well as reduce stormwater runoff. The increase in traffic would be spread out over the day causing less congestion than the current peak office hour traffic. As a main arterial with multiple lanes, State Line Road can accommodate the traffic.

The city's lighting code requirements prohibit any overflow lighting onto adjacent properties. The car lights would be screened by the proposed fence. Odors and noise from the operation are issued addressed in the conditions to be addressed by the owner.

The general character of this area is businesses on both sides of State Line Road. Culvers, Wendy's, CVS Pharmacy and McDonald's are located on the east side of State Line Road and all four have drive-through windows. There are residential uses to the northwest of this property which have their rear yards adjacent to this site. To the south are offices. The immediate area to the north is developed with restaurants and retail uses.

The applicant proposed to construct a 3,564 sq. ft. building that will be setback approximately 80 feet from the front property line. The required front yard setback in the C-1 District is 15 feet. The restaurant will have a seating capacity of 122 which will require 49 parking spaces. Both driveways on State Line Road will be retained. The north drive will have an entrance while the south drive will be a two-lane exit.

Several persons were present at the initial public hearing from the adjacent residential properties to the west expressing concerns with the existing “Panda Express” operation immediately to the north. The Planning Commission continued the application to their July 7th meeting directing the applicant to meet with the neighboring property owners to address the several concerns raised - specifically drainage, lighting, traffic, smell and noise.

At the July 7th Planning Commission meeting the applicant presented revised plans addressing the concerns stated at the June 2nd meeting. Neighboring residents were in attendance and once again spoke in opposition to the proposed rezoning.

The Planning Commission found favorably on the Golden Factors and recommends the Governing Body approve the request for rezoning of 7930 State Line Road from R-1b and C-0 to CP-1 subject to 15 conditions required by the Planning Commission addressing the concerns expressed by the residents.

Sheila Myers asked if deliveries and or trash services would occur before 7 a.m. Wes Jordan replied that they would not be allowed to do so by the city’s code. Mitch DeCarlo stated it was his understanding that cleaning and deliveries would occur in the morning but not prior to 7 a.m. Chris Brewster stated trash services throughout the city are allowed at 7 a.m.

Mrs. Myers stated she strongly believes that drive-through services should not be allowed on property adjacent to residential property. She noted that five homes that previously backed to an office building will now have to contend with drive-through traffic until 10:30 in the evening.

Dan Runion asked if the traffic study was done by the applicant. Mr. Brewster responded that it was and the study was reviewed by the city’s traffic engineer.

Terrence Gallagher asked if additional odor filters were being required. Chris Brewster responded that would be addressed as part of the approval of the final development plan. Mr. Gallagher noted that currently there is a strong wind drift of odors from the adjacent site. Mr. Brewster noted that condition #13 requires the installation of filters to address odor concerns.

David Morrison asked if a noise decibel limit was set for the drive-through. Wes Jordan replied the city's code does not have stipulated decibel ratings required for noise. There was significant discussion of this issue by the Planning Commission. The proposed location of the drive through on the south side, farthest from residential properties was done to minimize volume as well as the addition of the fence and landscaping to buffer sound.

Jori Nelson stated she visited the "Slim Chickens" located in Independence and it did not emit an odor outside the building and appeared to be a well run operation. She did notice sounds of operation that could be muted.

Sheila Myers asked how much sound barrier a wooden fence would provide and if a sound reduction fence could be installed. Chris Brewster replied studies have found that landscaping provides a better buffer to sound than hard surfaces.

Mayor Wassmer asked if there was space available to plant large evergreens. Mr. Brewster noted that space is available and that a landscape plan would be required with the final development plan. The site plan reflects a larger buffer area that is required by code.

David Wooldridge, 2115 Somerset Drive, noted that from his property he can write the orders taken from the current drive-through at Panda Express. Previously on this site were three quiet office buildings. Mr. Wooldridge stated that on July 19th he

called the police department to report loud noise from the Panda Express location. The police appeared and advised him that they had spoken to the workers and they had finished their work. At 2 a.m. he again called the police department to report loud banging on the dumpsters. The police responded and asked him if he would like to file a complaint, which he did. Mr. Wooldridge acknowledged the revenue received by the city from commercial/retail operations; however, he feels it is the city's duty to protect its residents from the encroachment of excessive noise, late hour activity, and snow removal noise. The drive-through is intrusive and the traffic study should have been conducted by an independent party, although it was endorsed by city staff.

Mitch DeCarlo, representing Block & Company, the property owner and agent for Slim Chickens expressed appreciation to the city staff for their cooperation in addressing the issues raised at the first Planning Commission meeting. He noted that several changes were implemented by the applicant in response to those comments. The hours of operation, although generally extending to 10:30 p.m., were reduced to 10 p.m. Changes were made to the site plan adding additional landscape buffer, revising the location of the drive through to be as far from the residential properties as possible, while maintaining sufficient space to prevent vehicle stacking on State Line Road.

Jori Nelson asked why they were proposing a double drive-through and asked if it could be changed to a single lane drive-through. She added that she felt the city should adopt a decibel driven noise ordinance.

Jeff Bartz with BHC Rhodes, explained that even though there are two lanes, there is only one window operator. There would not be noise coming from both speakers at the same time. The purpose of the dual lanes is to be able to process

orders more quickly minimizing the noise caused by multiple cars idling in the drive-through lane. The dual lanes also prevent vehicle stacking on State Line Road.

Mitch DeCarlo Slim Chickens operation is more orientated to walk-in service than drive-through with approximately 60% of business done inside their facility; however, drive-through service is a fast food industry requirement of the public.

Mr. DeCarlo stated the eight foot fence would prevent any headlight shining into the adjacent residential properties. Mr. Bartz added there are evergreens proposed along the entire back property line. Mayor Wassmer asked if the proposed evergreens were "Green Giant" evergreens that are known for their rapid growth and coverage.

David Morrison asked if the applicant would agree to maintaining a maximum decibel level. Mr. Jordan noted that the city does not have decibel requirement for noise emissions nor the equipment to read decibel levels; although a decibel rating was required for the HVAC equipment at Village Church and measured with borrowed equipment. Mr. Morrison asked if the city did adopt a code with maximum noise decibels if it would apply to all properties or would existing properties be grandfathered. The City Attorney responded it would apply to all properties.

Wes Jordan advised the Council that the issues with Panda Express operations had not been brought to the attention of the city police department or codes department until the public hearing on June 2nd. The city has spoken with representatives of Panda Express and they are currently addressing the issues raised and a fence permit has been issued.

Sheila Myers asked if Slim Chickens served alcohol. Mr. DeCarlo replied that did not. Mayor Wassmer asked if they were individually owned or operated by a corporation. Mr. DiCarlo replied they are independently owned franchises.

Jori Nelson questioned if a majority of their customers used walk-in services, why is a drive-through necessary. Katie Logan reminded the Council that the issue before them is the rezoning of the property, not the approval of a drive-through. However, she noted the rezoning could be approved with the removal of condition #8 that grants the drive-through.

Ted Odell stated he felt the applicant has made a good faith effort to address the concerns of the residents and the City and moved the Governing Body adopt Ordinance 2333 approving the rezoning of 7930 State Line Road from R-1b and C-0 to CP-1 (Planned Restricted Business District and approving the revised Preliminary Development Plan subject to the 15 conditions recommended by the Planning Commission. The motion was seconded by Ruth Hopkins.

Andrew Wang acknowledged Mr. Wooldridge's concerns and noted the importance of the city being sensitive to the letter and spirit of the law enforcing all the conditions of approval. However, he noted that this is redevelopment on State Line Road where there is a major thoroughfare surrounded by businesses on both sides that provide drive-through services. If the office buildings had been successful, they would not be vacant. He stated that he is supportive of the motion with the caveat that all of the conditions of approval be enforced.

Sheila Myers stated that she felt there were deficiencies in the city code allowing the placement of a drive-through on property adjacent to residential property. She cannot see how the Planning Commission could determine that this application is not detrimental to the adjacent property owners. She believes the city should have decibel rated noise regulations and that there should be density restrictions on properties.

Dan Runion noted that many of the businesses identified in the zoning and uses of nearby property are not within Prairie Village.

A roll call vote was taken with the following members voting “aye”: Hopkins, Noll, Wang, Morehead and Odell “nay” Weaver, Nelson, Myers, Runion, Morrison, and Gallagher. Mayor Wassmer declared the motion failed. (Mayor Wassmer’s vote was inadvertently not taken, but would not have affected the outcome of the vote.)

Jori Nelson moved the Governing Body adopt Ordinance 2333 approving the rezoning of 7930 State Line Road from R-lb and C-0 to CP-1 (Planned Restricted Business District and approving the revised Preliminary Development Plan with the removal of the condition 8 approving the drive-through and subject to the remaining 14 conditions recommended by the Planning Commission. The motion was seconded by David Morrison.

Ruth Hopkins questioned denying an application because of a condition that has been granted in other applications, noting the previous approval of a drive-through on the adjacent property. Katie Logan stated that the properties are not identical and although it may be challenged action would be based on the Council’s interpretation of the Golden Factors for this particular application.

Jori Nelson noted that make-up of the existing Council is different than that of the previous Council which took action on the adjacent property at 7920 Mission Road.

Brooke Morehead asked how Slim Chickens would respond to the removal of the drive-through. Mitch DiCarlo replied the issue has not been discussed with them and he did not know if the project would be viable without a drive-through as it seems that they are a critical component of these types of businesses.

Andrew Wang stated he cannot be supportive of dismantling the Planning

Commission's recommendation for the reasons given restating that this property is located on State Line Road and the character of the neighborhood is not limited to Prairie Village properties but includes all of the surrounding commercial properties many of which operate drive-through services. Ted Odell agreed with Mr. Wang's comments.

David Morrison asked if Mr. Wooldridge would be supportive of the application without the drive-through. Mr. Wooldridge responded that the proposed drive-through pierces so deeply into the adjacent neighborhood noting its length and stated that it would be visible from his property over the eight foot fence due to higher elevation of his property. Mr. Morrison confirmed that Mr. Wooldridge would accept the rezoning if the drive-through were not allowed.

Terrence Gallagher questioned the council's ability to tell a business to change a business model that has been very successful. He expressed concern with enforcing the conditions of approval and suggested perhaps that the evergreens be planted on the back side of the fence so the neighboring properties don't have to view an eight foot solid fence.

Katie Logan noted that nine votes are required for the City Council to override or change the recommendation of the Planning Commission.

A roll call vote was taken with the following members voting "aye": Weaver, Nelson, Runion and Morrison voting "nay" Hopkins, Noll, Wang, Myers, Morehead, Odell and Gallagher. Mayor Wassmer declared the motion failed. (Mayor Wassmer's vote was inadvertently not taken, but would not have affected the outcome of the vote.)

Jori Nelson moved the City Council return the application to the Planning Commission for reconsideration particularly addressing the location of the drive-through, number of lanes, traffic concerns and noise abatement. The motion was seconded by

Ashley Weaver.

Ms. Nelson suggested that the drive-through operations close earlier.

Ted Odell stated he did not feel it was appropriate for the Council to tell a business how to run its business. Dan Runion countered that the Council was not telling them how to run their business, but under what conditions the Council would approve the requested rezoning.

Andrew Wang stated he did not feel the hours of operation needed to be reduced the hours of operation if the conditions of approval were enforced.

Sheila Myers asked what was necessary to change the code to prohibit drive-through services next to residential districts. David Morrison suggested that only drive-through services for food operations be prohibited.

The motion was voted on and passed by a majority vote.

Mayor's Report

Mayor Wassmer reported on her recent activities attended on behalf of the City at the earlier Council Committee meeting.

STAFF REPORTS

Staff Reports were given at the earlier Council Committee of the Whole meeting.

OLD BUSINESS

Jori Nelson stated that she and Ashley Weaver would like to hold a Ward 1 meeting. Mayor Wassmer asked what funding was available and if other Wards were planning on having meetings. Quinn Bennion stated that \$2000 was included in the 2015 budget for Ward meetings. Wards 4, 5 and 6 indicated that they wanted to have

ward meetings. Mayor Wassmer stated that she and staff would look at available funding and get back to interested Council members.

NEW BUSINESS

There was no New Business to come before the City Council.

Committee meetings scheduled for the next two weeks:

Board of Zoning Appeals	08/04/2015	6:30 p.m.
Planning Commission	08/04/2015	7:00 p.m.
Sister City Committee	08/10/2015	5:30 p.m.
JazzFest Committee	08/12/2015	5:30 p.m.
Council Committee of the Whole	08/17/2015	6:00 p.m.
City Council	08/17/2015	7:30 p.m.

The Prairie Village Arts Council is pleased to present an exhibit by Wayne Wilkes in the R. G. Endres Gallery during the month of August. The artist reception will be Friday, August 14th from 6:30 - 7:30 p.m.

The final Moonlight Swim will be held on Friday, August 7th with the pool remaining open until 10 p.m.

Prairie Village Pool will begin reduced hours beginning August 10th. The pool will open at 4:30 p.m. on weekdays.

ADJOURNMENT

With no further business to come before the City Council the meeting was adjourned at 8:55 p.m.

Joyce Hagen Mundy
City Clerk