

**MERRIAM CITY COUNCIL
MINUTES
CITY HALL
9000 W. 62ND TERRACE
JUNE 22, 2009
7:00 P.M.**

I. CALL TO ORDER - PLEDGE OF ALLEGIANCE

Mayor Ken Sissom called the meeting to order at 7:00 p.m.

II. ROLL CALL

Mayor Ken Sissom

Pam Bertoncin
John Crabtree
Nancy Hupp
Chris Evans Hands
Dan Leap
Chad Rowe
Gayle Stephens

Bryan Burks was absent.

Staff Present

Michelle Daise, City Attorney; Phil Lammers, City Administrator; Bryan Dyer, Community Development Director; Hye Jin Lee, Assistant Community Development Director; Cindy Ehart, Finance Director; Bob Pape, Fire Chief; Randy Carroll, Public Works Director; and Juli Pinnick, City Clerk.

III. CONSENT AGENDA

All items listed under the heading are considered to be routine by the City Council and may be enacted by one motion. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which case that item will be removed from the Consent Agenda and considered separately.

A. Council items:

1. Approval of the minutes of the Public Hearing held May 18, 2009.

2. Approval of the minutes of the regular City Council meeting held May 18, 2009.
3. Consider acceptance of the 2008 Audit of Financial Statements.
4. Consider approval of the purchase of a new water rescue boat.
5. Consider approval of an Inter-Local Agreement with Overland Park for 240 ft. of Street and Drainage improvement on 54th Terrace and authorize the Mayor to sign the revised agreement and rescind previous Inter-Local Agreement.
6. Consider approval to compensate the property owners at 9415-9521 W. 55th St. \$500 per tree (\$1,000 total) and remove one dead tree related to Residential Street Group II improvements.
7. Consider approval of a contract with Freeman Concrete Construction LLC. for construction of the Residential Street Groups II including add alternate for related stormwater improvements in the amount of \$ 820,181.81 and authorize the Mayor to execute the contract.
8. Consider approval of a contract award to BHC Rhodes for design services for the 2009 Economic Stimulus Overlay Project and authorize the Mayor to execute an associated Professional Services Agreement in an amount not to exceed \$17,300.
9. Consider approval of a contract with Johnson County for \$144,000 in 2009 CDBG funds for the installation of street lights in the northwest portion of the city and authorize the mayor to execute the agreement.

COUNCILMEMBER CRABTREE MOVED THAT THE COUNCIL APPROVE THE CONSENT AGENDA ITEMS 1-9. THE MOTION WAS UNANIMOUSLY APPROVED.

IV. PUBLIC ITEMS

Members of the public are encouraged to use this time to make comments about matters that do not appear on the agenda. Comments about items on the regular agenda will be taken as each item is considered.

Kenny Petrehn, 5644 Knox, addressed the council regarding current issues he is having with the Community Development Department. While Mr. Petrehn is working with those folks to resolve the issues he explained that health and financial difficulties this winter contributed to his issues. Mr. Petrehn suggested

the city work with residents through a third party liaison to work through issues with their properties.

V. MAYOR'S REPORT

1. Recognition of the City of Merriam for Support to Reserves- presentation from Charles Bredahl – Employer Support for Guard and Reserves (ESGR).

Charles Bredahl Executive Director, Employer Support for Guard and Reserves, presented a certificate of support for the Merriam Fire Department as a patriotic employer by supporting Merriam firefighter Scott Higgins who is a 17-year member of the Guard. The City of Merriam and Merriam Fire Department has allowed Mr. Higgins to continue with his Guard duties and training while employed with the City of Merriam.

2. Recognition of Ben Petry, Shane Schnobelen, and Robert (Bob) Eddy for promotion to Master Firefighter positions.

Fire Chief Bob Pape and Mayor Sissom presented the Master Firefighters with their new badges.

3. Consider approval of a solid waste disposal permit to Superior Disposal Service, Inc.

Glen Smith, owner of Superior Disposal answered questions from the council regarding the service. At this time Superior will offer residential trash collection and recycling. Currently they do not have any routes, but residents have been calling them to ask if they service Merriam which is what prompted their application. Containers will be offered for lease as well as a quarterly fee for residential collection of \$55.54. Mr. Smith stressed that service is their number one goal.

COUNCILMEMBER ROWE MOVED THAT THE COUNCIL APPROVE A SOLID WASTE DISPOSAL PERMIT TO SUPERIOR DISPOSAL SERVICES, INC. THE MOTION WAS UNANIMOUSLY APPROVED.

4. Consider approval of an addendum to the Letter of Understanding for the City Prosecutor.

Mayor Sissom provided the background for this item. This addendum will provide for the prosecutor and judge to receive the same monthly compensation. That was the intention when the agreements were presented last month, however, there was an oversight, which resulted in the salaries being different.

COUNCILMEMBER BERTONCIN MOVED THAT THE COUNCIL APPROVE THE ADDENDUM TO THE LETTER OF UNDERSTANDING FOR THE CITY PROSECUTOR. THE MOTION WAS UNANIMOUSLY APPROVED.

5. Discussion regarding a Charter Ordinance repealing Charter Ordinance No. 21 relating to governance by the Merriam, Kansas Governing Body.

City Attorney Michelle Daise explained that this Charter Ordinance will go through committee then come before the council next month. This Charter Ordinance will address the question on primary elections which came up this past election.

Also there will be two other Charter Ordinances going through committee and coming to the full council. One will address sales tax law changes, and the other will address CIP engineer's estimates.

6. Update related to Pointe at Prairie Haven development.

Community Development Director Bryan Dyer provided some background regarding changes in State Statutes concerning nuisances. The revised State Statutes and City ordinances permit the City Council to, without holding a public hearing and by resolution, declare that a property violates the city's nuisance ordinance. The resolution must state a number of items including the nature of the violation, that the property owner has ten (10) days to abate the situation, and that the failure to abate shall result in the city abating the violation and accessing the costs against the property.

Pointe at Prairie Haven has been assumed by Bank Liberty. Staff has had a number of conversations with the Bank regarding the status of the property. Staff has indicated to the Bank that the Council may wish to consider whether or not Pointe at Prairie Haven is a nuisance. In staff's conversations with the Bank, staff has indicated that the Bank would have the opportunity to discuss the situation with Council as part of the nuisance process.

Staff recommends that, even though it is not required by State Statutes, the Council, at its July 27, 2009, meeting conduct a public meeting to consider possible nuisance issues at the property known as Pointe at Prairie Haven. Staff will provide the property owner with a notice of time, date, and location of the public meeting.

COUNCILMEMBER CRABTREE MOVED THAT THE COUNCIL DIRECT STAFF TO SET A PUBLIC MEETING FOR JULY 27, 2009 TO CONSIDER POSSIBLE NUISANCE CONDITIONS ON THE POINTE AT PRAIRIE HAVEN DEVELOPMENT. THE MOTION WAS UNANIMOUSLY APPROVED.

7. Update related to Timber Ridge development.

Roger Campbell, a consultant hired by the bank and owners of Timber Ridge addressed the council. Mr. Campbell stated that he is working with the owners and the bank to try to move forward and make the project feasible. Mr. Campbell acknowledged that the property does need some cleaning up and will work diligently over the next month to accomplish that goal.

COUNCILMEMBER BERTONCIN MOVED THAT THE COUNCIL DIRECT STAFF TO SET A PUBLIC MEETING FOR JULY 27, 2009 TO CONSIDER POSSIBLE NUISANCE CONDITIONS ON THE TIMBER RIDGE DEVELOPMENT. THE MOTION WAS UNANIMOUSLY APPROVED.

8. Update related to Merriam Village (DDR) Detention Basin.

Councilmember Stephens addressed the underground spring and a concern from residents over the massive amounts of mosquitoes that it is drawing.

COUNCILMEMBER STEPHENS MOVED THAT THE COUNCIL DIRECT STAFF TO SET A PUBLIC MEETING FOR JULY 27, 2009 TO CONSIDER POSSIBLE NUISANCE CONDITIONS ON THE MERRIAM VILLAGE DETENTION BASIN PROPERTY. THE MOTION WAS UNANIMOUSLY APPROVED.

Bryan Dyer explained that issues associated with Timber Ridge and Pointe at Prairie Haven go beyond tall grass. There is a need for final grading which would include leveling out large mounds of dirt and removal of debris. The grading out of these properties will allow for over seeding which will make the property easier to mow and maintain.

VI. PLANNING COMMISSION

1. Consider approval of a Revised Preliminary Development Plan for Baron Automotive Service Center - Located at 6231 Mastin (6663-PD4-0509).

Community Development Director Bryan Dyer provided the background for this item. Application 6663-PD4-0509 is a request for approval of a revised Preliminary Development Plan. The original Preliminary Development Plan Application 6663-PD3-0407, which was recommended for approval by the Planning Commission on June 6, 2007 and received final approval from the City Council on June 25, 2007 included a condition that stated that Phase II of the project was to begin January 2009. Due to the current economic conditions, Baron notified the City that construction would not be able to begin in January 2009. The revised plan calls for the Phase II construction

beginning no later than January 2011. The applicant is not proposing any other alterations to the approved development plan. Representatives were present for questions.

COUNCILMEMBER HUPP MOVED THAT THE GOVERNING BODY, BASED ON THE EVIDENCE PRESENTED AT THE MAY 5, 2009 PUBLIC HEARING, AS WELL AS, THE CRITERIA OUTLINED IN THE CITY'S ZONING ORDINANCE, AS DETAILED IN THE PLANNING COMMISSION STAFF REPORT, UPHOLD THE RECOMMENDATION OF THE PLANNING COMMISSION TO APPROVE, WITH CONDITIONS, A REVISED PRELIMINARY DEVELOPMENT PLAN FOR BARON AUTOMOTIVE SERVICE CENTER LOCATED AT 6231 MASTIN (6663-PD4-0509). THE MOTION WAS UNANIMOUSLY APPROVED.

VII. COUNCIL ITEMS

A. Work Session

1. Discussion regarding ¼ cent sales tax renewal.

City Administrator Phil Lammers explained that in answer to questions regarding renewal of the ¼ cent sales tax, the packet included a comparison of area cities sales tax rates. In addition, there was a question as to how long the tax could be in place. Basically, the state allows sales taxes for a specific purpose to be in place 10 years. Sales taxes encompassing a broader scope of issues could be in place indefinitely. In those previous discussions with the council, it was Mr. Lammers' understanding that the council wanted this sales tax renewal to include streets and drainage projects. There will be a work session scheduled for August 3rd to discuss the tax in more depth.

Councilmember Leap wanted it to go on records that he is opposed to renewing this sales tax.

Councilmember Rowe pointed out that 70 % of Merriam's sales tax is paid by non-residents. Also he would like to see the mill levy reduced as the sales taxes increase with development of the planned retail sites.

B. Finance and Administration Committee

C. Community Development/Public Works Committee

1. Consider approval of an ordinance adopting revised Floodplain Management regulations, amending Chapter 7 of the Code of Ordinances of the City of Merriam, Kansas (first reading).

Community Development Director Bryan Dyer provided the background for this item. Last year, Johnson County completed the process of updating the floodplain maps for the entire county. These updated maps are highly detailed and provide very accurate information on floodplain areas within the county. At the first of the year, the City of Merriam sent written notification of the map's changes to all owners of property in the floodplain. The City and County also conducted a public floodplain informational meeting and invited all owners of floodplain property to attend.

Minimum floodplain regulations are crafted by the Federal Emergency Management Agency (FEMA) and implemented at the State level by the Division of Water Resources (DWR). All flood insurance is backed by a federal program entitled the National Flood Insurance Program (NFIP). For a community's residents to obtain flood insurance, the community must participate in NFIP. In order to participate in NFIP, the community must adopt the minimum floodplain standards set forth by FEMA and reviewed by DWR.

This year, FEMA notified all Johnson County communities that the revised floodplain maps created by Johnson County will become effective on August 3, 2009. Currently, the City of Merriam participates in NFIP. In order for the City to continue in NFIP, before August 2, 2009, the City must adopt revised floodplain regulations that reference the new floodplain maps. In addition to referencing the date of the new floodplain maps, DWR required that a few small changes be made to the City's floodplain ordinance. Those small changes include the addition of language permitting a Professional Engineer to perform floodplain certifications and requiring that commercial structures in the floodplain be flood proofed to one (1) foot above base flood elevation. The revised ordinance contains the following changes:

Article 1, Section B, 3a – Adopts the new floodplain maps dated August 3, 2009.

Article 4, Section B, 1a – Add Professional Engineer as a person who can certify lowest floor elevation.

Article 4, Section B, 1b – require that commercial structures in the floodplain be flood proofed to one (1) foot above base flood elevation.

Article 4, Section B, 1b – Add Professional Engineer as a person who can certify flood proofing.

Article 4, Section C, 2d – Add Professional Engineer as a person who can certify lowest floor elevation of a manufactured home.

This is the first reading of the ordinance with the second reading and adoption to occur at the July 27th City Council meeting.

2. Update on development projects.

Peppertree Apartments - Ready for Certificate of Occupancy to be issued.
Shawnee Mission Medical Center - Still working though some issues prior to a Certificate of Occupancy being issued.

Merriam Village - The developers state that they are continuing to market the retail spaces.

Merriam Pointe - Was sent a mowing letter. Began mowing today and stopped with about 1/3 of the sight left to be mowed.

Also discussed at the committee meeting was how foreclosures are affecting neighborhoods and the level that those properties are being maintained.

The number of foreclosures for 2006 was 61, 62 in 2007, 74 in 2008 and 24 in the first quarter 2009. This year there have been twice as many weed notices than last year, but this year the city has contract mowed a lot fewer properties. Many of the homes receiving weed notices are not foreclosed homes.

VIII. STAFF ITEMS

IX. OLD BUSINESS

1. Take Charge Challenge Update.

Councilmember Hands reported that the Take Charge Committee hosted a booth at the Party in Your Park event at Quail Creek Park. 42 participants signed pledge cards at that event. The pledge card participants have resulted in an additional 100 e-mail addresses being added to the e-Merriam update distribution list. There is hope to have a presence at the Farmers Market the next two Saturdays.

2. Report on 5800 Hadley.

Community Development Director Bryan Dyer provided the background for this item.

Mr. Dyer provided photos of the property taken today which depicted the siding removed and a tarped roof, which appears to be the only work done on the structure. The owner has yet to obtain a building permit.

Resolution No. 783 states that the property must be made safe and secure by June 23. While the property is more secure than it was back in April, it is still not considered safe, as there is no drywall installed. There are

options to be considered regarding the property which include: extend deadline to remove the structure, pass a resolution to have the structure removed by the city, or wait until July 27, 2009 and make another report on the progress of the property.

The property owner, Steve Olgren addressed the council regarding the issues associated with the structure. Mr. Olgren stated that the reason he has not obtained a building permit is because he has had a hard time with the engineer getting the plans required for the building permit. He was supposed to have those plans today and is meeting with the engineer on Wednesday. He has taken the structure to the level he can without getting the building permit.

Councilmember Stephens commented that this issue has been going on for far too long and stated that she is opposed to extending any more time and the structure should be razed.

Mr. Olgren responded that the structure is sound, and he would like to move forward and expand the structure as he has planned.

Councilmember Leap asked if it was correct to assume that he cannot obtain the building permit without the engineering plans.

Mr. Dyer responded that that is correct, staff is waiting on those drawings to review before the city can issue a permit.

Mr. Olgren asked the council to give him a few more days to get his engineer to submit those plans.

COUNCILMEMBER CRABTREE MOVED THAT THE COUNCIL GRANT AN EXTENSION UNTIL THE JULY 27, 2009 MEETING.

Councilmember Bertocin suggested a compromise: If the city has not received the building plans by June 30, 2009 the proposed resolution goes into effect.

COUNCILMEMBER CRABTREE WITHDREW HIS MOTION.

COUNCILMEMBER CRABTREE MOVED THAT THE COUNCIL GRANT AN EXTENSION TO THE JULY 27TH MEETING WITH THE CAVIAT THAT THE ENGINEER STAMPED PLANS ARE AVAILABLE FOR REVIEW BY JUNE 30TH.

COUNCILMEMBER CRABTREE WITHDREW HIS MOTION.

There was some discussion regarding the submission of the complete building permit application and the engineer's stamped plans and the timeframe for the submission.

COUNCILMEMBER LEAP MOVED THAT THE COUNCIL APPROVE A RESOLUTION FINDING THAT THE OWNER OF A STRUCTURE AT 5800 HADLEY HAS FAILED TO COMMENCE REPAIR OR REMOVAL OF SUCH STRUCTURE AND DIRECT STAFF TO PROCEED IN ACCORDANCE WITH THE PROVISIONS OF RESOLUTION NO. 783 TO RAZE OR REMOVE THE STRUCTURE, AND MAKE THE PROPERTY SAFE AND SECURE, WITH THE COSTS THEREOF BEING BILLED AND ASSESSED AS SET FORTH IN SAID RESOLUTION AND REVISE THE EFFECTIVE DATE OF THE RESOLUTION TO BE JULY 24, 2009 UNLESS STAMPED PLANS AND BUILDING PERMIT APPLICATION AND FEES ARE RECEIVED ON OR BEFORE JULY 24, 2009. THE MOTION WAS UNANIMOUSLY APPROVED.

3. Update on Merriam Village.

City Administrator Phil Lammers informed the council that the property taxes on Merriam Village are delinquent. The amount due is approximately \$88,000. A letter has been sent to the DDR representative asking them to submit the taxes to the county.

4. Update on Merriam Pointe.

Councilmember Leap asked how much was owed on the delinquent taxes on the Merriam Pointe development.

City Administrator Phil Lammers responded that, including special assessments, the amount due is approximately \$200,000.

Councilmember Stephens asked about the portion of the site that is owned by Block and Co., and if those taxes were also delinquent.

Mr. Lammers responded yes, they are delinquent in the amount of \$32,000.

Chase Simmons, Polsinelli Law firm, representing the owners of Merriam Pointe LLC. addressed the council regarding a letter sent to the city last Friday outlining a potential proposal. While Mr. Simmons acknowledged that paying the taxes was the owners' responsibility, there is no reason for them to not pay the taxes other than an inability to do so based on the assumption that it has been indicated by the council that when the September date for possibly terminating the TIF agreement comes up a

strong sense is that the council will take action to terminate the agreement. With that in mind the developer has been asking for an extension to the September date. An extension would allow the developer to pay the taxes. That request is backed up with a proposal to pay the taxes currently due and post a security in the amount of one million dollars cash which will pay the taxes for three future years. The three years would coincide with the extension. Without the extension the project will no longer be viable.

Councilmember Rowe asked about the hotel sites and if they are going forward with development.

Ross Stiner, managing partner, Merriam Pointe LLC., responded that the hotel contract has matured and was subject to financing. They were unable to get that financing so the contract is no longer valid. Mr. Stiner stated that the site was shown to an out of town retailer this week. The retailer was not disclosed to him, however he was informed that the retailer does not currently have a presence in the Kansas City market and they plan to enter the Kansas City market sometime in the next two years. This retailer is interested in the entire site north of the traffic circle including the Block and Christie properties. There is also an interested party looking at two acres of the hotel site for a 20,000 square foot office building. The mowing of the property began this week, they hit some wet spots but are scheduled to come back and complete the mowing by the end of the week.

COUNCILMEMBER STEPHENS MOVED THAT THE COUNCIL RECESS INTO EXECUTIVE SESSION TO CONSIDER CONSULTATION WITH LEGAL COUNSEL ON MATTERS THAT WOULD BE DEEMED PRIVILEGED IN AN ATTORNEY-CLIENT RELATIONSHIP FOR THE PURPOSE OF RECEIVING LEGAL ADVICE. PRESENT WILL BE THE GOVERNING BODY, CITY ADMINISTRATOR AND CITY ATTORNEY THE MEETING WILL RECONVENE IN THE COUNCIL CHAMBERS AT 9:25 PM. THERE WILL BE A 5-MINUTE RECESS BEFORE GOING INTO EXECUTIVE SESSION. COUNCILMEMBER HUPP SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

The meeting reconvened at 9:25 p.m.

Councilmember Hupp invited everyone to attend the Flags for Freedom event that will be held over the July 4th weekend. Councilmember Hupp also asked for volunteers to help mark the field and setup flags on Friday and Saturday, June 26 and 27.

COUNCILMEMBER ROWE MOVED THAT THE COUNCIL AUTHORIZE STAFF TO NEGOTIATE WITH REPRESENTATIVES FROM MERRIAM POINTE, LLC REGARDING POSSIBLE AMENDMENTS TO THE

MERRIAM POINTE REDEVELOPMENT AGREEMENT INCLUDING THOSE MATTERS ADDRESSED IN A LETTER DATED JUNE 22, 2009 FROM CHASE SIMMONS. AT THIS TIME, COUNCIL IS NOT TAKING ACTION TO EXTEND THE SEPTEMBER 15, 2009 DEADLINE. THE MOTION WAS APPROVED. COUNCILMEMBER LEAP VOTED NAY.

X. NEW BUSINESS

XI. EXECUTIVE SESSION

COUNCILMEMBER HUPP MOVED THAT THE GOVERNING BODY RECESS INTO EXECUTIVE SESSION TO DISCUSS PERSONNEL MATTERS OF NON-ELECTED PERSONNEL TO PROTECT THE PRIVACY INTERESTS OF SUCH PERSONNEL. PRESENT WILL BE THE GOVERNING BODY AND IF DEEMED NECESSARY THE CITY ADMINISTRATOR WILL BE INVITED IN. THE MEETING WILL RECONVENE IN THE COUNCIL CHAMBERS AT 9:50 P.M. COUNCILMEMBER CRABTREE SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

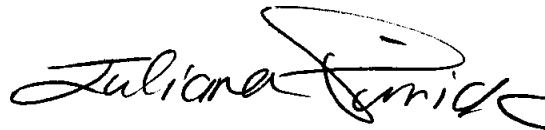
The meeting reconvened at 9:50p.m.

COUNCILMEMBER HANDS MOVED THAT THE COUNCIL AUTHORIZE THE MAYOR TO EXECUTE AN AMENDED EMPLOYMENT CONTRACT FOR CITY ADMINISTRATOR PHIL LAMMERS REFLECTING THE SALARY INCREASE AS RECOMMENED. THE MOTION WAS UNANIMOUSLY APPROVED.

XII. ADJOURNMENT

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COUNCIL, COUNCILMEMBER HUPP MOVED TO ADJOURN AT 9:55 P.M. COUNCILMEMBER HANDS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Juliana Pinnick". The signature is fluid and cursive, with a large loop at the end.

Juliana Pinnick
City Clerk