

RECORD OF PROCEEDINGS
**OF THE GOVERNING BODY
CITY OF GARDNER, KANSAS**

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February 18, 2019

The City Council of the City of Gardner, Kansas met in regular session on February 18, 2019, at 7:00 p.m. in the Council Chambers at Gardner City Hall, 120 East Main Street, Gardner, Kansas, with the Honorable Mayor Steve Shute presiding. Present were Councilmembers Mark Baldwin, Randy Gregorcyk, Rich Melton, Lee Moore, and Todd Winters. City staff present were Interim City Administrator Laura Gourley; Police Chief James Pruetting; Business & Economic Development Director Larry Powell; Utilities Director Gonzalo Garcia; Finance Director Matthew Wolff; and City Clerk Amy Nasta. Others present included those listed on the attached sign-in sheet and others who did not sign in.

CALL TO ORDER

There being a quorum of Councilmembers present, the meeting was called to order by Mayor Shute at 7:00 p.m.

PLEDGE OF ALLEGIANCE

Mayor Shute led those present in the Pledge of Allegiance.

PUBLIC HEARING

1. Hold a public hearing on the proposed Community Improvement District (Main Street Market Place)

Councilmember Melton made a motion to open a public hearing for the purpose of receiving comments on the proposed Community Improvement District (Main Street Market Place).

Councilmember Moore Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

Joel Riggs, 5000 Kansas Ave, Kansas City Kansas, provided a presentation as the Developer of the project. He provided basic information about the project and reminded the Council and public that the QuikTrip and Walgreens are not included. He said there had been good collaboration on the project between staff, consultants, and his team.

Bond Counsel Tyler Ellsworth stated the CID is the entire shopping center, with the exception of the QuikTrip and the Walgreens. He said the CID will be financed through a 1% add-on retail sales tax on all retail sales within the shopping center, for up to a twenty-two year term. He said the tax would be used to reimburse the redevelopment costs to the developer, including costs for vertical construction, which could not be funded with TIF. He said the issuance of special obligation bonds for the project could be considered in 2020. He said the total incentive package between the City and the developer included a TIF component for costs incurred by the developer including new access, the potential addition of a traffic signal, and infrastructure for stormwater. He said the CID is a separate incentive, which can be done on a pay-go basis or through the issuance of special obligation bonds. He said the final piece is Industrial Revenue Bonds to be issued in 2020, which would provide the developer with a sales tax exemption for construction materials. He said both the special obligation CID bonds and the IRBs do not require a guarantee or backing from the City.

Municipal Advisor Bruce Kimmel stated there had been a lot of discussion regarding the available incentives and what was best for the City. He said the developer was looking for a total of approximately \$4.7 million in incentives. He said the final package eliminates the sales tax, includes a pay-as-you-go property TIF that would end in 2030, and maximizes the use of the CID with proposed financing that would take approximately seventeen years to pay off, though tails would be available for an additional five years, assuming the financing had been paid off.

Bond Counsel Tyler Ellsworth stated the agreement stipulated an October 1, 2019 to start the construction of the new grocery store with a completion date of December 31, 2020. He said the agreement gave until March 31, 2022

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to renovate existing Price Chopper. He continued that the agreement ensured maintenance standards were defined and enforceable and put protections in place for future issuance of special obligation bonds.

Councilmember Moore made a motion to close the public hearing.

Councilmember Melton Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

PUBLIC COMMENTS

CONSENT AGENDA

1. **Standing approval of the minutes as written for the regular meeting on February 4, 2019**
2. **Standing approval of City expenditures prepared January 30, 2019, in the amount of \$322,041.91; January 31, 2019, in the amount of \$359,288.66; February 8, 2019 in the amount of \$207,973.07**
3. **Consider a Position Title Change in the Parks and Recreation Department**
4. **Consider authorizing the Mayor and City Administrator to sign KDOT Form 1302 for the Center Street Sidewalk project**
5. **Consider the acceptance of ingress/egress and utility easement dedications by separate instruments for Mid America Bank**
6. **Consider Authorizing the City Administrator to enter into a contract agreement with US Foods to provide certain concessions supplies to Gardner Parks and Recreation Department**

Councilmember Gregorcyk asked to remove item 4 from the Consent Agenda

Councilmember Moore made a motion to approve the Consent Agenda. Items 1-3, and 5-6

Councilmember Melton Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

Discussion of Consent Agenda Item

Council member Gregorcyk asked for more information about KDOT Form 1302

Public Works Director Michael Kramer stated this was a housekeeping form with KDOT to move the project forward.

Councilmember Gregorcyk made a motion to approve Consent Agenda item 4

Councilmember Moore Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

COMMITTEE RECOMMENDATIONS

1. **Consider an ordinance approving rezoning Z-18-07 for 1000 E. Santa Fe Street from M-2 (General Industrial) District to M-1 (Restricted Industrial)**

Councilmember Melton made a motion to adopt Ordinance 2600 changing the zoning classifications or districts of certain lands located in the City of Gardner, Kansas, under the authority granted by Title 17 of the Municipal Code of the City of Gardner, Kansas

Councilmember Moore Seconded.

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With all of the Councilmembers voting in favor of the motion, the Ordinance passed and was assigned Ordinance number 2600

Moore:	Yes
Winters:	Yes
Baldwin	Yes
Gregorcyk:	Yes
Melton	Yes

EXECUTIVE SESSION

Councilmember Melton made a motion to recess into executive session for consultation with an attorney which is deemed to be privileged in the attorney-client relationship pursuant to K.S.A. 75-4319 (b)(2) to discuss matters relating to the Main Street Market Place redevelopment project), beginning at 07:25 p.m.; and returning to regular session at 07:35 p.m.

Councilmember Winters Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

Councilmember Moore made a motion to resume regular session at 07:35 p.m.

Councilmember Winters seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

OLD BUSINESS

1. **Consider a resolution declaring the intent of the City of Gardner, Kansas, to issue Industrial Revenue Bonds in the approximate principal amount of \$19,390,000, for the purpose of financing a portion of the costs of the acquisition, construction and equipping of a commercial facility within the City (Main Street Market Place)**

Councilmember Melton made a motion to adopt Resolution No. 2010 declaring the intent of the City of Gardner, Kansas, to issue Industrial Revenue Bonds, in the approximate principal amount of \$19,390,000, for the purpose of financing a portion of the costs of the acquisition, construction and equipping of a commercial facility within the City (Main Street Market Place)

Councilmember Gregorcyk Seconded.

With all of the Councilmembers voting in favor of the motion, the Resolution passed and was assigned Resolution number 2010

Winters:	Abstain
Baldwin	Yes
Gregorcyk:	Yes
Melton	Yes
Moore:	Yes

NEW BUSINESS

1. **Consider adopting an ordinance authorizing the creation of the Main Street Market Place Community Improvement District in the City of Gardner, Kansas and authorizing the imposition of a community improvement district sales tax to be collected within such district.**

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Councilmember Melton made a motion to adopt Ordinance No. 2601 authorizing the creation of the Main Street Market Place Community Improvement District in the City of Gardner, Kansas and authorizing the imposition of a community improvement district sales to tax to be collected within such district

Councilmember Moore Seconded.

With all of the Councilmembers voting in favor of the motion, the Ordinance passed and was assigned Ordinance number 2601

Baldwin	Yes
Gregorcyk:	Yes
Melton	Yes
Moore:	Yes
Winters:	Abstain

2. Consider adopting an ordinance approving and adopting a redevelopment project plan for a redevelopment district in the City of Gardner, Kansas (Main Street Market Place Redevelopment District, Project Area 1)

Councilmember Moore made a motion to adopt Ordinance No. 2602 approving and adopting a redevelopment project plan for a redevelopment district in the City of Gardner, Kansas (Main Street Market Place Redevelopment District, Project Area 1)

Councilmember Melton Seconded.

With all of the Councilmembers voting in favor of the motion, the Ordinance passed and was assigned Ordinance number 2602

Gregorcyk:	Yes
Melton	Yes
Moore:	Yes
Winters:	Abstain
Baldwin	Yes

3. Consider adopting a resolution approving the execution and delivery of a development agreement for a development project within the City (Main Street Market Place)

Councilmember Melton made a motion to adopt Resolution 2011 approving the execution and delivery of a development agreement for a development project within the City (Main Street Market Place)

Councilmember Moore Seconded.

With all of the Councilmembers voting in favor of the motion, the Resolution passed and was assigned Resolution number 2011

Melton	Yes
Moore:	Yes
Winters:	Abstain
Baldwin	Yes
Gregorcyk:	Yes

4. Consider a petition for the formation of a benefit district for a sanitary lift station and related site improvements to serve the Tuscan Farms residential development and adopt a resolution determining the advisability of certain internal improvements in the City of Gardner, Kansas, and authorizing and

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providing for the making of such improvements in accordance with the findings of the Governing Body and K.S.A. 12-6a01 et seq. (Tuscan Farm sanitary lift station special benefit district)

Finance Director Matthew Wolff stated this would be a special benefit district. He said the developer had provided a letter of credit to help to abate risk. Councilmember Moore asked why this benefit district was different from past benefit districts that had not fared well for the City. Mr. Wolff stated some of the past benefit districts had been subject to unfortunate timing and economic downturns. He said the developer's letter of credit would help to alleviate many of these risks. Councilmember Gregorcyk stated he appreciated the developer's interest and felt the houses were needed in the community.

Councilmember Winters asked if the development was currently within the City limits. Mayor Shute stated it had been annexed the previous year. Councilmember Winters asked if there was a way to ensure the property remained within the City limits. Mr. Wolff stated deannexation would require a petition before Council. City Attorney Denk stated the only caveat to this would be if the City defaulted on an agreement and suit was initiated, though he did not believe conditions had been attached to the annexation agreement. Mayor Shute stated it would still take an action of the Governing Body to de-annex.

Councilmember Gregorcyk made a motion to adopt Resolution 2012 determining the advisability of certain internal improvements in the City of Gardner, Kansas, and authorizing and providing for the making of such improvements in accordance with the findings of the Governing Body and K.S.A. 12-6a01 et seq. (Tuscan Farm sanitary lift station special benefit district)

Councilmember Winters Seconded.

With all of the Councilmembers voting in favor of the motion, the Resolution passed and was assigned Resolution number 2012

Moore:	Yes
Winters:	Yes
Baldwin	Yes
Gregorcyk:	Yes
Melton	Yes

5. Consider a petition for the formation of a benefit district for certain infrastructure improvements to serve the Tuscan Farms residential development and adopt a resolution determining the advisability of certain internal improvements in the City of Gardner, Kansas, and authorizing and providing for the making of such improvement in accordance with the findings of the Governing Body and K.S.A. 12-6a01 et seq. (Tuscan Farm Phase I Infrastructure special benefit district)

Councilmember Gregorcyk made a motion to adopt Resolution 2013 determining the advisability of certain internal improvements in the City of Gardner, Kansas, and authorizing and providing for the making of such improvement in accordance with the findings of the Governing Body and K.S.A. 12-6a01 et seq. (Tuscan Farm Phase I Infrastructure special benefit district)

Councilmember Moore Seconded.

With all of the Councilmembers voting in favor of the motion, the Resolution passed and was assigned Resolution number 2013

Winters:	Yes
Baldwin	Yes
Gregorcyk:	Yes
Melton	Not in room
Moore:	Yes

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6. Consider adopting a resolution establishing an account with the State of Kansas Municipal Investment Pool and repealing all other resolutions not in conformity herewith

Mayor Shute asked if this was related to the Land Bank. Finance Director Matthew Wolff stated it was not.

Councilmember Melton made a motion to adopt Resolution 2014 a resolution of the City of Gardner, Kansas establishing an account with the State of Kansas Municipal Investment Pool and repealing all other resolutions not in conformity herewith

Councilmember Winters Seconded.

With all of the Councilmembers voting in favor of the motion, the Resolution passed and was assigned Resolution number 2014

Baldwin	Yes
Gregorcyk:	Yes
Melton	Yes
Moore:	Yes
Winters:	Yes

7. Consider adopting an ordinance amending Title 14 – Floodplain and Stormwater Management, adopting Chapter 14.01 and repealing Chapter 14.10, relating to floodplain and stormwater management, of the Gardner Municipal Code

Councilmember Melton asked if lots currently had to conform to this. City Engineer McEldowney stated they do not. He said the lot size was set at 5,000 square feet to cover most development within the City limits.

Councilmember Gregorcyk asked what the cost for a residential permit would be. Mr. McEldowney stated this had not been settled yet, but he expected it to be approximately \$150/acre. Mayor Shute asked if this was to cover the cost of assessment. Mr. McEldowney stated it was to cover the City's costs.

Councilmember Melton asked the cost to the City for failing to implement this. He said he did not want to add additional costs to developers and take away a potential advantage for the City. Mayor Shute stated it is a federal law. Mr. McEldowney stated both the EPA and KDOT have levied significant fines for failure to comply.

Councilmembers Melton and Gregorcyk asked the cost to the City. Mr. McEldowney stated a full time employee may be needed in the future. He continued that the program would reduce the amount of infrastructure needed but would need to be maintained. He said this maintenance would be the responsibility of the developer, but the City would need to perform inspections. Mayor Shute stated every new development would have to include filtering or mitigation in their stormwater infrastructure. Mr. McEldowney stated this could be a ten percent increase in cost.

Councilmember Melton made a motion to adopt Ordinance No. 2603, an ordinance amending Title 14 – Floodplain and Stormwater Management, adopting Chapter 14.01 and repealing Chapter 14.10, relating to floodplain and stormwater management, of the Gardner Municipal Code

Councilmember Baldwin Seconded.

With all of the Councilmembers voting in favor of the motion, the Ordinance passed and was assigned Ordinance number 2603

Gregorcyk:	Yes
Melton	Yes
Moore:	Yes
Winters:	Yes
Baldwin	Yes

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COUNCIL UPDATES

Utilities Director Gonzalo Garcia stated there had been an item in the Friday Minute Memo two Fridays prior to the Council meeting regarding a water interconnection with Water Seven. He said in 2018, the City had repaired a twelve inch water main break. He said this water main was the only source of water for the St. John's subdivision. He said a secondary line to the subdivision was estimated to cost \$172,000. He said Water Seven had offered an emergency interconnection for \$18,977 for the City's portion of the costs.

Interim City Administrator Laura Gourley stated it was preferred to have Council provide consensus prior to the City signing off on the interconnection.

Council provided consensus for the interconnection.

Councilmember Winters asked if there were any compatibility issues or if any studies would be necessary. Mr. Garcia stated the City currently has four interconnections with Water Seven.

Chief Planner Kelly Woodward stated the Business and Economic Development Department had held a productive meeting to discuss the proposed Waverly Pointe project with concerned area homeowners.

Public Works Director Michael Kramer stated a meeting had been held with USD 231 concerning traffic in the area of the proposed Waverly Pointe project. He said current traffic projections at Santa Fe and Waverly did not warrant the use of signals, but this could be revisited in the future. He said the Public Works department had assisted USD 231 on the previous Friday by providing additional salt and helping to clear parking lots so sports events could be held. Mayor Shute stated he appreciated staff's efforts on this.

Mr. Kramer stated the City would now be able to move forward with the engineering on the Tuscan Farms benefit districts. He said this was common in these situations. He thanked City Engineer McEldowney, City Attorney Denk, and Attorney Dunlay for their work on the stormwater ordinance.

Police Chief James Pruetting stated the Justice Center was progressing well. He said soffits and tile had been installed and painting had been done. He said the courtyard glass would be installed that week.

City Clerk Amy Nasta stated that the Council members on the UAC and Airport Advisory Board selection committees had been emailed earlier that day to request availability for interviews. She stated if the interview process was not completed for the two newly opened seats on the Airport Board, the terms of those members would need to be extended in order to maintain a quorum. She said the process for filling the original vacant seat would need to be restarted as the time for filling the position had elapsed. She said there were only two applicants to fill the three advertised open positions on the Utility Advisory Commission, and that, per City Attorney Denk and *Governing Body Rules of Procedure*, members of the Council may recommend individuals to serve in such situations. She said an additional position on the UAC would be advertised as one of the Commissioners has resigned. Mayor Shute stated these were commissions and needed to be able to meet.

City Attorney Denk stated he had reviewed the annexation agreement with Tuscan Farms and found that a petition to de-annex could be brought before the City Council if the agreement were materially breached.

Mr. Denk stated the Kansas Legislature had requested comments on two topics affecting local government: right-of-way and franchise agreements with the telecommunications industry and amendments to the Kansas Open Meetings Act (KOMA). He said there had been much discussion about scaling back the ability of local government to regulate the use of right-of-way and to charge franchise fees. He said the proposed legislation did not recognize that the use of right-of-way costs local governments money due to higher maintenance fees, and that franchise fees were intended to address this issue. He said the legislation to amend KOMA called for having a recording of each and every body subject to KOMA made available within 24 hours.

Mayor Shute asked if this had to be a video recording or if an audio recording would suffice. Attorney Denk stated the recording could be either audio or video. Councilmember Melton stated everyone had a device capable of recording. Mayor Shute stated he would not consider this an undue burden.

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Councilmember Baldwin stated, concerning right-of-way, he preferred local control in any and all cases. Mayor Shute stated right-of-way is an asset owned by the citizens and was not intended to be free and clear for all private entities to use. He said he would prefer to maintain control of this at a local level. Councilmember Baldwin asked if there was any long term outlook that this could be a slippery slope with other utilities. Attorney Denk stated it was possible there could be future concerns regarding non-discrimination clauses.

Councilmember Gregorcyk thanked staff for their support and positive work with the developer and contractors on the Price Chopper project.

Councilmember Melton stated he had found a model allowing for the building and purchase of hangars on leased ground based on an airport in Eldon, Missouri. He said he would like to see how this would fit for Gardner, as it would allow the City to no longer be in the airport hangar business.

Councilmember Moore stated this was a common model across the country, and was more common for private airport use. He said doing this would require changing the airport layout plan and platting the airport. He said in most cases, the hangars were aesthetically different, and that some kind of design standard would need to be implemented if this model were utilized in Gardner.

Councilmember Melton thanked Clint Barney for his service on the Utility Advisory Commission.

Councilmember Moore stated he wished to remind everyone that it was their responsibility to remove snow and ice from sidewalks and public rights-of-way.

Councilmember Winters thanked staff for clearing snow from the roads and asked if Mr. Kramer could talk about the process for repairing Highway 56. Mr. Kramer stated KDOT was responsible for both snow removal and repairs on Highway 56, and KDOT had been performing repairs. He said the City was responsible for City streets.

Mayor Shute stated the opening date for the Hampton Inn would be the 25th of March. He said the State of the City would be held at this venue, with a date in mid-April to be finalized soon. He said the theme would be building bridges.

ADJOURNMENT

There being no further business to come before the Council, on a motion duly made by Councilmember Moore and seconded by Councilmember Melton the meeting adjourned at 08:45p.m.

City Clerk