

December 13, 2016
Garnett, Kansas

The Governing Body of the City of Garnett met in regular session on December 13, 2016 at 6:00 p.m. with the following present: Greg A. Gwin, Mayor; W. Gordon Blackie and Jody M. Cole, City Commissioners; Joyce E. Martin, City Manager and Terry J. Solander, City Attorney. Absent: Kristina L. Kinney, City Clerk. Also attending: Jeremy DuPont, ACH Youth in Government Representative.

CALL TO ORDER

Mayor Gwin called the meeting to order at 6:00 p.m.

The Pledge of Allegiance was recited followed by Pastor Chris Goetz of the First Christian Church giving the invocation.

MINUTES APPROVED

A motion was made by Commissioner Cole, seconded by Mayor Gwin to approve the minutes of November 22, 2016. On roll call, the following vote was recorded: Ayes – three; noes – none.

COMMUNICATIONS & REPORTS

Mayor Gwin read a letter from County Clerk Phyllis Gettler certifying the results of the November 8, 2016 general election for city commissioner as follows:

Greg A. Gwin	729
Christopher M. Kanawyer	24
Paula Scott	168
Travis Wilson	327
Write-Ins	5

Mayor Gwin read a letter from Dave Harwood, Regional Manager of Vyve Broadband. This letter informs the city that effective January 1, 2017 a monthly copyright fee of \$0.18 will appear on customer billing statements. For the record, another letter was received from Mr. Harwood that indicates a monthly increase on customer billing statements of \$0.87 for local broadcaster fees.

Commissioner Blackie spoke about the survey prepared by the League of Kansas Municipalities that is being made available to citizens, businesses and city employees to help the commission

in their search for a new city manager. Mr. Blackie encouraged everyone to complete the survey. The deadline is December 23rd.

Commissioner Cole echoed Commissioner Blackie's comments. She extended thanks to Chamber Director Desiree Donovan for her efforts in getting information out about the survey.

Mayor Gwin thanked the Nazarene Church members for the beautiful display of lights on Fourth Avenue.

Student representative Jeremy Dupont reported that he was organizing a fund raiser through the local Pizza Hut. The skate boarders have set a goal to match the \$5,000 from the city's budget. They will discuss what equipment they want to order and will ask the city manager to request American Ramp to prepare a drawing of how the facility will look with the new and existing equipment.

The General Report of City Manager Joyce E. Martin was received and discussed, a copy of which is attached hereto and made a part hereof.

The matter of the rezoning issue is listed as follows: Consideration of an application by CDRJ Enterprises LLC to rezone all of Lot 14 and the East 20 feet of Lot 13 in Block 11, commonly known as 407 West 2nd in Garnett, Kansas from O-I (office institutional) zoning district to a B-1 (general business) zoning district.

City Attorney Solander led the discussion on this matter. The Planning Commission conducted a public hearing on November 15, 2016 to receive comments on the proposed rezoning from any members of the public in attendance. Therefore, tonight's discussion is not a public hearing; it is a time for the commission to receive reports and recommendations from the Planning Commission. Public comments can be considered. At their meeting, the Planning Commission granted the request of CDRJ Enterprises LLC and voted to recommend to the governing body that the property be rezoned.

The minutes of the November 15, 2016 Planning Commission meeting reflect accurately the discussions that were held. Mr. Solander provided a review of the zoning history of this property going back to May 1973 when zoning was adopted for the City of Garnett. He said that Dan Clark and Everett Moddie, representing CDRJ Enterprises LLC dba Wise Auto, were present at the public hearing held on November 15th. He advised the commission that the options are to accept the recommendation of the Planning Commission, reject the recommendation or send the matter back to them for further study. He also said that Dennis

Runyan, owner of the property at 121 South Vine which is east of the proposed rezoning, arrived at the Planning Commission meeting after the members had adjourned the hearing.

Mr. Runyan stated his feeling that the zoning for 407 West Second should stay the way it is. He said that in 3-5 years, he doesn't want a restaurant or some other type of building to locate on the lot. His concerns are an increased amount of traffic and lower property value for his home. It is his opinion that enjoyment of their backyard will be infringed upon. He offered that zoning to the north, south and east of the property in question is residential.

Commissioner Blackie asked Mr. Runyan if he wants to keep the zoning the way it is and Mr. Runyan replied in the affirmative.

City Attorney Solander said that with the present zoning, the owners of the car lot could use the area east of their business to park but not sell vehicles from that location. He said the Planning Commission had questioned what type of uses could be put in an O-I zone. He explained that it could be more business intensive in a B zone as compared to an O zone.

Mr. Runyan asked how many people would like to have a used car lot in their backyard.

Everett Moddie, managing partner of Wise Auto, thanked Andy Frye for helping them through this process and said he was very professional as he directed them, at the city level, to make sure things were done right. Everything has gone as planned, some improvements have been made and the cars are on the lot. He said they want to purchase the property to the east of the car lot so an additional 50-60 vehicles will be available for sale. They contacted Travis West of Home Team Properties and were told the house was for sale. But they determined they would need to request proper zoning. At the November 15, 2016 hearing they were told that, typically, the City Commission goes along with the Zoning Board which would allow them to purchase the property, raze the house and make the area more attractive. He said they own four (4) other franchises and have been in business over thirty years. They've had no problems with city personnel and people in the community and are hopeful the commission will let them move forward with their plans. He said they would be good neighbors and would raze an old, dilapidated house. They have visited with other neighbors and received no objections to their plans. They tried to contact Mr. Runyan by going to the house at 121 South Vine; however no one appears to be living there at the present time.

Mr. Blackie said "You haven't had an opportunity to talk to Mr. Runyan"? Mr. Moddie said no and he didn't come to the Planning Commission hearing on time. After their rezoning request

was approved, they left. He said Mr. Frye had given Dan Clark's e-mail and phone number to Mr. Runyan but no contact was received. Commissioner Blackie asked if anything could come out of a discussion about a fence? Mr. Moddie said there is a good fence there now. Commissioner Blackie said the house you are proposing to take down is a shield between the Runyan property and the car dealership. Mr. Moddie said they are just interested in moving forward without any further delay.

Mayor Gwin said he had talked with Dan Clark who is the manager of the dealership. He said he is tickled to death the car dealership is here in Garnett.

Travis West, owner of Home Team Properties, explained his reasons for stopping renovation of the house at 407 West Second. He continued by saying that almost two (2) months have passed since he was contacted about selling the property to CDRJ Enterprises, LLC and he wants to do whatever he can to work with the city to move forward on the rezoning and, if at all possible, would like to get this taken care of tonight. He encouraged the commission to see if this matter can be resolved because he needs to close on the property within the next two (2) days.

Mayor Gwin said this is the first time the commission has received the information from the Planning Commission.

Lewis Place, who lives at 406 West Second, which is across the street from the house proposed to be torn down, expressed his support of the proposed rezoning, saying he believes the flow of traffic has slowed down, the car dealership looks very nice and is well manicured and people can no longer sit in their cars in the parking lot at all hours of the night. He believes his property values will increase. He has talked with Mr. Runyan about his concerns and sees no problems with the car lot.

Commissioner Blackie said he is glad the car lot is here and appreciates the comments that have been shared with the commission tonight. He said he wants to try and see if there is a way for a compromise so Mr. Moddie will be able to use the property. Since Mr. Runyan lives out of town, he asked if this could be talked about one more time.

Commissioner Cole said she was excited about the new business in Garnett. She said she understood Mr. Runyan's feelings but said there is always going to be a car lot at this location. They are providing new jobs and she is willing to go forward.

Mayor Gwin said he had read the recommendations from the Planning Commission and would like to see an 8' fence installed. Mr. Frye responded that fences in the front yard can be no higher than 4' and 6' in the back yard. Installation of an 8' fence would require approval by the planning commission. The problem here is that the property in question is one property owner's back yard and another owner's side yard.

City Attorney Solander said there are several things to consider about the installation of a fence including the fact that you have a business owner that needs to move ahead, you have a property owner who is opposed to the rezoning request, there is a neighbor across the street who approves the rezoning and the fact that the Planning Commission motion talks about fencing, if required. Mr. Solander said he believed fencing would be required only when any industrial (not a business) abutted a residential zone.

Travis West said the 407 West Second property had been for sell for months on the open market. He said Mr. Runyan had a chance to buy it and did not.

Mr. Moddie said one more thing to note is there is a retaining wall made out of cinder blocks on the east side of the property. If they are required to put up a fence, it will only gather trash and debris. He said the parties involved have to use some common sense in this matter. The fence should not be on the car lot property as it will create the issues he was talking about.

Mayor Gwin said he didn't think it was fair for Mr. Runyan to pay for a fence to block off what the car dealership is trying to do. Somebody has to pay the bill. The Planning Commission recommendation mentions fencing.

Mr. Moddie replied if the Runyans want a fence, a fence already exists. To his knowledge the city has never required a fence. It doesn't make any sense to take down a good fence and put up a new one.

Andy Frye said the matter of outdoor lighting has been resolved.

Mr. Runyan said he was in favor of the car lot but not right up against his back yard. The existing fence isn't great and not tall enough to shield anything. It would be acceptable to him to install a new fence on his side of the retaining wall.

Travis West asked Mr. Runyan when the rezoning was done the first time, did he have a problem with it. Mr. Runyan responded no.

Mayor Gwin asked Mr. Moddie if he would be willing to pay to install a new fence. Mr. Moddie said he wasn't in a position to answer that as he has a business partner that will have to help make this decision.

Mayor Gwin said we can approve or deny the rezoning request or send it back to the Planning Commission. He would like to see if an agreement can be made between all parties to put a fence on Mr. Runyan's property. This should be doable without going back to the Planning Commission.

City Attorney Solander said the commission has no authority to compel a fence to allow the rezoning. The Commission cannot require a fence; can't put that requirement in the motion. There is no basis to grant rezoning subject to a special condition.

Mr. Moddie said they would like to move forward with their proposal. He said if the commission approves the rezoning, he would promise to make a good faith effort to be a good neighbor. Mr. Runyan said he believed this to be a solid commitment and he would do whatever it takes to make it work.

A motion was made by Commissioner Cole, seconded by Mayor Gwin to approve the recommendation of the Planning Commission to rezone the property known as 407 West Second from O-I (office institutional) to a B-1 (general business) zoning district. On roll call, the following vote was recorded: Ayes – Cole, Gwin and Blackie.

NEW BUSINESS

A motion was made by Commissioner Blackie, seconded by Commissioner Cole to approve the following 2017 cereal malt beverage license applications: Leiszler Oil/Short Stop #20, 420 South Maple; Casey's General Store, Inc., 219 West Park Road; Pizza Hut of SE Kansas, 405 North Maple and the Chinese Restaurant, 115 West 5th Avenue. On roll call, the following vote was recorded: Ayes – three; noes – none.

RESOLUTIONS

Resolution 12/13/16-1 was read as follows: A RESOLUTION AUTHORIZING THE EXECUTION OF A LICENSING AGREEMENT WITH GENCO MANUFACTURING TO PERMIT THE INSTALLATION OF ONE OR MORE COMMUNICATIONS ANTENNAS AND RELATED EQUIPMENT ON A CITY WATER TOWER. A motion was made by Commissioner Blackie, seconded by Commissioner Cole to approve Resolution 12/13/16-1 as read. On roll call, the following vote was recorded: Ayes – Cole and Blackie; abstention – Mayor Gwin.

Mayor Gwin said that GENCO had closed on the building today, will be meeting with a contractor in the near future and progress should move quickly from this point on.

CLAIMS, BONDS & COMMERCIAL LIABILITY INSURANCE:

Commissioner Cole questioned an amount from Employee Benefit for \$18,590.47

The City Manager replied that this was the city's share of the Blue Cross/Blue Shield medical insurance coverage. Ordinance #4166 was read as follows: AN ORDINANCE FOR THE APPROPRIATION OF CERTAIN CLAIMS. A motion was made by Commissioner Blackie, seconded by Commissioner Cole to approve Ordinance #4166 as written. On roll call, the following vote was recorded: Ayes – 3; noes – none. Ordinance #4166 paid warrants in the amount of \$197,959.25.

Mayor Gwin asked the City Manager to explain what plans, if any, had been made for an employee Christmas party. The manager said that it had been decided to have snacks on Friday, December 23rd as there was very little interest in having a family gathering as had been done in the past. A memo has been sent to all employees inviting them to stop by City Hall between the hours of 10:00 a.m. to 4:00 p.m. to eat and sign up for drawings. Mayor Gwin discussed Christmas bonuses. A motion was made by Commissioner Blackie, seconded by Commissioner Cole to approve \$200 for full-time employees and \$100 for part-time employees. On roll call, the following vote was recorded: Ayes – three; noes – none.

There being no further business to come before the Governing Body, Mayor Gwin adjourned the meeting at 7:45 p.m.

/s/ Greg A. Gwin

Mayor

Attest:

/s/ Kristina L. Kinney

City Clerk