

**ANDOVER CITY COUNCIL
Tuesday, January 10, 2012
Minutes**

1. Mayor Lawrence called the meeting to order.

2. Roll Call

Present were Mayor Ben Lawrence, Council Member Byron Stout IV, Council Member Sheri Geisler, Council Member Dave Tingley, Council Member Clark Nelson, Council Member Caroline Hale, Council Member Troy Tabor, Police Chief Mike Keller, Chief Financial Officer Director Donna Davis, Fire Chief Jim Shaver, Assistant City Administrator Jennifer McCausland, City Attorney Norman Manley, Public Works & Community Development Director Les Mangus, City Clerk Susan Renner, City Administrator Sasha Stiles, and City Bond Counsel J.T. Klaus.

3. Invocation was given by Pastor Leon Hiebert of the Generations Church.

4. Pledge of Allegiance was led by Mayor Ben Lawrence.

5. Public Forum - there were no comments.

6. Acceptance of Agenda

Mayor Lawrence requested the addition of an executive session to the agenda to discuss legal matters.

A motion was made by Council Member Clark Nelson, seconded by Council Member Byron Stout to accept the agenda with the addition of an executive session. Motion carried 6/0.

7. Awards

James Haney, Executive Vice President AAA of Kansas, and David Corp of the Kansas Department of Transportation, presented the Andover Police Department the AAA silver award, Police Sergeant Brandon (Hoss) Stewart accepted it, for the departments safety efforts in the Andover community.

8. Public Hearing - Appeal of Vicious Dog Ruling

Mayor Lawrence opened the hearing and asked Police Chief Keller for a brief synopsis of the case.

Police Chief Keller provided information regarding an incident reported on October 31, 2011, where a Westy/Poodle mix was attacked by an Akita. A vicious dog hearing was held on November 16, 2011, and after review of testimony and evidence Animal Control

Officer Mickey Farris declared the dog vicious to other animals in accordance with section 2-2502 of the Code of the City of Andover. 2-502. *Vicious animals; complaint. (a) Upon the complaint of any person or upon his own initiative, an Animal Control Officer may hold a hearing to determine whether or not an animal which has attacked or bitten any person or domestic animal as vicious. The owner of said animal shall be notified in writing of the time and place of the hearing. If the owner is not known, notice of the hearing shall be published at least one week prior to the hearing in the official city newspaper. In making a determination, the Animal Control Officer shall consider the following: (1) The seriousness of the attack or bite; (2) The past history of attacks or bites; (3) The likelihood of attacks or bites in the future. (4) Conditions existing at the time of the attack or bite. (5) The conditions under which the animal is kept or confined. (b) If the Animal Control Officer determines that the animal is vicious, he may order that the animal be confined in a manner and location that will insure that it is no threat to persons or domestic animals. If such confinement is not possible, or if a prior order of confinement has been violated, the Animal Control Officer may cause the animal to be destroyed. Alternatively, the owner of such animal shall be given the option to immediately and permanently move such animal from the city limits of the City of Andover. Any person failing to abide by such order of the Animal Control Officer shall be deemed to be in violation of this ordinance. (c) Any person dissatisfied with any order or determination of the Animal Control Officer made pursuant to the preceding section may appeal such order or determination within three (3) days, excluding Saturdays, Sundays, and holidays, to the governing body of the City of Andover, Kansas. An appeal to the governing body shall be taken and based upon the evidence considered at the hearing before the Animal Control Officer. Pending the outcome of such appeal, any animal determined to be vicious by the Animal Control Officer shall be confined as directed by the Animal Control Officer.*

Chief Keller stated the electronic shock collar the owner was using was not keeping the dog contained and if Mr. Weddington keeps the animal inside the City limits he must comply with certain requirements.

Tim Weddington, 1920 N. Remington, owner of the dog, stated his dog is not vicious only aggressive by nature. Mr. Weddington stated he is a certified AKC dog trainer and a dog trial specialist. He wants to keep the dog but building a dog kennel as requested by the Police Department is not allowed in the subdivision he lives in. He has purchased the house at 1910 N. Remington and there is a 6' wood fence and he will install an electrical wire on the inside of the fence to keep the dog from digging out or any other animal coming in. He will muzzle the dog and always have him on a leash if out of the yard or house.

Byron Stout asked Mr. Mark Humphries to speak to previous altercations.

Mr. Humphries, 1916 N. Remington Court, stated there were two occasions, once his dog went on Mr. Weddington's property and once Mr. Weddington's dog came on his property. He stated he felt neighbors should work out these situations and also felt responsible due to not having his dog on a leash.

Norman Manley, City Attorney, stated the Council has the authority to modify the containment requirements.

There was discussion regarding the legality of an electric wire at which time Police Chief Keller stated that would not be required.

A motion was made by Council Member Sheri Geisler, seconded by Council Member Clark Nelson to uphold the findings by Animal Control Officer Farris and amend the vicious dog ruling to allow Mr. Weddington to keep the animal confined in the fenced yard at 1910 Remington and if outside the home or fenced yard the animal must be on a 4' leash and muzzled. Motion carried 6/0.

Mayor Lawrence stated he wanted Mr. Weddington to know that this is a last chance ruling.

(The addresses shown on the police reports state W. Remington, the correct addresses are actually N. Remington).

9. Consent Agenda

- a. Approval of Minutes
 - i. City Council Meeting: December 27, 2011
- b. Receive & file reports
 - i. Fire: December 2011
- c. Receive & file minutes
 - i. Planning Commission: November 15, 2011
- d. Approval of appropriation ordinance B-24-11 in the amount of \$ 732,457.60.
- e. Approval of non-elected personnel items

Captain Randall Coffman, Police Department, longevity increase from \$26.95 per hour to \$27.62 per hour, effective January 23, 2012.

Officer Braxton Hill, Police Department, position change from Officer to MPO I, with a pay increase from \$16.72 per hour to \$17.05 per hour, effective January 9, 2012.

- f. Approval of KDOT/LaFarge change order 23 on the South Andover Road project for curb & gutter, surfacing material, aggregate base, and patching. (\$52,843.13)
- g. Approval of KDOT/LaFarge change order 24 on the South Andover Road project for water and asphalt. (-\$31,774.06)
- h. Approval of an invoice for Regional Economic Area Partnership (REAP) membership for 2012 (\$7,650)
- i. Approval of the Mayoral appointment of Bill Schnauber, 8285 S.W. Indianola

Road, to the Planning Commission. Mr. Schnauber will fill the out of city limits term vacated by Andrew Hart which expires May 2013.

A motion was made by Council Member Caroline Hale, seconded by Council Member Dave Tingley to approve the consent agenda. Motion carried 6/0.

10. [Discussion: YMCA Special Assessments](#)

Mayor Lawrence explained the YMCA was attempting to expand and considering the purchase of the piece of property west of the current facility. That piece of property has special assessments and the YMCA does not want to issue a letter of credit to cover those assessments. Staff has discussed a plan to allow the re-spread of assessments to the property where the YMCA facility is located.

J.T. Klaus, Triplett Woolf & Garretson, City Bond Counsel, stated the assessments can be re-spread if all the property owners are in favor, with this property there would be only one owner, the YMCA.

After much discussion regarding fees for the re-spread the Council concurred to move forward with the re-spreading of the assessments as requested. Triplett, Woolf & Garretson fees will be paid by the property owner and the City will not charge any fee for the re-spreading.

11. [Irrigation replacement for Andover Court Assisted Living \(21st Street project\)](#)

Les Mangus explained the quotes are for the replacement of the irrigation system damaged due to the 21st Street project.

A motion was made by Council Member Byron Stout, seconded by Council Member Sheri Geisler to approve the reimbursement to Andover Court Assisted Living for the low bid of \$1,800 from Suburban Landscape Management, Wichita, for repair of the Andover Court Assisted Living irrigation system as outlined and the property owner is to sign a release of claims in exchange for the payment. Motion carried 6/0.

12. [A resolution amending the Code of Municipal Policies, City of Andover, Chapter 2, Personnel, Article 2 -1.2 Position & Salary Classification Plan. \(part-time IT support\)](#)

Sasha Stiles explained this job description needed to be created so the position could be advertised.

A motion was made by Council Member Troy Tabor, seconded by Council Member Sheri Geisler to approve a resolution amending the Code of Municipal Policies, City of Andover, Chapter 2, Personnel, Article 2 -1.2 Position & Salary Classification Plan. (part-time IT support) Motion carried 6/0. Resolution number 15-01 was assigned.

13. [An ordinance changing the zoning district classification of certain lands located in the](#)

City of Andover, Kansas, under the authority granted by the Zoning Regulations of the City as originally approved by Ordinance No. 1187. (Z-2011-01 the north side of Kellogg/U.S. Hwy 54 between Onewood Drive and Jamestown)

Mayor Lawrence presented an ordinance changing the zoning district classification of certain lands located in the City of Andover, Kansas, under the authority granted by the zoning regulations of the City as originally approved by Ordinance No. 1187. (Green Valley P.U.D. Z-2011-01)

The Mayor asked the City Council if anyone intended to disqualify themselves from discussing or voting on this case because they have conflicts of interest or particular bias. No one did.

The Mayor asked if anyone has discussed this case outside of this meeting. No one had.

The Mayor asked the City Clerk if the City had received any protest petitions. She responded she had not.

The Mayor confirmed with the Council that they had received the December 20, 2011, Planning Commission meeting minutes.

The Mayor asked if the applicants were present. They were not.

The Mayor asked Zoning Administrator Les Mangus to give a brief report regarding the case.

Mr. Mangus explained the case is to amend the zoning and to reconfigure the boundaries of parcel 15 and 16 of the Green Valley P.U.D. changing from B-4 Central Business District and B-5 Highway Business District to R-4 Multiple Family Residential District with permitted uses limited to church and associated church uses, such as but not limited to a senior center, child care facilities, educational facilities and recreational uses.

Mr. Mangus stated there has been some citizen concern regarding the buffering between the proposed backage road and the rear of the existing single family residential lots. Mr. Mangus added that without knowing what the buffer will be you cannot determine how wide it needs to be and that will be known when the property is platted.

Council Members Troy Tabor and Sheri Geisler are concerned if the buffer is not addressed in the ordinance it could be over looked later and that it should be sent back to the Planning Commission.

Council Member Clark Nelson stated this issue should be addressed through the normal process and the Council should be confident in the Planning Commission.

CASE NUMBER: Z-2011-01
 APPLICANT/AGENT: Revelation Ministries Christian Church/ Baughman Co., P.A. (Russ Ewy)
 REQUEST: Amendments to the Amended Final General Planned Unit Development (P.U.D.) of Green Valley Greens.
 Reconfiguration of the boundaries of Parcels 15 and 16 of the Amended Final P.U.D. and an amendment to the zoning district classification of Parcel 16 eliminating the B-4 Central Business District and B-5 Highway Business District classifications to R-4 Multiple Family Residential District only with permitted uses limited to church and associated church uses, such as but not limited to senior center, child care facilities, educational facilities, and recreational uses.

CASE HISTORY:
 LOCATION: N. of US-54 and East of Onewood Dr.
 SITE SIZE: +/- 20 acres
 PROPOSED USE: Church and associated uses.

ADJACENT ZONING AND EXISTING LAND USE:

North: R-2 Green Valley 8, 9, 10 single family residences
 South: Butler Co. Ag-40 used vehicle sales, pet cemetery and office building
 East: R-1 & R-2 Single family residences
 West: R-3 Patio homes and vacant B-4 lot

Background Information: This property was zoned to accommodate either apartments or highway businesses several years ago. At that time stringent buffering and screening wall conditions were placed on the north and east property lines to provide some screening between the more intense proposed uses and the single family residences.

* Note: This report is to assist the Planning Commission to determine their findings from the evidence presented at the hearing so as to base their rezoning recommendation on the required 17 factors found in Section 11-100 H of the Zoning Regulations. The responses provided need to be evaluated with the evidence and reworded as necessary to reflect the Planning Commission's considered opinion. Sample motions are provided to ensure the accuracy of the motion and facilitate the summary of the hearing for the minutes. Conditions attached to the motion, if any, should be carefully worded to provide instructions to the applicant and facilitate enforcement by the Zoning Administrator.

(As per Article 11, Section 100 of the City of Andover Zoning Regulation – 1993)

H. Amendments to Change Zoning Districts. When a proposed amendment would result in a change of the zoning district classification of any specific property, the report of the Planning Commission, accompanied by a summary of the hearing, shall contain statements as to (1) the present and proposed district classifications, (2) the applicant's reasons for seeking such reclassification, and (3) a statement of the factors where relevant upon which the recommendation of the Commission is based using the following factors as guidelines:

FACTORS AND FINDINGS:

- | | | |
|-----|----|--|
| YES | NO | 1. What is the character of the subject property and in the surrounding neighborhood in relation to existing uses and their condition? |
| | | STAFF:
PLANNING:
COUNCIL: |
| YES | NO | 2. What is the current zoning of the subject property and that of the surrounding neighborhood in relation to the requested zoning change? |
| | | STAFF:
PLANNING:
COUNCIL: |
| YES | NO | 3. Is the length of time that the subject property has remained undeveloped or vacant as zoned a factor in the consideration? |
| | | X STAFF:
X PLANNING:
COUNCIL: concurred |
| YES | NO | 4. Would the request correct an error in the application of these regulations? |
| | | X STAFF:
X PLANNING:
COUNCIL: concurred |
| YES | NO | 5. Is the request caused by changed or changing conditions in the area of the subject property and, if so, what is the nature and significance of such changed or changing conditions? |

- X STAFF:
- X PLANNING:
- COUNCIL: concurred
- 6. Do adequate sewage disposal and water supply and all other necessary public facilities including street access exist or can they be provided to serve the uses that would be permitted on the subject property?
- YES NO
- X STAFF: All can reasonably be extended to serve the site.
- X PLANNING:
- COUNCIL: concurred
- 7. Would the subject property need to be platted or replatted in lieu of dedications made for rights-of-way, easements access control or building setback lines?
- YES NO
- X STAFF:
- X PLANNING:
- COUNCIL: concurred
- 8. Would a screening plan be necessary for existing and/or potential uses of the subject property?
- YES NO
- X STAFF: Some buffering of the nearby single family residences is necessary.
- X PLANNING:
- COUNCIL: Council Members Geisler and Tabor had concerns but it was determined the Planning Commission and Subdivision Committee would handle during the platting process.
- 9. Is suitable vacant land or buildings available or not available for development that currently has the same zoning as is requested?
- YES NO
- X STAFF: Not available
- X PLANNING:
- COUNCIL:
- 10. If the request is for business or industrial uses, are such uses needed to provide more services or employment opportunities?
- YES NO
- X STAFF: Not applicable
- X PLANNING:
- COUNCIL:
- 11. Is the subject property suitable for the uses in the current zoning to which it has been restricted?
- YES NO
- X STAFF:
- PLANNING:
- COUNCIL:
- 12. To what extent would removal of the restrictions, i.e., the approval of the zoning request detrimentally affect other property in the neighborhood?
- YES NO
- STAFF: No detriment is perceived because of the intensity of the existing permitted uses.
- PLANNING:
- COUNCIL: concurred
- 13. Would the request be consistent with the purpose of the zoning district classification and the intent and purpose of these regulations?
- YES NO
- X STAFF:
- X PLANNING:
- COUNCIL: concurred
- 14. Is the request in conformance with the Comprehensive Plan and does it further enhance the implementation of the Plan?
- YES NO
- X STAFF: The Comp. Plan suggests a commercial strip 600 ft. from US-54, however the US-54 Corridor Study revises the uses to more mixed uses.
- X PLANNING:
- COUNCIL: concurred
- 15. What is the support or opposition to the request?
- YES NO
- STAFF: The majority of those who have inquired support the proposed use, however some would like a larger buffer between the proposed backage road and the rear yards in the green Valley neighborhood.
- PLANNING:
- COUNCIL: concurred
- 16. Is there any information or are there recommendations on this request available from knowledgeable persons, which would be helpful in its evaluation?
- YES NO
- X STAFF: Staff recommends approval as applied for.
- X PLANNING:
- COUNCIL: concurred
- 17. If the request was not approved, would this result in a relative gain to the public health, safety and general welfare which would outweigh the loss in property value to or the hardship experienced by, the applicant?
- YES NO
- STAFF:
- X PLANNING:
- COUNCIL: concurred

A motion was made by Council Member Troy Tabor, seconded by Council Member Sheri Geisler to return the recommendation to the Planning Commission for further consideration of the buffer between the access road and the adjacent residential property. Motion failed 2/4. Council Members Hale, Tingley, Nelson, and Stout opposed.

A motion was made by Council Member Clark Nelson, seconded by Council Member Byron Stout to adopt an ordinance changing the zoning district classification of certain lands located in the City of Andover, Kansas, based upon the findings and factors of items 6, 7, 12, 13 and 14, of the Planning Commission recommendation, under the authority granted by the Zoning Regulations of the City as originally approved by Ordinance No. 1187. (Z-2011-01 the north side of Kellogg/U.S. Hwy 54 between Onewood Drive and Jamestown) Motion carried 5/1. Council Member Tabor opposed. Ordinance number 1505 was assigned.

It was stated that staff and the Council can contact the Planning Commission to express their concerns for the buffering.

14. [Discussion: Update of Rail Road Right of Way with Butler County and the City of Augusta](#)

Mayor Lawrence stated he, Mayor Kristy Williams of Augusta, Butler County Commissioner Will Johnson, and Sasha Stiles had a conference call with the attorney in Washington who is representing Butler County with issues regarding the railroad right of way and abandonment proceedings. The County will continue responsibility of the corridor between the two cities and the City does not have any liability.

Mayor Lawrence stated the ultimate intent is to preserve the corridor in some fashion jointly and would like to begin the process to determine how to do that.

Sasha Stiles stated in the conference call the County's attorney confirmed that court cases involving the taking of the property is the Federal Government, Surface Transportation Board and ultimately the Department of Justice's liability. The City does not own the property it only has management of an easement.

The Council concurred to investigate possibilities and costs for a rails to trails type project.

Mayor Lawrence will draft a letter to Butler County, City of Augusta, and various rails to trails groups, stating the City would like to preserve the corridor and look into a future joint program and ask for their assistance in the process.

15. [KMIT Workers Compensation renewal](#)

Sasha Stiles stated there is a slight increase over the 2011 cost. The library has been added and they will pay the additional premium of \$596.

A motion was made by Council Member Byron Stout, seconded by Council Member Sheri Geisler to approve payment of the KMIT Workers Compensation renewal invoice in the amount of \$75,351. Motion carried 6/0.

15.B Executive Session

A motion was made by Council Member Sheri Geisler, seconded by Council Member Byron Stout at 9:26 p.m. to enter an executive session for ten minutes to discuss legal matters and to include the Governing Body, City Administrator Sasha Stiles, and City Attorney Norman Manley. Motion carried 6/0.

A motion was made by Council Member Sheri Geisler, seconded by Council Member Troy Tabor at 9:38 p.m. come out executive session. Motion 6/0.

No action was taken as a result of the executive session.

16. Member items

Council Member Byron Stout

- Appreciates the planning process and encouraged citizens take a part in it.

Council Member Sheri Geisler

- Agreed with Council Member Stout's statement.
- Welcomed Bill Schnauber to the Planning Commission.

Council Member Dave Tingley

- Agreed with Council Member Stout's statement and added people complain the City does not work with companies coming in but it is just not that simple.
- Asked to be removed from the Site Plan Review Committee due to scheduling conflicts.
 - Mayor Lawrence stated he will make an appointment at the next meeting.

Council Member Clark Nelson

- Announced the ad-hoc committee formed to look at planning and zoning standards will meet at the conclusion of each Site Plan Review Committee meeting which meets on the 1st Tuesday of each month at 6:00 p.m.
- Thanked whoever took care of the improvements on 159th Street south of 13th.

Council Member Caroline Hale had none.

Council Member Troy Tabor

- Reminded everyone that January is School Board Appreciation month and to thank the members.

17. [Recess to Thursday, January 12, Envisioning meeting, Central Park Lodge, 5:30 p.m. Additional Envisioning meetings to be held on January 19 and 26.](#)

Respectfully Submitted by

Susan Renner
City Clerk

Approved this 31st Day of January, 2012, by the City Council, City of Andover