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CITY OF MERRIAM, KANSAS

9000 W. 62nd TERRACE

SPECIAL COUNCIL MEETING

MINUTES

July 19, 2004

I. CALL TO ORDER

The Special City Council Meeting of the City of Merriam, Kansas, was called to order by Mayor Carl Wilkes on Monday, July 19 at 6:33 p.m.

II. ROLL CALL

Members Present

Mayor Carl Wilkes

R. Kevin Buchta

Bryan Burks

Nancy Hupp

Dan Leap

Gayle Stephens

Allen Troyer

Jim Wymer

Staff Present

Quinn Bennion, City Administrator; Michelle Diase, City Attorney; Stephanie Dawkins, Assistant City Administrator; Maureen Rogers, Finance Director; Dustin Smith, Community Development Director; Terry Harris, Downtown Development Coordinator; and Juli Pinnick, Recording Secretary.

Mayor Wilkes read the notice of the Special Governing Body meeting to consider approval of process for the sale of two city-owned downtown Merriam buildings.

III. AGENDA ITEMS

1. Consider approval of process for the sale of two city-owned downtown Merriam buildings.

Community Development Director, Dustin Smith presented an update from the previous work session held on July 12, 2004. Mr. Smith explained the two options for marketing the properties. The first option regarded having the properties listed with a real estate agent. Six real estate agents were contacted regarding marketing the buildings. Feedback from those agents indicated that the agents were interested in marketing the buildings however the fees for their services varied, as did determining the basis for which the fees would be based. Some indicated that the fee would be based on sales price while others would base the fee on appraised value.

The second option was to have the City market the buildings using a Request for Purchase Proposal and a Real Estate Purchase and Redevelopment Agreement as used in the past sale of city owned buildings. With this option the Downtown Coordinator would coordinate and administer the sale.

Mr. Smith went on to review the changes in the Request for Purchase proposals and the Real Estate Purchase and Redevelopment Agreement. Changes in the RFP from the last sale of city owned property are minor and consist of a construction easement for the downtown enhancement project; deadline changes- to be determined; agreement to form of contract regarding changes to the Real Estate Purchase and Redevelopment Agreement being only allowed through the RFP; architectural guidelines to be followed and maintained; references to compliance with the Turkey Creek Floodplain; and minor verbiage changes.

The changes and significant considerations to the Real Estate Purchase and Redevelopment Agreement were also outlined.

City Attorney, Michelle Daise presented an overview of the Ethics Code for elected officials regarding the sale of these buildings and their involvement in the process of disposition of the buildings. The Governing Body has the responsibility to impose sanctions upon a violation being determined. Those sanctions range from, a public censure reprimand issued by the Governing Body; complaint be filed for action with law officials-this would be issued through Johnson County; the matter be referred the State Attorney General for consideration; or dismissed for lack of cause. These actions can only be taken by the Governing Body upon referral by a member of the Governing Body that they believe a violation has occurred; discussions to determine if a violation has occurred would need to take place before any action could be taken. This issue would have to be discussed and actions decided upon would be done in

open session, as this issue would not constitute an executive session for discussion. Ms. Daise reminded the Council that the Code of Ethics is not a law, but rather the responsibility of the Council to enforce.

Ms. Daise then briefed the Council on how to prevent an ethics violation from occurring. Council members have brought the issues of voting and decision making regarding the sale of the buildings to the attention of Ms. Daise and the City Administrator. Councilmembers questioned how those actions could effect the Code of Ethics depending on the level of involvement. Specific issues that could effect the Code of Ethics could be a Councilmember submitting a proposal on their own or Councilmembers that may have involvement with Downtown Merriam Partnership and then DMP presenting a proposal. If either of these events were to occur it might appear that those Councilmembers have an "interest" in the transaction of selling the buildings. Ms. Daise read the definition of "interest" as stated in the code of ethics which states " *a direct or indirect financial or material benefit accruing to a public officer as a result of contract or transaction which is or may be the subject of an official act or action by or with the City.*" Ms. Daise further addressed the Council in regard to the issue of events that may occur if an individual became involved with an issue or project down the road and that individual is on the Council making decisions now. In determining whether an individual on the Governing Body has an interest in an issue one must look at not only ones self interest but an interest exists if it involves the affairs a relative by blood, and/or marriage, a spouse, child, parent, grandparent, grandchild or sibling – divorce does not sever that interest. Interest is also defined as any person or business entity in which contractual relationship exists and any business entity in which the public officer (Councilmember) is an officer, director, or employer or member having a financial interest and any business entity in which the public official would have 5% or more interest in-this would include stock and/or ownership in the business.

Ms. Daise addressed the issue of DMP and how, if DMP submitted a bid for these buildings it could effect City Councilmembers who are involved with DMP. As an example, if a Councilmember serves on the DMP Board of Directors, it could be construed that that Councilmember has an interest. However simply being a member with no financial interest of the DMP organization would not constitute an interest. Business entities referenced earlier is defined to include corporations and DMP is a corporation. Ms. Daise referenced that the Code of Ethics which states, "Any Councilmember deemed to have a direct or potential interest shall disclose that interest to the Board President (Mayor), not participate in any discussion nor shall that person be present during any discussion or decision relating to the matter in which the interest has been determined."

Councilmember Stephens asked about Conflict of Interest if a councilmember donated time or money to a business or organization that was bidding.

Ms. Daise responded that if a councilmember received a financial gain, there may be a conflict.

Councilmember Burks expressed his support of staff's recommendation to use the RFP and sales agreement and sell both buildings. Mr. Burks also supported staff's recommendation to utilize Terry Harris, Downtown Development Coordinator to market and show the buildings. Mr. Burks also indicated his desire to bring in Kate Michaelis, VP Economic Development, Northeast Johnson County Chamber of Commerce to work with Mr. Harris.

Councilmember Hupp requested more details regarding the Real Estate agent fees.

Quinn Bennion responded that the fees for the agents' services varied depending on the scope of services the agents would perform. And the role of the real estate agent and scope of their work has not been defined as far as the level of involvement. However, the fees ranged from \$10,000 each on the two buildings; 6% of appraised value; 7% of sales price; to a flat fee of \$1,500-2,000 for each building. Again with the scope of services not defined it was difficult for the agents to determine their fees.

Councilmember Stephens asked if the process could be open to allowing realtors to show the property if they had an interested buyer.

Quinn Bennion responded that one of the contacted agents referred to listing the property "Brokers Protected". Listing the property Brokers Protected means that if anyone who purchased the property were represented by a real estate agent then their broker would be entitled to receive a fee. With a Brokers Protected listing, the agents would be more inclined to market the buildings. The fee would be taken from the sale price.

Public comments were heard from Anita Maggio 7641 W.93rd St. Ms. Maggio expressed her opinion that the buildings need to be marketed by a Real Estate Agent.

Paul Cassetta 9913 W. 69th Ter. expressed similar concerns of the need, in his opinion, for the buildings to be marketed by a Commercial Realtor.

Downtown Development Coordinator Terry Harris explained the market plan he has for selling the buildings.

Dan Phillips of Mercantile Financial, 11880 Switzer, addressed the Council and offered a proposal for both buildings. The 5846 Merriam Dr. building would be very suitable for a tenant that sells old and used record albums. The business is very successful with its mail order business and is

looking for a retail location. It would be necessary for this business to be in and running by December 2004. The building's location would fit in to their business plan as a destination location. The proposal would include buying the property at 5854 Merriam Dr. known as the old bank building and tear it down to allow for parking for the retail record store. Mr. Phillips requested a 30-day option to sell the buildings for the city for \$1,000.

Mayor Wilkes explained that although he appreciated Mr. Phillips offer, the City was not in the position to accept any proposals at this time.

COUNCILMEMBER BUCHTA MOVED TO FOLLOW STAFF RECOMMENDATION TO USE THE RFP AND SALES AGREEMENT AND SELLING BOTH BUILDINGS. IT IS FURTHER RECOMMENDED TO UTILIZE THE DOWNTOWN DEVELOPMENT COORDINATOR TO MARKET AND SHOW THE BUILDINGS. COUNCIL WOULD CONDUCT INTERVIEWS AND DETERMINE THE BEST PROPOSAL.

There was some discussion regarding a time schedule for obtaining title work, surveys and advertising. There would be a 30-60 allowance for title work and surveys to be obtained; the proposal forms would be available after the title and survey work is complete. The proposals would be due approximately at the end of September, and advertising of the buildings would begin right away. Council would interview potential buyers in October.

There was some discussion regarding listing the properties as broker protected.

COUNCILMEMBER BUCHTA ADDED TO HIS MOTION TO INCLUDE THE SCHEDULE FOR PREPROPOSAL WORK AND TO LIST THE PROPERTIES AS BROKER PROTECTED. THE MOTION PASSED UNANIMOUSLY.

IV. ADJOURNMENT

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COUNCIL, COUNCILMEMBER WYMER MOVED FOR ADJOURNMENT AT 7:50 P.M. COUNCILMEMBER BUCHTA SECONDED THE MOTION. THE MOTION WAS UNANIMOUSLY APPROVED.

Respectfully submitted,

Juli Pinnick
Recording Secretary