

MULVANE CITY COUNCIL  
SPECIAL MEETING MINUTES

May 23, 2016

7:00 p.m.

The Mulvane City Council convened at the City Building at 211 N. Second at 7:00 p.m. Presiding was Mayor Shelly Steadman, who called the meeting to order.

**Council Members Present:** Joe Johnson, Kevin Cardwell, Nancy Farber Mottola and Jenean Keck. Terry Richardson arrived at 7:15 p.m.

**Others Present:** Kent Hixson, Debbie Parker, J.T. Klaus, Tyler Heffron of Triplet, Woolf & Garretson, LLC, Allison Herring of KDHE and Mike Robinson.

City Clerk read the following:

REQUEST FOR SPECIAL COUNCIL MEETING

City Clerk read the following:

To The Honorable Shelly Steadman  
Mayor of the City of Mulvane, Kansas

We, the undersigned, as duly elected members of the City Council of the City of Mulvane, Kansas, do hereby respectfully request that you call a special meeting of the City Council to be held at the Mulvane City Hall, 211 North 2<sup>nd</sup>, Mulvane, Kansas on Monday, May 23, 2016, at 7:00 p.m. for the object and purpose of:

1. Holding an executive session to discuss matters privileged in the attorney-client relationship;
2. Consideration of sewer services to the Mulvane Mobile Home Park.

Respectfully Requested,

Joe Johnson, Council Member, Nancy Farber Mottola, Council Member, Terry Richardson, Council Member

**CITY ATTORNEY**

**Executive Session – matters privileged in the attorney-client relationship.**

Request an executive session not to exceed fifteen (15) minutes to discuss matters privileged in the attorney-client relationship. The executive session to include the Mayor, Council, City Administrator, City Attorney and Special Counsel to the City, Tyler Heffron.

MOTION by Mottola, second by Keck to recess for a period not to exceed 15 minutes to discuss matters privileged in the attorney-client relationship with the Mayor, Council, City Administrator and City Attorney and special counsel. To return at 7:25 p.m.

MOTION approved unanimously at 7:10 p.m.

MOTION by Mottola, second by Keck to return to regular session at 7:32 p.m.

MOTION approved unanimously.

Mayor Steadman stated that no binding actions were taken in executive session.

Request for a second executive session not to exceed ten (10) minutes to discuss matters privileged in the attorney-client relationship. The executive session to include the Mayor, Council, City Administrator, City Attorney and Special Counsel to the City, Tyler Heffron.

MOTION by Johnson, second by Keck to recess for a period not to exceed 10 minutes to discuss matters privileged in the attorney-client relationship with the Mayor, Council, City Administrator and City Attorney and special counsel. To return at 7:43 p.m.

MOTION approved unanimously at 7:33 p.m.

MOTION by Johnson, second by Mottola to return to regular session at 7:43 p.m.

MOTION approved unanimously.

Mayor Steadman stated that no binding actions were taken in executive session.

Consideration of sewer services to the Mulvane Mobile Home Park:

Tyler Heffron stated that a trial was held in the U.S. Bankruptcy Court on May 18, 2016 on Midwest Legacy's Motion to Prohibit the Disconnection of Sewer Service and the U.S. Trustee's Motion to Dismiss Midwest Legacy's bankruptcy case. The Judge ordered that: (1) based on the facts and applicable bankruptcy law, the City is not prohibited from turning off the sewer service; and (2) Midwest Legacy has mismanaged its business and failed to show a financial ability to reorganize its affairs. Consequently, Midwest Legacy's Motion to Prohibit the Disconnection of Sewer Service was denied, and the U.S. Trustee's Motion to Dismiss the bankruptcy was granted. Effectively, the bankruptcy is now over and, so far as the Bankruptcy Court is concerned, the City can turn off the sewer service.

Allison Herring of KDHE's Wichita District office explained that KDHE's Director of the Bureau of Water sent a letter to the Council explaining KDHE's position. Ms. Herring stated that KDHE does not object to or doubt that the City has the ability to shut off sewer service to the Mulvane Mobile Home Park. Ms. Herring stated that KDHE's concern is that if the owner of the Mulvane Mobile Home Park continues to provide water to the park residents and the sewer is turned off, then sewer could backup and cause a possible nuisance within a matter of days. However, Ms. Herring stated such an event would not be caused by the City in any way. Ms. Herring stated KDHE would address any event if and when it happens, and that KDHE typically provides technical advice in cleaning up a contamination event. Ms. Herring explained that this is a unique situation for KDHE and recognized that typically the supply of water and sewer service are provided by the same providers, such that when sewer service is disconnected so is water service, thereby preventing a possible sewer backup situation.

Mayor Steadman read the following into the record:

PREAMBLE TO MOTION:

The Mulvane Mobile Home Park is located outside the city limits of Mulvane. The City first entered into a contract to provide sewer service to the Park in approximately 2004, at the behest of the Kansas Department of Health & Environment and the Park's then owner, D&D Simpson Family, LLC. Sometime in approximately 2008, D&D Simpson sold the Park to a new owner, Midwest Legacy. Since Midwest Legacy took over the Park, the Park has had frequent delinquencies in its account with the City for sewer service.

In 2010 and 2011, the City had to file a lawsuit against the Park's owner because of an extremely delinquent account. That prior lawsuit resulted in the appointment of a Receiver to collect rents from the tenants and pay the Park's bills. While that Receiver was in place, things appeared to run smoothly and

the bills got paid. But, as the Receivership ended, problems started again. The Park owner was litigious about that prior delinquency and that prior lawsuit ended in an appeal before the Kansas Court of Appeals. As a result of the prior lawsuit, the current Agreement for Provision of Sewer Service was entered into with the Park in July of 2011. KDHE was involved in the review of that Agreement. The Agreement provides that if the payment for sewer service becomes delinquent or if the required security deposit is not funded, the City can give notice of its intent to disconnect sewer service to the Park.

The Park's account with the City under the Sewer Agreement has been in a "past due" status 16 of the last 19 months. In that timeframe, the City has offset the Park's deposit on two occasions and has also sent a notice of intent to disconnect the sewer service on two occasions. On April 27, 2016, this Council authorized the City's attorney to send notice to the Park ownership that the sewer service would be disconnected on May 18, 2016, and that courtesy notice of this disconnection would be given to the tenants of the Park on May 12, 2016. However, the Park ownership was in a Chapter 11 bankruptcy proceeding at that time, and after the Park owner filed a motion, the City had to wait to disconnect the sewer service while the Bankruptcy Judge determined if the City had the right to do so. The Bankruptcy Judge has since ruled that the City does have the right to turn off the sewer service utility to the Park. In fact, the Park owner, knowing his account with the City was in default, waited nearly two weeks after the Notice of Intent to Disconnect was sent before having its attorney even contact the City about this situation. The City's past lawsuit with the Park in 2010 and 2011, the appeals and the latest appearances before the Bankruptcy Court have cost the City an estimated \$62,000 in attorney fees.

This situation with the Park is very frustrating. The Park ownership is in default and breach of the Agreement it has with the City for sewer service due to repeated delinquencies and failure to maintain the required deposit. Further, the Park owner has repeatedly ignored his obligations under the Agreement.

Based on the default, breach and time passage of all cure periods of the Agreement, the City is terminating the Agreement with the Park.

The City is sensitive to the tenant's situation, especially when the sewer is disconnected. And, quite frankly, even though they are not citizens of the City, the Council has concerns for those tenants well-being and their health given that the local news has recently reported that a Boil Water Advisory was placed on the Park's water supply due to the Park owners' failure to adequately maintain the water supply system and test the water. Certainly, health and water conditions at the Park are concerning, even in the absence of the Park's owner continually failing to pay for any sewer service. The residents may, in fact, be paying their rent, but the Park Owner is not paying the sewer utility bills. That being said, and even though the tenants are not citizens of Mulvane and the contract does not require the City give the tenants notice of its intent to disconnect the sewer service, the City has always done so in the past and should do so again now.

Given the Council's concern over the health and well-being of the tenants and the impact our decision might have on their living arrangements, the members of this Council have an obligation to the taxpaying citizens of Mulvane and their tax dollars. The City cannot continue to allow the Park owner, who is not a citizen of Mulvane, to take advantage of what has for too long been the City's generous nature in this situation. The City cannot continue to enable this Park to risk the health of its residents, nor can the City continue to process sewage from the Park at the expense of its own taxpaying citizens of Mulvane. Doing so would set a bad precedent for how the City handles contracts with individuals that are not its citizens. An agreement is an agreement, and both parties should honor their agreement. In essence, this matter boils down to one of contract. The Park had a contractual obligation to the City to pay its bills and maintain a deposit. It has failed to do these things and the contract has terminated.

MOTION by Johnson, second by Richardson to shutoff sanitary sewer service to the Mulvane Mobile Home Park on Friday, June 2, 2016, and to give courtesy notice of such shutoff on Tuesday, May 24, 2016, to the tenants of the mobile home park, KDHE, Midwest Legacy, Midwest Legacy's attorney, D&D Simpson Family, LLC's attorney, and the Sumner County Department of Health.

Discussion:

Mottola asked the council to give the residents one month to make other living arrangements.

Cardwell agreed.

MOTION approved 4-1.

## **ADJOURNMENT**

Motion by Mottola, second by Richardson to adjourn the council meeting.

MOTION approved unanimously.

Adjourned at 8:00 p.m.

Minutes by Debbie Parker

City Clerk