

CONSENT AGENDA

Mayor Fitch stated item #2 with regards to the Herman and Maxine Ledford claim will be discussed separately and items #15, #33 and #34 will be pulled for discussion.

MOVED by Wells SECOND by Morford to approve the consent agenda with the exception of items #2 (Ledford claim), #15, #33 and #34. AYE: Morford, Jackson, Bellino-Hall, Tanner, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

1. Consider the following damage claim recommended for approval: Wilma L. Caldwell in the amount of \$1050.00. Exhibits: Legal Opinion/Recommendation and **Resolution No. 15-01**.
2. Consider the following damage claims recommended for denial: Jesse Meddler in the amount of \$1676.00; Patty and James Parker in the amount of \$164.46; and Herman and Maxine Ledford in the amount of \$7500.00. Exhibits: Legal Opinions and Recommendations.

Kelea Fisher, Assistant City Attorney, stated she had recommended denial of the Ledford claim. There was a water main break and the claim is that the break caused damage to property owned by Mr. Ledford. The recommendation is based on the long standing Supreme Court ruling from 1966 that states if the City does not have constructive or action notice of a defect in its water main system or sewer sanitary system then the City is not liable.

Herman Ledford, claimant, stated this problem is no one's fault. He stated a 14-inch water line broke up on the hill and washed his dam out and water went right in front of his building. He had all kinds of furniture in there to sell. The water was standing in the building approximately 2-3 days until it drained out and then there was mud. He is asking council to help him take care of his losses. He started out at \$7,500 but he then thought he could salvage some of it. He dropped it down to \$4,500 to get rid of it, but it has been 90 days.

Haywood stated Mr. Ledford called and he went to the property and there was some damage with the mud going into his building but he does not believe it was worth \$7,500 or \$4,500, but it is worth some money.

Fisher stated in her memorandum she does not deny that the water main break did cause mud and water to flood his building and did cause some damage, which is evidenced by the photographs included in the agenda book. Their recommendation remains the same based upon the legal standard.

Wells requested Fisher explain state law.

Fisher stated the Supreme Court case states that in the case of a defective water and sanitary sewer system, the Oklahoma Supreme Court has held that a complaining part does not meet his burden of proving negligence unless prior notice of the defective condition, actual or constructive, has been received by the entity controlling and managing the system. The City

cannot act as an insurance company and insure that our water and sewer systems are going to be perfect.

Wells requested Fisher explain what that means to an individual council member is they approve something that goes against the law.

Fisher stated her recommendation is not just based on this claim, but also based upon the fact that sewer/sanitary systems fail as do water main breaks. In this situation they would never recommend the council pay this based on anything other than legal standards because they do not want to open up the flood gates for other situations in which they would make a recommendation for denial.

Wells questioned if council members could be held personally liable.

Fisher stated yes, if we were to ever receive a taxpayer lawsuit, when they pay these funds they are coming from city funds.

Haywood questioned if Mr. Ledford had insurance on the building.

Mr. Ledford stated no.

Mayor Fitch stated he was renting the building and did not have renters insurance.

MOVED by Wells SECOND by Morford to deny the claim of Herman and Maxine Ledford in the amount of \$7500.00. AYE: Morford, Bellino-Hall, Wells. NAY: Tanner, Jackson, Zarle, Haywood. MOTION FAILED.

MOVED by Jackson to approve the claim of Herman and Maxine Ledford in the reduced amount of \$4500.00.

Jackson stated many times he has sat up here and they have paid claims based on sewer back ups in people's houses without prior notice and this man had damage to his property on a 14-inch main that blew through his neighborhood and we are liable.

Mayor Fitch stated that there is some liability there, that is why you have insurance, even renters insurance.

Bellino-Hall stated this is citizen's money that they would be paying the claim with. A citizen could sue them for doing this because of Supreme Court actions. She stated the sewer line broke on 38th Street behind her house a few years ago and there was a foot and half of sewage in her basement and the City did not pay anything because there was no notice that the sewer line had ever had a problem. She empathizes with Mr. Ledford but she finds it hard to support paying the claim with citizens money, when other claims have not been paid and it opens us up to a lot of legal responsibility.

Tanner questioned if they were legally responsible for the amount that they would approve which is \$4,500.

Wells stated no, it is triple damages.

Mayor Fitch stated \$13,500.

Tanner questioned if that was split among council members.

Wells stated no, it is each.

Tanner stated he cannot afford that.

MOTION DIED DUE TO LACK OF SECOND.

MOVED by Wells SECOND by Morford to deny the claim of Herman and Maxine Ledford in the amount of \$7500.00. AYE: Morford, Bellino-Hall, Tanner, Zarle, Wells. NAY: Jackson, Haywood. MOTION CARRIED.

3. Consider adopting a resolution approving the compromise settlement and making payment in the workers' compensation claim of James Shepard. Exhibits: **Resolution No. 15-02.**
4. Consider adopting a resolution approving the compromise settlement and making payment in the workers' compensation claim of Asa Hursey. Exhibits: **Resolution No. 15-03.**
5. Consider adopting a resolution approving the compromise settlement and making payment in the workers' compensation claim of Ronny Ahlborn. Exhibits: **Resolution No. 15-04.**
6. Consider adopting a resolution ratifying the action of the City Attorney and the City Manager in making payment on the judgment in the Workers' Compensation case of Clinton Kizarr in the Workers' Compensation Court of Existing Claims, Case No. 2014-00051 A. Exhibits: **Resolution No. 15-05.**
7. Consider approval of the Retainer Agreement for Legal Services as Alternate City Prosecutor between the City of Lawton and John C. Mackey, Jr. of Mackey Law Firm, P.L.L.C., and authorize the Mayor and City Clerk to execute the Agreement. Exhibits: Retainer Agreement for Legal Services on file in City Clerk's Office.
8. Consider revised Employer Benefit Program application for Blue Cross and Blue Shield Medicare supplement plan (Blue Secure) and Prescription Drug Plan documentation. Exhibits: Benefit Program Application for Blue Secure, Prescription Drug Plan Application.

9. Consider approving contracts with Steven Scott Smith (\$675.00), Kenneth Hobbs (\$562.50), Catherine Daugherty (\$292.50), and Kathleen Long (\$262.50) instructors for the Spring 2015 Children's Art Studio program and authorize the Mayor and City Clerk to execute the agreements. Total amount for spring semester stipends is \$1,792.50. Exhibits: Contracts on file in City Clerk's office.
10. Consider approving a resolution amending the FY 2014-2015 budget to budget, appropriate and authorize encumbering the expenditure of existing funds carried forward from FY 2013-2014 to the credit of the Drainage Maintenance Division capital outlay account for the purchase of a replacement crawler dozer. Exhibits: **Resolution No. 15-06.**
11. Consider approving a Resolution that ratifies the National Incident Management System (NIMS) as the standing incident management system at the City of Lawton, and designating the Comanche County Emergency Management Director, Mr. Michael Merritt as the new Local Point of Contact (LPOC) for NIMS compliance. Exhibits: **Resolution No. 15-07.**
12. Consider approving agreement with nCourt LLC, Kennesaw, GA, to provide on-line and telephone options for payment of certain Municipal Court traffic infractions' fines and costs. Exhibits: nCourt agreement.
13. Consider approving the appointment of Scott Ray as an Alternate Municipal Judge, and authorize the Mayor and City Clerk to execute the Agreement. Exhibits: Scott Ray's Agreement for Judicial Services.
14. Consider accepting State Aid for Libraries Grant of \$50,086.00 from the Oklahoma Department of Libraries for FY2014-2015. Exhibits: Agreement for 2015 State Aid Recipients; Oklahoma Department of Libraries Rules and Regulations for State and Grants to Public Libraries.
15. Consider setting the date of February 24, 2015, to hold a public hearing to close the south 12 feet of street right-of-way along SW J Avenue, west of SW 11th Street, adjacent to Lot 1, Block 25, Waldman Addition. Exhibits: Application, Location Map and Survey.

Wells stated that CenterPoint and City of Lawton had utilities in the right of way and PSO and Fidelity does not. It states that public works has required a hold harmless agreement from the owner. He requested if that included CenterPoint Energy or is that only for City of Lawton easements.

Richard Rogalski, Community Services Director, stated the agreement we would get would be a hold harmless with the City of Lawton. He stated this isn't the item to actually close the right-of-way, this is just to set the date for the public hearing. The Hold Harmless agreement had to be between each party. He stated there is no good way to do this since the building was simply built in the right of way thirty years ago and it has been there ever since.

Wells questioned what would happen if CenterPoint does not get a hold harmless agreement.

Rogalski stated they would have the opportunity to come to the public hearing to oppose or they could also oppose the vacation. They would have to go to district court to petition for a vacation of the right of way. If CenterPoint showed up on the 24th and said they opposed this because they didn't have a hold harmless agreement, that would be a good reason for the council to deny this item.

MOVED by Wells SECOND by Morford to approve setting the date of February 24, 2015, to hold a public hearing to close the south 12 feet of street right-of-way along SW J Avenue, west of SW 11th Street, adjacent to Lot 1, Block 25, Waldman Addition. AYE: Morford, Jackson, Bellino-Hall, Tanner, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

16. Consider acknowledging receipt of a Tier 1 Permit from the Oklahoma State Department of Environmental Quality for the construction of 415 linear feet of 8-inch PVC waterline, 314 linear feet of 8-inch PVC sanitary sewer line, and all appurtenances to serve the House of Cool located at 7401 NW Cache Road in the SE/4 of Section 20, T2N, R12W, I.M., Comanche County, Oklahoma. Exhibits: Permits to Construct on file in the City Clerk's Office.
17. Consider acknowledging receipt of a Tier 1 Permit from the Oklahoma State Department of Environmental Quality for the construction of sanitary sewer lines to serve the South Wolf Creek Trunk Expansion #3 Project, City of Lawton, Comanche County, Oklahoma. Exhibits: None.
18. Consider awarding a professional services contract to Zia Corporation for the purpose of providing environmental engineering services for the City of Lawton and authorize the Mayor and City Clerk to execute the contract. Exhibits: Retainer Agreement for Professional Engineering Services.
19. Consider approving plans and specifications for the 2012 CIP Local Street Reconstruction Project #2012-11, Phase II and authorizing staff to advertise for bids. Exhibits: List of Phase II projects. Plans and specifications are on file in the Engineering Division office.
20. Consider adopting a Resolution authorizing the installation and/or removal of traffic control measures on: Southbound NW 82nd Street about 200 feet in advance of NW Cache Road; on southbound SW Ard Street in advance of SW Neal Blvd; on westbound SW Neal Boulevard in advance of SW Ard Street; on the west side of NW 14th Street between NW Logan Avenue and NW Hoover Avenue; on the west side of NW 14th Street between NW Bessie Avenue and NW Smith Avenue; and on the north side of NW Hoover Avenue from 14th Street to 150 feet east of 14th Street. Exhibits: **Resolution No. 15-08**, Traffic Commission Minutes and Traffic Issue Requests.

21. Consider accepting three permanents and a temporary easement from The Beverly K. Edwards Loving Trust, with Beverly K. Edwards Trustee for right of way needed for the North Wolf Creek Trunk Expansion Phase 1 Project #14-2SSES authorizing the Mayor and City Clerk to execute the documents and authorizing payment for the same. Exhibits: Location Maps. Documents are on file in the City Clerk's office.
22. Consider accepting a permanent easement and a temporary easement from L. Matthew and Arlene K. Purvis, husband and wife, for right of way needed for the South Wolf Creek Trunk Expansion #3, Project #14-2SSES authorizing the Mayor and City Clerk to execute the documents and authorizing payment for the same. Exhibits: Location Maps. Documents are on file in the City Clerk's office.
23. Consider accepting two permanent easements and two temporary easements from 2020 Development of Lawton, Inc., for right of way needed for the Nine Mile Creek Sanitary Sewer Interceptor Project#2008-2, authorizing the Mayor and City Clerk to execute the documents. Exhibits: Location Maps. Documents are on file in the City Clerk's office.
24. Consider accepting two permanent easements and two temporary easements from Frank L. Richards Trustee of the Frank Richards 1992 Trust, for right of way needed for the Nine Mile Creek Sanitary Sewer Interceptor Project#2008-2, authorizing the Mayor and City Clerk to execute the documents. Exhibits: Location Maps. Documents are on file in the City Clerk's office.
25. Consider accepting a temporary easement from Church of the Living God, a corporation, for right of way needed for the SW 52nd Street Project# 2012-4, authorizing the Mayor and City Clerk to execute the document and authorizing payment for the same. Exhibits: Documents are on file in the City Clerk's office.
26. Consider accepting a warranty deed from Darnell and Connie Garth, husband and wife, for right of way needed for the SW 52nd Street Project# 2012-4, authorizing the Mayor and City Clerk to execute the document and authorizing payment for the same. Exhibits: Document is on file in the City Clerk's office.
27. Consider approving the purchase of: (1) two Four-Door, Cab Over, Rescue Style Pumpers from Sutphen Corporation of Dublin, Ohio; and (2) associated equipment from various vendors to be determined in accordance with city code and/or purchasing policy, as appropriate. Exhibits: Equipment Maintenance Superintendent recommendation, Sutphen Price Sheet Discounts.
28. Consider extending contract (CL14-015) Fire Hydrants (Items 1-5) to American Waterworks Supply of Norman, OK. Exhibits: Department recommendation, Contract Extension Form, Price Sheet.
29. Consider extending contract (CL14-015) Fire Hydrants (Items 6-7) to Hydraflo, Inc. of Beaumont, TX. Exhibits: Department recommendation, Contract Extension Form, Price Sheet.

30. Consider extending contract (CL14-015) Fire Hydrants (Items 8-11) to HD Supply Waterworks of Owasso, OK. Exhibits: Department recommendation, Contract Extension Form, Price Sheet.
31. Consider awarding contract (RFPCL15-021) Semi Automated Satellite Refuse Truck to Waste Research Inc., of Chouteau, OK. Exhibits: Department Recommendation, Abstract of Bids, Price Sheet.
32. Consider extending contract (CL13-025) Sodium Hydroxide to FSTI, Inc. of Austin, TX. Exhibits: Department recommendation, Contract Extension Form, Price Sheet.
33. Consider awarding contract (CL15-026) Large Diameter PS46 Closed Profile PVC Pipe (Item #1 - 36' Closed Profile, PS 46 PVC Pipe and Item #2 - 42' Closed Profile, PS 46 PVC Pipe) to HD Supply Waterworks, LTD of Owassa, OK. Exhibits: Department recommendation, Abstract of Bids, Price Bid Sheet.

Jerry Ihler, Public Works Director, stated staff did not recommend the low bidder for items #33 and #34. Essentially, they set their specifications and they did make a recommendation to make award to the lowest responsive bidder to their specifications. The specifications required a closed profile pipe, PVC pipe. They have had this standard for large diameter sewer pipes since 1991 in their construction standards. They have over 125,000 linear feet in the ground and they have not had a failure. They have 25 years of experience with no failures and good success with that pipe. The low bid by ADS, theirs is a polypropylene pipe and it is not a PVC pipe and therefore it does not meet the material specs. One of the reasons was their experience with PVC closed profile pipe. Another reason listed in the agenda item was that several years back, in 2001, they tried some HDP pipe from ADS in the Wyatt Acres Addition at the southeast corner of 82nd Street and Cache Road. They had about 400-500 feet of this material and it was a new material at the time and they decided to allow them to put it in. It was in for a little over two years, just past the maintenance bond, and then they had failure. With the failure, staff went to ADS and asked them to stand behind the product and they received no support. This is not the exact same material, but the point is that they had an experience with ADS which was not positive because they would not support their product at that time. It cost the City \$57,000 to replace and repair that material without any assistance from ADS. In researching the material which they submitted as a bid, they contacted Owasso, Oklahoma, and they indicated that they no longer allow closed profile pipe in their specs because they had awarded and put in some pipe that was bid as the low bid and they had some problems with it about 8 months ago. Based on all that information staff made the recommendation to go with the lowest responsive bid that met the specifications.

Mayor Fitch stated staff had the same comments for item #34.

Ihler stated the reason they have two items is they did have three bidders that did bid the PVC material that was specified and met the specifications. Items #1 and #2, they had one bidder that was low, items #3 and #4 they had another bidder that was low. They awarded to the low PVC bidder on both.

Joshua Herchl, Sanitary Market Manager for Advanced Drainage Systems, stated they are a publicly traded company with 58 facilities in North and South America. They have 46 domestically, the competitive material they are talking about today has two facilities in the U.S., one with one company, one with another company. With regards to the concerns ten years ago with the City of Lawton, he was not with the company in this application ten years ago and he cannot speak to the actions then, he can speak to the actions that material is not the material they are proposing today. He encouraged council to do more investigation prior to awarding this bid. There has been a recommendation to award a material that 1) the industry has identified as inferior and 2) is costing the City of Lawton hundreds of thousands of dollars if not millions in material dollar amounts. There are three items identified in the letter recommending the award of items #33 and #34. The first item was that the ADS pipe is not PVC and does not meet the ASTM specified, that is correct and they knew that, that is a material specification for poly vinyl chloride, this is poly polypropylene material, it is a different plastic material. As a manufacturer they have grown this business of storm and sanitary sewer pipe, the sanitary sewer pipe specifically polypropylene. The main differences in the specifications are the material properties, PVC is held to a different standard because they are brittle. PVC materials are brittle in nature, polypropylene are not.

Mr. Herchl distributed a package of materials which is on file in the City Clerk's office.

Mr. Herchl stated that included in the package are some pictures of a stock pile of material in the City of Lawton's service department. Within that stock pile are approximately 75 pieces of sanitary sewer pipe left over from past projects with the City of Lawton. Those 75 pieces of material are no longer in useful condition, they are cracked. That is why they manufacture material out of polypropylene, it is not prone to the same material characteristics that PVC would be prone to. The second item he would like to address that was pointed out in the recommendation is that this material is new to the market and not had in depth testing. That statement could not be further from the truth. The ASTM specifications that their sanitary sewer pipe are among the most rigorous in the industry and highly scrutinized. ASTM and AASHTO all develop specifications that this particular material they are proposing meet. This particular material is also approved by the Army Corps of Engineers, Naval Facilities Command, Air Force, FAA and NASA, all encompassing in the UFGS specifications. Right here in the city of Lawton on Fort Sill they have this very pipe they are proposing today because it is approved by the nation's military bases. This particular material is also approved by Florida DOT, which is interesting because they assign a surface life to materials. FDOT has assigned a 100 year service life to the polypropylene material they are proposing. In addition to the additional testing protocols that have been completed on this pipe, this sanitary sewer material is approved by the City of Cincinnati MSD, St. Louis MSD, Denver metro wastewater and most recently the City of Dallas. All of those entities have approved the sanitary sewer pipe that they manufacture for use within their collection systems based on significant testing protocols and in depth studies of the materials that have been completed. In addition, new to the market an in depth warranty that's a statement he believes that encompasses the City's reluctance to use the material based on a lack of comfort. Based on that lack of comfort within your own bid specifications you have included a provision for the inclusion of an additional warranty. Along with their bid they submitted an additional ten year warranty to the City of Lawton for the material they are proposing. The additional warranties that were proposed by the manufacturers that are being proposed to be awarded, that was not published, so he does not know what those manufacturers proposed for an additional warranty. The last item was the material failure here within the city of

Lawton, that was a storm drain material, not the sanitary sewer pipe. Mr. Whisenhunt admitted to them that he believed that failure to not be a material problem, it was installation related. That claim that cost the City of Lawton money was due to an improper installation. Referencing the City of Owasso problem, also a failure problem, that was not their sanitary sewer pipe, that was a storm sewer pipe incorrectly designed. Owasso doesn't approve this material for years because they can't trust that particular contractor to put the material in. The design engineer for the City of Owasso claim was millions of dollars and that design engineer paid that claim, ADS did not pay one dime in that City of Owasso problem. Today they are different company than they were ten years ago, they were a private company and today they are a public company. They are held to different standards, as he mentioned they are across the U.S., Canada, South America and Mexico. He stated he would wrap up his comments with a quote from Ms. Bellino regarding the CIP, "We need money for operations, now is the time you wish you were Bill Gates and you could write a check". Earlier that month she could also be quotes as saying "I could not see buying lights for Cameron Ball Park when we cannot properly outfit our police department". The savings they offer on this particular bid are \$490,051. that is almost half a million dollars, that is 30% of your engineering budget and 5% of your sewer budget. If you relate that to additional footage of pipe, that is 15,557 feet of 36-inch diameter pipe. Three miles of sanitary sewer pipe in savings the City of Lawton is giving up in a dollar value by not looking at additional materials.

Mayor Fitch stated Mr. Herchl has done a thorough job of digging into this entire situation. He questioned how much time has ADS spent with engineering staff in talking about the positive things about the product and setting up some type of a testing program or did they just bid the pipe for this particular application.

Mr. Herchl stated they have spent a significant amount of time with the city, gaining a level of comfort in order to specify the sanitary sewer project.

Mayor Fitch questioned what he would call a significant amount of time.

Mr. Herchl stated he personally did not attend those meetings, and they have local representation at the engineering level and the sales representative level that met with the city's sewer departments. They have provided significant numbers of references, personal phone numbers and emails at some of the approving agencies, contractors and engineers that have utilized their product at the request of the city's sewer department.

Mayor Fitch questioned if they have requested that this product be put on the acceptable bid list within the City of Lawton.

Mr. Herchl stated yes. He stated they also provided the City of Lawton free sample materials of the sanitary sewer pipe to use in their application at their discretion. You don't have twenty feet of sanitary sewer that you are looking to replace at one time, however, that pipe could be installed in a culvert application, so that pipe was given to the City for the purposes of evaluation.

Mayor Fitch questioned the standard warranty period of time on this and are they extending it an additional ten years?

Mr. Herchl stated this is correct. The additional warranty that they are providing is providing additional coverage based on the installation. Their standard terms and conditions apply coverage lifetime to the product.

Mayor Fitch questioned if they are extending that ten years beyond the lifetime.

Mr. Herchl stated they are extending a warranty of the installation to ten years. They normally don't warrant contractors work, they warrant the materials against defects of workmanship. ADS materials are warranted for the life of the product which in Florida is 100 years, it could be 75, it could be 50. For the City of Lawton, they are offering a ten year warranty to replace from an installation perspective.

Mayor Fitch questioned if they had their personnel on site during the installation to make sure that it is done according to their specs.

Mr. Herchl stated yes. Black eyes in Owasso do not do them any favors. That methodology has changed. Ten years ago they had one representative in Oklahoma and today they have seven. They require on site assistance and they train contractors. He understands that the City is performing these duties and labor themselves and that type of training would be significant. The installation specification is identical to the PVC material that is specified. From the performance standpoint in the field after it is installed, it meets the identical specifications that you would normally utilize for post installation inspection in regards to pressurizing or manual testing for roundness.

Morford stated our problem is more the past record of ADS. He has a little comfort level there and he would like Ihler to discuss how he feels about it.

Jackson stated for the public and the council reference, Mr. Herchl is saying that the failed product of previous is not the same product that is being bid today.

Mr. Herchl stated that is correct, it was a different material.

Morford questioned if Ihler still does not recommend this.

Ihler stated they do not. They do not have the experience with this product. They do have the experience with what they have used for the last 25 years. They have had experience with the company on a particular job where they basically tried a pilot project with them in Wyatt Acres and it failed and they got absolutely zero support from the company. Granted, that was in 2001. Based on their experience with the company and the information they received from contacting Owasso, they recommend that they go with what is in their construction standard and award to the lowest responsive bidder. Mr. Whisenhunt indicated that he did request from ADS if they would consider a pilot of putting in one section from manhole to manhole and then they could monitor it over a couple of years and get some history and check it periodically to see if there is any deflection and ADS indicated that they were not willing to do that.

MOVED by Morford to award contract (CL15-026) Large Diameter PS46 Closed Profile PVC Pipe (Item #1 - 36' Closed Profile, PS 46 PVC Pipe and Item #2 - 42' Closed Profile, PS 46 PVC Pipe) to HD Supply Waterworks, LTD of Owassa, OK.

Bellino-Hall stated she went on line and reviewed this polypropylene pipe and apparently it has been looked at independently and it is a good material.

Wells questioned if there was an immediate need for this.

Ihler stated yes, for this particular purchase, from the standpoint of we are under consent order with ODEQ under our phase 3 sewer rehab and they are buying the next segment. They will be bidding several of these as they go through the program over the next six or seven years. They are doing south of the airport all the way out to the industrial park. They will be buying much more material.

Wells questioned if two or four weeks will make a big difference.

Ihler stated they do need to have the 48-inch pipe now.

Wells stated with the cost difference, would it not pay to take a couple weeks to talk to some of these other people in Florida. We are referencing our one experience in Owasso and he comes up and says all the military is using, Florida is using it, etc. Would it not pay to take a couple weeks and talk to some other people and see if there is some experience out there.

Ihler stated they would have to rebid it then because our specifications are for PVC material and this is not PVC.

Wells stated they would have to rebid it possibly if they did change the award, but at least get some more information.

Jensen stated the memorandum for the record to say why they were not going with the lowest bidder say that “it appears that the ADS pipe does not meet specifications”. It says it appears, and he understood that it does not.

Ihler stated it does not.

Jensen stated if it does not meet specifications, we cannot lawfully award to someone that does not meet specifications at this point in time.

Mayor Fitch stated there will be several opportunities to bid pipe of this nature for the sewer rehab project that is going on and it seems that they need to award this contract as is or don't award it period and rebid the whole thing. If you are talking about more opportunities down the line to bid pipe for this project, he feels that due to the time constraint they go with this, it is a tested pipe that has been utilized within this community for a long period of time and has tested successfully. Before they go out the next time, let's do some research on what ADS has to offer in a substitute of what we are recommending on future purchases and at that time decide if you want to include the specs for that pipe on future purchases. That sounds like the best thing to do at this point.

Ihler stated even if they want to go one step further, if Mr. Herchl would be willing to provide the pipes segment from one manhole to the next, they could determine how it installs and if there is any problem with it from that aspect. He may not be willing to do that.

Mayor Fitch stated possibly the company may not be willing to do that and the thing is, you put it in the ground, are you going to wait four, five years, you can't. We can talk to people that have had it in the ground for fifteen, twenty years and have their results for future bids on pipe.

Ihler stated he will have Mr. Whisenhunt and Mr. Hennessey get together and meet with ADS again and evaluate and contact different people in Florida and the references provided and go through and research it again.

Wells stated he is a little leery now because of what the City Attorney said because he doesn't say it doesn't meet the specs, it just appears it doesn't meet the specs.

Ihler stated it should say it does not meet the specs.

Wells stated but it doesn't. He questioned if they could approve it this way.

Jensen stated yes, the council could approve what staff is recommending.

MOVED by Morford SECOND by Haywood to award contract (CL15-026) Large Diameter PS46 Closed Profile PVC Pipe (Item #1 - 36' Closed Profile, PS 46 PVC Pipe and Item #2 - 42' Closed Profile, PS 46 PVC Pipe) to HD Supply Waterworks, LTD of Owassa, OK.

Tanner stated he is not going to vote for this approval, because he is in favor of saving half a million dollars and if he was spending his own personal money it would be worth his effort to table this for a couple weeks to save this money.

Mayor Fitch stated he did not think the difference was half million dollars.

Ihler stated it was around \$400,000.

Jensen stated from a legal standpoint the choice the council has tonight is to award as recommended or not award, which is fine, but we will have to go out and rebid to include this type of material in the specifications.

Mayor Fitch stated basically they approve this or disapprove this and go out for bids again.

VOTE ON MOTION: AYE: Morford, Haywood, NAY: Jackson, Bellino-Hall, Tanner, Zarle, Wells. MOTION FAILED.

34. Consider awarding contract (CL15-026) Large Diameter PS46 Closed Profile PVC Pipe (Item #3 - 48' Closed Profile, PS 46 PVC Pipe and Item #4 - 54' Closed Profile, PS 46 PVC Pipe) to Oklahoma City Winwater of Oklahoma City, OK. Exhibits: Department recommendation, Abstract of Bids, Price Bid Sheet

Mayor Fitch stated all the discussion they have had up to this point is relevant here.

Morford stated Ihler said that the 48" was more critical on time and he questioned if it was worth that or not.

Mayor Fitch questioned the amount of this bid.

Ihler stated the difference in the amount of the two bids was \$229,000.

Morford questioned how critical this was, did they have the ditch open?

Ihler stated no.

Morford questioned how long it would take to rebid this.

Ihler stated approximately a month.

Morford questioned if staff is still recommending they go ahead with this.

Ihler stated he is understanding that council wants staff to go out and rebid this allowing the option of this material.

Wells stated that is not what he said. You might have to rebid or you might not depending on what staff finds out from these other sources. If someone has had this around for five years and it is working fine you might change your opinion. He is just saying get some more information.

Ihler stated they can hold up for two weeks.

Mayor Fitch recommended they table both these items and maybe within two weeks we can have some discussion about it.

Wells stated he would make a motion to table both items #33 and #34.

Jensen stated item #33 has already been acted upon. They would have to have a motion to reconsider.

Bellino-Hall stated if you Google this product, it has been used in Europe for 30 years, it is not a new product so there is some background on it.

MOVED by Wells SECOND by Morford to reconsider item #33. AYE: Morford, Jackson, Bellino-Hall, Tanner, Zarle, Wells. NAY: Haywood. MOTION CARRIED.

MOVED by Wells SECOND by Morford to table items #33 and #34 for two weeks. AYE: Morford, Jackson, Bellino-Hall, Tanner, Zarle, Wells. NAY: Haywood. MOTION CARRIED.

35. Consider approving appointments to boards and commissions. Exhibits: None.

Board of Adjustment

Neil Springborn CPC Member
5431 NW Cottonwood Drive
Lawton, Oklahoma 73505
1/27/17

City Planning Commission

Deborah Jones
2920 NW Templeton Terrace
Lawton, Oklahoma 73505
Unexpired Term 7/26/17

Mayor's Commission On The Status of Women

Tiffany Spears
440 NE Sunset Drive
Elgin Oklahoma 73538
Unexpired Term 01/10/16

36. Consider approval of payroll for the period of December 22, 2014 – January 4, 2015.

NEW BUSINESS ITEMS:

37. Hold a public hearing and consider a resolution amending the 2030 Land Use Plan from Professional Office to Commercial and an ordinance changing the zoning from R-1 (Single-Family Dwelling District) to C-1 (Local Commercial District) zoning classification on property located at 3401 – 3405 NW Cache Road. Exhibits: Resolution No. 15-___, Ordinance No. 15-___, with Site Plan, Location Map, Applications and Draft CPC Minutes.

Richard Rogalski, Community Services Director, stated this request is for Lots 1-3, Block 2, Morford Hills Addition. The lots are under contract for sale through Insight Commercial Real Estate Brokerage. The proposed uses are all uses permitted in the C-1 district. The applicant, HN Capital, LLC, is the developer of the proposed project. The zoning of the surrounding area is R-1 with Historic Preservation Overlay District to the north, C-1 and C-5 (General Commercial District) to the south, and R-1 to the east and west. The land use of the surrounding area is single-family residential to the north, east, and west, and single-family residential and commercial to the south. The 2030 Land Use Plan designates the lots along the north side of NW Cache Road between NW 33rd Street and NW 38th Street as Professional Office. The current uses of the lots are single-family residential, and the proposed uses are all permitted uses within the C-1 district. There has been much discussion on the transitioning of the lots fronting

Cache Road from residential. The single-family residential neighborhood to the north was rezoned to include Historic Preservation Overlay District in 2012. The lots fronting NW Cache Road were not included in that request. While the 2030 Land Use Plan shows this areas as transitioning to Professional Office, most of the property fronting NW Cache Road between Fort Sill Boulevard and NW 82nd Street is zoned as commercial. C-1 Local Commercial District is the most restrictive commercial zoning district. The lots are approximately 75 feet wide by 160 feet deep, and multiple lots are required to provide a tract large enough for commercial development. The site plan indicates the requested area totals 36,519 square feet and includes a 5,500 square foot building with 55 parking spaces. The building is shown to be sited 25 feet from the right-of-way line of Cache Road and parking to be located to the north and west of the building. The plat of Morford Hills Addition included a 70-foot building limit line from the original lot line. Over the years additional right-of-way was granted for the widening of Cache Road. The location of the proposed building on the site plan does not meet the platted building limit line. The 55 parking spaces would be sufficient if the building required the highest parking requirement of 1 space per 100 square feet of floor area. The site plan includes a patio area which would also require 1 space per 100 square feet of floor area. The parking requirement could be met with additional landscaping (10% reduction in required parking spaces) and the provision of bicycle racks (2% reduction in required parking spaces). On December 18th, 2014, the City Planning Commission (CPC) held a public hearing on this request. During the public hearing one person expressed concerns regarding lighting from the proposed development onto the lots fronting Atlanta Avenue. The CPC, by a vote of 7 – 0, recommended approval to the City Council subject to the issuance of a variance to the front yard setback by the Board of Adjustment and the screening fence being located adjacent to the alley along the north side of the property. The applicant has filed an application to the Board of Adjustment for a variance to the front yard setback. The Board of Adjustment met on January 9, 2015 and did approve a variance to the greatest extent they could which resulted in a 31 foot resulting setback in the front yard. In the event the deed restrictions are removed the setback will go back to 25 feet. Notice of public hearing was mailed on December 23, 2014 to 34 property owners within 300 feet of the requested area, and proper notice was published in *The Lawton Constitution* on December 28, 2014.

Wells questioned if anyone opposed the rezoning at the public hearing.

Rogalski stated no one spoke in opposition. The CPC did recommend approval with a vote of 7-0.

PUBLIC HEARING OPENED. No one appeared to speak and the public hearing was closed.

Morford stated when they did the historical overlay on this they realized that Cache Road was going to go commercial and the houses in this area are getting really bad. He would prefer they not have an opening on 34th Street, but to make the project go they have to do that. There is no drive through line that will create problems. He has not had anyone call him opposing the rezoning. He feels this is the best thing for the area.

MOVED by Morford SECOND by Wells to adopt **Resolution 15-09**. AYE: Morford, Jackson, Bellino-Hall, Tanner, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

MOVED by Morford SECOND by Wells to adopt **Ordinance 15-01**, waive the reading of the ordinance, read the title only. AYE: Morford, Jackson, Bellino-Hall, Tanner, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 15-01

An ordinance changing the zoning classification from the existing classification of R-1 (Single-Family Dwelling District) to C-1 (Local Commercial District) zoning classification on the tract of land which is hereinafter more particularly described in section one (1) hereof; approving the site plan attached as Exhibit A; and authorizing changes to be made upon the official zoning map in accordance with this ordinance.

38. Consider approving an ordinance creating 6-1-5-189, Division 6-1-5, Article 6-1, Chapter 6, Lawton City Code, 2005, requiring all commercial car wash facilities that are issued a building permit for either new construction or for the remodeling of an existing facility where the cost of the remodeling exceeds fifty percent (50%) of the value of the facility, on or after January 14, 2015, to install, use and maintain a water recycling system that captures and reuses at least fifty percent (50%) of the wash and/or rinse water. Exhibits: Ordinance No. 15-__.

Ihler stated as we get further and further into this drought we are experiencing council appointed members to a water conservation committee and during one of their meeting there was discussion from Councilmember's Morford, Burk, Tanner and Wells about new car washes coming in and should they be required to utilizing recycling facilities. They saw information where recycling facilities in California use 70 gallons on a car, but those that utilize recycle facilities, would only utilize 15 gallons of fresh water mixed with the recycled water. The committee wanted to ask the council to approve a requirement for all commercial car wash facilities that are issued a building permit for either new construction or for the remodeling of an existing facility where the cost of the remodeling exceeds 50% of the value of the facility, on or after January 14, 2015, to install, use and maintain a water recycling system that captures and reuses at least 50% of the wash and/or rinse water.

Wells stated he has been told by those that are using the system, that they will recoup their money over a period of years because of the savings on the water. There is a higher up front cost for the recycling system but they will recoup it.

MOVED by Wells SECOND by Morford to adopt **Ordinance 15-02**, waive the reading of the ordinance, read the title only, and declaring an emergency. AYE: Morford, Jackson, Bellino-Hall, Tanner, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 15-02

An ordinance pertaining to commercial carwash facilities creating Section 6-1-5-189, Division 6-1-5, Article 6-1, Chapter 6, Lawton City Code, 2005, requiring that after January 14, 2015, all commercial car wash facilities that are issued building permits for either new construction or for

the remodeling of an existing facility where the cost exceeds fifty percent (50%) of the value of the facility, install, use and maintain a water recycling system that captures and reuses at least fifty percent (50%) of the wash and/or rinse water, providing for severability and declaring an emergency.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Wells stated when we had Code Red as an emergency service the phone would ring and it would say “this is an amber alert”, etc. The call that came this morning said that “this is the City of Lawton”. We have a lot of senior citizens that have been trained not to punch telephone numbers because of scams. He questioned if there was any way to get this message changed to tell immediately what the alert is for.

Long stated this was a designated alert to citizens of our community from the police department. He stated they can change this and will do so.

Wells stated for a couple of years he has talked about coming up with some kind of award for the recipient of the employee spotlight. He questioned if the City Manager could send out a letter to businesses and look into giving some type of incentive award.

Long stated he will consult with legal, but he would be happy to undertake the challenge.

Wells stated they did this years ago with legal approval.

The Mayor and Council convened in executive session at 7:15 p.m. and reconvened in regular, open session at 8:15 p.m. Roll call reflected all members present.

EXECUTIVE SESSION ITEM

39. Pursuant to Section 307B.1, Title 25, Oklahoma Statutes, consider convening in executive session to review the employment of Nathan M. Johnson as Municipal Judge, and in open session take other action as necessary. Exhibits: None.

Mayor Fitch read the title of item #39.

MOVED by Wells SECOND by Haywood to approve a contract with Judge Johnson for an additional two years with a 3% salary increase. AYE: Morford, Jackson, Bellino-Hall, Tanner, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

40. Pursuant to Sections 307B.3, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the proposed land acquisition for the purpose of expanding, improving and remodeling Central Fire Station (AKA Fire Station #1) and construction/expansion of a new jail facility in the downtown area of Lawton and if necessary, take appropriate action in open session. Exhibits: None.

Jensen read the title of item #23. No action was taken.

ADDENDUM:

- 1 Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss a pending investigation by the Oklahoma State Board of Veterinary Medical Examiners concerning the Lawton Animal Shelter, and if necessary, take appropriate action in open session. Exhibits: None.

Mayor Fitch read the title of the addendum. He stated at this time there was no action to take. He stated that Beverly Tuberville-Perry has requested to speak at the council meeting on January 27th and at that time they can get all the information together. This is under investigation and they cannot make any comments in regards to whatever is said. He would like to see documentation, pictures, testimony, etc. presented in a formal manner that they can convey to the investigative team. He stated they do want community involvement and the council is taking this very serious. They do not have a lot of options as to where we can go to have someone investigate this situation. With regards to the Oklahoma State Board of Veterinary Medical Examiners, this entity can come and start the investigation and there will be things that could possibly be outside the parameters. They can notify the proper authorities and make them a part of the investigation. He looks forward to everyone attending the January 27th meeting and he is assuming Ms. Perry will be the speaker for the group and he would also like to see a packet of information that they deem pertinent to the situation that they can pass on to the board of examiners. They do want community input and want it done correctly.

Beverly Tuberville-Perry stated she became aware that there was a petition being circulated and she agreed with the petition so she initiated the online portion, which now has 1,000 signatures in a week. The online petition and the Facebook page put her in the center of a firestorm. There were people everywhere waiting to have someone to talk to and to tell their story to. She has done some research on chemical chloride neutering. For seventeen years she was with the largest medical company in research and development over medical safety and part of her job was researching these kinds of issues related to human health. She is not a veterinarian, but what she has heard and witnessed is very upsetting and they would like to see a full investigation into every aspect of the running of the shelter. She stated they will bring a lot of information at the next meeting.

Mayor Fitch stated the council can review all the information, but they will be limited as to what they can say because it is under investigation. He would like the community to be involved and serve in some capacity.

There being no further business to consider, the meeting adjourned at 8:23 p.m. upon motion, second and roll call vote.

FRED L. FITCH, MAYOR

ATTEST:

TRACI HUSHBECK, CITY CLERK