

MINUTES
LAWTON CITY COUNCIL REGULAR MEETING
OCTOBER 8, 2013 – 6:00 P.M.
NEW CITY HALL
COUNCIL CHAMBERS/AUDITORIUM

Fred L. Fitch, Mayor
Presiding

Also Present:
Bryan Long, City Manager
Frank V. Jensen, City Attorney
Traci Hushbeck, City Clerk
COL Glenn Waters, Fort Sill Liaison

Mayor Fitch called the meeting to order at 6:00 p.m. Notice of meeting and agenda were posted on the City Hall notice board as required by law. Invocation was given by Pastor Dennis Dawson, First Baptist Church, followed by the Pledge of Allegiance.

ROLL CALL

PRESENT:

Bob Morford, Ward One
Keith Jackson, Ward Two
Rosemary Bellino-Hall, Ward Three
Jay Burk, Ward Four
Dwight Tanner, Jr., Ward Five
Richard Zarle, Ward Six
Stanley Haywood, Ward Seven
Doug Wells, Ward Eight

ABSENT:

None.

AUDIENCE PARTICIPATION:

J. R. Warren, 2418 NW 80th Street, stated he wanted to put a concrete pad in the easement behind his house. He stated there will be no interference with utilities. He spoke with Councilmember Zarle earlier today and based on their discussion he is in attendance to discuss with the council. He stated the permit would cost him \$500 and it is non refundable. He did not want to spend the \$500 until he talked with council and got a feel if they would even approve it.

Richard Rogalski, Community Services Director, stated a council approved revocable permit is very expensive and Mr. Warren is saying that rather than pay an application fee and then see what council says, he is asking for some kind of indication if the council would even consider this or not. He does not feel the council can do that without even looking at it.

Long stated staff has not even had the benefit of reviewing this application.

Mayor Fitch stated council cannot take any action on this item at this time because it is not on the agenda.

Long stated it would be beneficial if Mr. Warren sat down with staff so they could give him some indication of what the staff recommendation would be.

CONSIDER APPROVAL OF MINUTES OF LAWTON CITY COUNCIL REGULAR MEETING OF SEPTEMBER 24, 2013.

MOVED by Wells SECOND by Zarle to approve the minutes of the Lawton City Council regular meeting of September 24, 2013. AYE: Morford, Jackson, Bellino-Hall, Burk, Tanner, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

CONSENT AGENDA: The following items are considered to be routine by the City Council and will be enacted with one motion. Should discussion be desired on an item, that item will be removed from the Consent Agenda prior to action and considered separately.

Mayor Fitch stated item #2 needs to be discussed and they will strike item #4.

MOVED by Burk SECOND by Jackson to approve the consent agenda with the exception of items #2 and #4. AYE: Morford, Jackson, Bellino-Hall, Burk, Tanner, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

1. Consider the following damage claims recommended for approval: Marva and Clarence Henderson in the amount of \$225.00 and George Whitehead in the amount of \$1,330.72 (**Res. 13-61**). Exhibits: Legal Opinions/Recommendations and Resolution No. 13-____.
2. Consider the following damage claims recommended for denial: Frank Roach in the amount of \$975.00 and Dennis Foster in the amount of \$316.91. Exhibits: Legal Opinions/Recommendations.

Frank Roach, 1815 SW B Avenue, stated his car hit a pot hole on July 1, 2013 and it caused a lot of damage to the front end of his Lincoln Towncar. He obtained two estimates and Firestone gave him a puffed up estimate of \$7,000. His car does not need that much work, but it did cause damage to his windshield. He suffered damage to his hip also. He stated the streets are in bad shape. He just pulled out from a stop sign at 14th and Lawton and he was not doing more than 3-5 miles per hour when he hit the pot hole. His tire busted and it bent his rim. He feels he should be compensated for these damages to his car.

Mayor Fitch questioned what size wheels and tires he had on his car.

Mr. Roach stated 24-inch.

Mayor Fitch stated that is a short tire.

Mr. Roach stated it was unavoidable as it was in the middle of the street and he didn't even see it.

Bellino-Hall questioned the year of the car.

Mr. Roach stated 1998 and it is in very good shape.

Scott Meadors, Deputy City Attorney, stated the city was not notified of any type of roadway defect in that area. He distributed photos of what the actual roadway condition looked like immediately following the accident. There is no pot hole, but there is a roadway with cracks in it. It could not do damage to a vehicle traveling 3-5 miles per hour. The legal justification for the denial is the law in Oklahoma. We do have a duty to maintain streets to an acceptable level, but we don't have duty, without notice, to correct any type of defects. This is the first time any type of defect at this particular area was brought to the attention of the city.

Wells questioned who required the Firestone vehicle inspection.

Meadors stated those were estimates supplied by Mr. Roach.

Wells stated the item says the vehicle performed by Firestone indicates that Mr. Roach's vehicle has numerous issues, none of which are related to the alleged damage he claims was caused by the depression in the road way.

Meadors stated that Firestone just inspected the vehicle generally and they said there is a lot wrong with this car. Staff is saying that a vehicle traveling 3-5 mph over the roadway conditions you see in this photograph, there is no way to create that kind of damage. He stated he is not sure that is the conclusion that Firestone made, but it is the conclusion that his office has made.

Long questioned if there was an insurance settlement paid out on this claim.

Meadors stated he is not aware if Mr. Roach made a claim.

Mr. Roach stated he did not submit a claim to his insurance company. He added that the street was fixed the next day.

Meadors stated once we do have a situation where an alleged defect has occurred, we are going to take action and remedy it because we are then on notice of it.

Haywood questioned how many miles Mr. Roach had on his vehicle.

Mr. Roach stated 150,000.

MOVED by Tanner to approve the claim of Frank Roach in the amount of \$975.

SUBSTITUTE MOTION by Wells SECOND by Jackson to deny the claim of Frank Roach in the amount of \$975.00. AYE: Morford, Jackson, Bellino-Hall, Burk, Zarle, Haywood, Wells. NAY: Tanner. MOTION CARRIED.

Dennis Foster, 711 NW 35th Place, stated on July 2nd he was making a turn off of Cache Road onto Sheridan Road going north and there were cars in front of him and beside him. As he turned there was a chunk of curb in the middle of the road. He thought the car in front of him hit the loose curbing and turned it sideways. He could not avoid hitting the edge of the curb which gouged his tire and hurt his rim. The tire was under warranty so he had it replaced. He also purchased a used rim. He would have hit the car next to him if he would have swerved to avoid the curb.

Meadors stated if the curb was out of place the City did not have any notice of it prior to the incident. (He distributed photos of the tire and the displaced curb). He stated Mr. Foster said he hit the edge of the curb, which is consistent with the photograph. The emphasis from the City Attorneys office is that they did not have any prior notice.

Bellino-Hall stated that Mr. Foster said the piece of curbing was in the road. From the photos it looks like Mr. Foster hit the curb. She is confused.

Mr. Foster stated it was not actually in the road it was pointed out towards the road from the median. If he had swerved he would have side swiped the car next to him.

Bellino-Hall stated there was no prior notification that there was a problem.

MOVED by Bellino-Hall SECOND by Jackson to deny the claim of Dennis Foster in the amount of \$316.91. AYE: Morford, Jackson, Bellino-Hall, Zarle, Haywood, Wells. NAY: Burk, Tanner. MOTION CARRIED.

3. Consider approving a revised Outside Water Sales Contract with Clint and Tiffany Kirk, and authorize the Mayor and City Clerk to execute the Contract. Exhibits: Location Map. Contract is on file in the City Clerk's Office.
4. Consider approving the annual agreement with Comanche County providing use of the City Lawton Library to residents of the county who do not live in the Lawton city limits and authorize the Mayor and City Clerk to execute the agreement. Exhibits: Board of County Commissioners' Letter; Agreement on file in City Clerk's office. **STRICKEN FROM AGENDA.**
5. Consider approving an agreement redesignating the Transportation Policy Board of the Lawton Metropolitan Area as the Lawton Metropolitan Planning Organization in accordance with Section 134, Title 23, United States Code. Exhibits: Redesignation Agreement is on file in the City Clerk's Office.
6. Consider approving the record plat for Quannah Parker Commercial Addition and accepting a Performance Bond for improvements. Exhibits: Plat Map.
7. Consider accepting a warranty deed and a temporary easement from Sullivan Village Church of Christ, Inc. for right of way needed for the SE 45th Street Reconstruction (Between Lee & Gore) Project #2006-12, authorizing the Mayor and City Clerk to

execute the documents and authorizing payment for the same. Exhibits: Location Map. Documents are on file in the City Clerk's office.

8. Consider accepting a permanent easement and a temporary easement from Paul D. & Catherine L. Abercrombie 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 and authorizing payment for the same. Exhibits: Location Map. Documents are on file in the City Clerk's office.
9. Consider accepting 4 sidewalk/bicycle route easements and 2 temporary easements from Board of Education of the Independent School District #8 for right of way needed for the Bicycle & Pedestrian Facilities Phase II Project #2010-07, authorizing the Mayor and City Clerk to execute the documents. Exhibits: Location Map. Documents are on file in the City Clerk's office.
10. Consider depositing the reimbursement funds received from St. James Baptist Church regarding cost sharing donations for a fire hydrant installation to serve their facility located at 714 SW 45th Street, into the City Water Distribution Division's 211 Account. Exhibits: None.
11. Consider accepting a permanent drainage easement from Theodore Decker to give the City of Lawton access to maintain a drainage channel, authorizing the Mayor and City Clerk to execute the document. Exhibits: Location map. Easement is on file in the City Clerk's office.
12. Consider extending contract (CL12-008) Degreaser with Mid-American Research Chemical of Windthorst, TX. Exhibits: Department Recommendation, Contract Extension Form, Price Bid Sheet.
13. Consider approval of payroll for the periods of September 16 - 29, 2013.

NEW BUSINESS ITEMS:

14. Hold a public hearing and consider an ordinance closing 5 feet of the 25-foot utility easement on Lot 27, Block 6, Heritage Hills Addition, Part 2, addressed as 1608 NE 31st Street. Exhibits: Application and Location Map.

Richard Rogalski, Community Services Director, stated this item is to hold a public hearing and consider a request to close the northeasterly 5 feet of the 25-foot utility easement located along the rear of Lot 27, Block 6, Heritage Hills Addition, Part 2 (1608 NE 31st Street). The applicant, Darin Ray, has made the application to increase the usable size of his rear yard to install a swimming pool and a larger patio. When staff gave notice for this public hearing the applicant thought he would have his survey ready, but he was delayed in getting everything together. Staff is requesting that the council open the public hearing and allow anyone to speak and then continue the public hearing to October 22, 2013. The applicant felt he would be ready by that time.

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

MOVED by Morford SECOND by Wells to continue the public hearing to October 22, 2013.
AYE: Morford, Jackson, Bellino-Hall, Burk, Tanner, Zarle, Haywood, Wells. NAY: None.
MOTION CARRIED.

15. Receive a presentation from Guernsey and Associates on the Downtown Transfer Center location and design concept study, accept the study, and take appropriate action.
Exhibits: None.

Rogalski stated as part of the FY 2013 Unified Work Program, the LMPO retained Guernsey and Associates in order to look at sites and the viability of those sites for a new transfer center. Since LATS started, the transfer center is just the street on B Avenue, adjacent to old city hall. They are looking at where a new transfer center could go as they start looking for federal funding.

Karl Stickley, Guernsey and Associates, presented a power point presentation to council.
(Presentation is on file in the City Clerk's Office).

Rogalski stated this study evaluates two sites and they found that the scales were pretty balanced. He would like the council to accept the study by Guernsey and Associates which means they have done everything they can do to evaluate these sites. If the city council has other plans for the old city hall then they will not move forward on doing any type of environmental analysis. If both sites are viable they need to move forward and they are trying to find some FTA funding to do the phase II environmental study and do the testing and analysis for the old city hall building and find out what type of contaminant may be in the building as wells as drilling a couple of test holes at the Railroad site. That is the idea they have to move forward with unless the council gives staff other directions.

Wells stated he was on the committee and he agrees with Rogalski. He feels they need to move on to phase II for both sites. He suggested council form a committee to determine what to do with old city hall. Do they want to sell it, keep it or tear it down? If they want to sell it they will have to remediate the hazardous materials anyway. Until they know the approximate costs of both locations and if there are any contaminants he feels they cannot make a decision. He suggested council accept the study and direct staff to try to find funding for phase II.

Mayor Fitch stated we will be responsible for any remediation at old city hall whether they sell it or tear it down.

Wells stated according to Guernsey and Associates, those funds could go towards our cost to build a transfer station on that site. He feels they need to find out what there is at both sites before we make any kind of decision.

Mayor Fitch stated he does not think there would be a lot of cost associated with the phase II studies they would have to do based on what they saw in the twelve block area on Railroad.

Rogalski stated the phase II environmental studies are extremely expensive.

Mayor Fitch stated his personal opinion on the old city hall is to tear it down and build a new police station and tie it in with the annex.

Haywood questioned if the city owned the property on Railroad and Larrance on Gore to A Street.

Rogalski stated yes, that was part of the abandoned railroad property that came to us from ODOT about a year ago.

Haywood stated what the Jefferson Bus line has is just terrible and he would like to see that happen.

Rogalski stated when you are going after federal funding there are certain things to put in your application and multi-modal is a big deal right now. They mentioned the CNG station in the presentation and they don't know if it is viable there and they may not even need it if one is built closer to I-44 or Bishop.

Haywood stated even if they build it on Railroad they still need a stop at the library, mall and annex. He stated he feels it is more feasible to go to Railroad.

COL. Waters stated they have done a great job discussing the up front cost and environmental costs, but he questioned if there were any studies done on the long term and short term maintenance costs of running the facility.

Rogalski stated there would be a cost to operate the transfer center but that would be part of the process when they come to council to put in the application. Council has made the decision to have a transit system which is a service you provide to the community at some cost. The transfer center would be part of that service which would be a necessity.

Mayor Fitch questioned if those costs would be absorbed in the federal money.

Rogalski stated the federal government gives us a certain amount of money to run our transit system and the city does augment that cost. One of the ideas of offering this service to Jefferson Bus Line is that they will help pay for the funding for that transfer center as well as the CNG station. It will likely be an increased cost to the city for that higher level of service.

MOVED by Wells SECOND by Haywood to approve the study and direct staff to move forward to the phase II study. AYE: Morford, Jackson, Bellino-Hall, Burk, Tanner, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

16. Considering approving amendments to ordinances pertaining to sections 19-4-401, 19-4-402, 19-4-403, and 19-4-407, article 19-4, chapter 19, Lawton City Code, 2005, by adding and repealing language as needed clarifying hunting permits and exceptions regulations to include permit fee exceptions; State hunting license requirements and duck

hunting on city land regulations concerning designated hunting areas and times around city lakes; providing for severability and declaring an effective date. Exhibits: Ordinance 13-__.

Kim Shahan, Parks and Recreation Director, stated in the spring time the lake patrol staff brought some language change to areas concerning hunting in the lake region. Those recommendations were taken to the Lakes and Land Commission and they agreed with those changes. Most of this is clean up language but a major change is the elimination of permanent duck blinds. A permanent duck blind is when materials are brought into a location and they use this annually for hunting purposes. A temporary blind is utilizing existing materials in the vicinity of the location. The elimination of permanent duck blinds will assist staff in managing the property around the lakes and it also eliminates the opportunity for a particular duck hunter to control a portion of the lake during the year by creating a permanent site.

MOVED by Burk SECOND by Jackson to adopt **Ordinance 13-31**, waive the reading of the ordinance, read the title only and establishing an effective date. AYE: Morford, Jackson, Bellino-Hall, Burk, Tanner, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 13-31

An ordinance pertaining to hunting, amending Sections 19-4-401, 19-4-402, 19-4-403, 19-4-407, Article 19-4, Chapter 19, Lawton City Code, 2005 by adding and repealing language as needed clarifying hunting permits and exceptions regulations; to include permit fee exceptions; state hunting license requirements and duck hunting on city land regulations concerning designated hunting areas and times around city lakes; providing for severability and declaring an effective date.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Mayor Fitch reported twelve people received their citizenship at the International Festival. He stated Spirit of Survival was a tremendous success.

The Mayor and Council convened in executive session at 7:12 p.m. and reconvened in regular, open session at 8:08 p.m. Roll call reflected all members present.

BUSINESS ITEMS: EXECUTIVE SESSION ITEMS

17. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the pending case of Joseph Harper and Vivian Wheeler vs. City of Lawton, CV-12-841-F, and if necessary, take appropriate action in open session. Exhibits: None.

Jensen read the title of item #17. No action was taken.

ADDENDUM:

1. Pursuant to Section 307(B)(3), Title 25, Oklahoma Statutes, consider convening in executive session to discuss the proposed sale of approximately 50 ½ acres, collectively or by parcel, of City-owned real property in the vicinity of NW 67th Street and Rogers Lane, as authorized by Ordinance No. 11-07, and take appropriate action in open session. Exhibits: None.

Jensen read the title of the addendum.

MOVED by Wells SECOND by Jackson to approve the additional 120 days for Anthony Properties with the stipulation that it cost an additional \$20,000 in earnest money and that the total earnest money of \$70,000 be forfeited to the City of Lawton if the deal does not go through. AYE: Morford, Jackson, Bellino-Hall, Burk, Tanner, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

There being no further business to consider, the meeting adjourned at 8:10 p.m. upon motion, second and roll call vote.

FRED L. FITCH, MAYOR

ATTEST:

TRACI HUSHBECK, CITY CLERK