

MINUTES
LAWTON CITY COUNCIL REGULAR MEETING
MARCH 14, 2017 – 6:00 P.M.
LAWTON CITY HALL
COUNCIL CHAMBERS/AUDITORIUM

Fred L. Fitch, Mayor
Presiding

Also Present:
Jerry Ihler, City Manager
Frank Jensen, City Attorney
Traci Hushbeck, City Clerk
COL Samuel Curtis, Fort Sill Liaison

Mayor Fitch called the meeting to order at 6:28 p.m. Notice of meeting and agenda were posted on the City Hall notice board as required by law. Invocation was given by Pastor Steven Patterson, 8th & Lee Church of Christ, followed by the Pledge of Allegiance.

ROLL CALL

PRESENT:

Bob Morford, Ward One
Keith Jackson, Ward Two
Caleb Davis, Ward Three
Dwight Tanner, Jr., Ward Five
Cherry Phillips, Ward Six
V. Gay McGahee, Ward Seven
Doug Wells, Ward Eight

ABSENT:

Jay Burk, Ward Four

AUDIENCE PARTICIPATION: None

Jackson stated they are constantly getting questions about people having the opportunity to come down and speak before the council on anything they want to talk about that is not on the agenda and 99% of the time no one comes forward, but yet they are constantly under attack by a select few that want to complain because they think they don't have any rights to speak.

CONSENT AGENDA

Mayor Fitch stated a citizen has signed up to speak on item #2. Phillips requested item #9 and Davis requested item #8 be considered separately.

MOVED by Wells SECOND by McGahee to approve the consent agenda with the exception of items #2, #8 and #9. AYE: Morford, Jackson, Davis, Tanner, Phillips, McGahee, Wells. NAY: None. MOTION CARRIED.

1. Consider the following damage claims recommended for approval: Holley Gore-Horsey in the amount of \$1,594.46 (**Res. 17-28**) and Alicia and Cory Miller in the amount of \$470.42 (**Res. 17-29**). Exhibits: Legal Opinions/Recommendations, Resolution No. 17-____ and Resolution No. 17-____.
2. Consider the following damage claim recommended for denial: LaShonda Bernstine in the amount of \$575.00. Exhibits: Legal Opinion/Recommendation.

Kelea Fisher, Assistant City Attorney, stated the claim is filed by LaShonda Bernstine who owns the property at 213 SE Heather Lane. She filed the claim in the amount of \$575 as a result of a sewer back up that occurred on October 4, 2016. The \$575 represents \$75 for a plumbing invoice and a \$500 deductible that she paid to a contractor to replace her carpet. She has recommended denial of this claim. Staff has reviewed the sewer history for the pipe segment that services this location as well as the pipe segments above and a lift station this is located below the pipe segment and they have found no prior history on those lines for the past three years preceding their sewer backup. The plumber indicated that Ms. Bernstine's service line was actually broken at the quarter bend and found small rock particles in the service line. That is an indication that there is a break in the service line or the main. They had the wastewater collections division go out and camera the City's main and there was no breakage on the main. They asked if Ms. Bernstine had repaired that quarter bend and she has not had that repaired. The recommendation is based on the longstanding law that indicates when the City does not have actual or prior notice of a defective condition within our system, the City cannot be held negligent.

Rutha Taylor, mother of LaShonda Bernstine, stated when they had the backup they called American Home Shield and they sent out a plumber. The plumber never mentioned anything to them about a break. The City came out the following day and a city employee said it was the City's fault and they flushed the main and found the obstruction and cleared it. They never had any problems with the plumbing after it was cleared. They have had a problem with a pond that fills up with waste all the time and the City is out there two or three times a week pumping that out and there is the worst odor that comes up through the pipes. She has witnesses that have said this is an ongoing problem. She stated on November 29, 2016 the pump went down and on December 27, 2016, the lift station was out and it took two weeks to repair and the waste was up to the banks of the pond. She feels that they should be reimbursed the \$500 which was the deductible and the \$75 which was paid to the plumber.

Fisher stated she neglected to say that on the day the City was called out they did find an obstruction in the main and they did clear the main. That was the first obstruction that they did receive notice of. She stated the records indicated that there were no calls from this area. She stated she could bring back witnesses to discuss those issues that happened after this event but it would not change her recommendation because any lift station issues or problems with that line that occurred after the issue in question would still not have provided the required notice that would allow her to make a recommendation to pay the claim.

Davis question when there were problems with the lift station.

Ms. Taylor stated her grandson has been there since September 2015 and there has always been a problem with the lift station and the pond filling up with waste.

Davis questioned if those problems had been called in prior to October 2016.

Ms. Taylor she had not.

Phillips questioned if there were any records of the neighbors calling in.

Fisher stated no. They pulled the records for that actual pipe segment and the segments above and below and any phone calls would be recorded on those records. According to the records that were given to her by wastewater collections division there have been no calls or reported issues.

Ms. Taylor stated the city workers are out there at least three times a month.

Mayor Fitch stated the operation of the lift station and the problem that occurred on her line are two different issues.

Fisher stated she wouldn't say they were two separate issues because her pipe segment actually feeds into the lift station.

McGahee questioned if the city workers were out there prior to or after the incident.

Ms. Taylor stated there were out there two or three times a month prior to the incident.

McGahee questioned why we wouldn't have any documentation of city workers being out there.

Ihler stated this is not a pond, it is the lagoon for the lift station that is required by DEQ. In case there is a pump failure or backup it will back up into the lagoon and after it is repaired it would go back into the lift station. There is a city employee that goes around to every lift station that we have and it is his responsibility to get to those every week to make sure it is running properly and do some maintenance on the pumps.

Phillips questioned if it was common for those to smell.

Ihler stated there would be an odor if there was water in the lagoon from the lift station.

McGahee questioned if the employee was reporting that everything was okay.

Ihler stated he does not read the report. If the lagoon was to overflow they would certainly report that.

Fisher stated the information she was given is that there is no prior history of any issues with the lift station. She stated she specifically asked that question.

Tanner questioned what is defined as a prior issue. If the truck is pumping the lagoon out, to him, that is an issue. He feels the claimant is being fair and they are only asking for their out of pocket expenses. He believes there are issues occurring in that area.

MOVED by Tanner SECOND by Jackson to approve the damage claim of LaShonda Bernstine in the amount of \$575.00.

Davis questioned why no one called in prior to October 2016.

Ms. Taylor stated if the city workers were out there then there was no reason to call.

Davis stated the claimant has a responsibility to have given the city prior notice at least one time before the city is responsible. He believes that is state law.

Jensen stated we have to have some type of prior notice of a defective condition in the main otherwise we are operating as an insurance company and we are not an insurance company. If we know of a defect and we fail to fix the problem then we are negligent. We can't know what is going on in hundreds of miles of sewer line throughout the city limits.

McGahee stated it sounds like we knew there was an issue out there and that is why city employees are out there as often as they are.

Ihler stated the maintenance man for the pump station is required to go around to every lift station and perform routine maintenance. He doesn't look at those reports so he does not know if there was a particular problem at that particular lift station prior to this time frame.

Phillips questioned if that maintenance person is responsible for checking to see if the line is clear.

Ihler stated no, it is his responsibility to make sure the pump station is operating.

Tanner stated if the pump station is operating, would there be no need to pump out the sewer from this holding lagoon.

Ihler stated the lagoons are typically an overflow if there is a problem with the pump.

Tanner stated if there is a truck going out there and pumping sewage out of this lagoon then the pump itself must not be working properly.

Ihler stated he does not have any information about a pump truck going out to pump the lagoon.

Wells stated he would suggest they table this and get a report on the lagoon at the next meeting.

MOVED by Wells SECOND by Tanner to table. AYE: Morford, Jackson, Davis, Tanner, Phillips, McGahee, Wells. NAY: None. MOTION CARRIED.

3. Consider approving a Memorandum of Understanding agreement, requested by the U.S. Department of the Army, establishing training procedures and operational guidelines between the 7-158th Aviation Regiment and the City of Lawton. Exhibits: Proposed MOU from the United States Department of the Army, 7-158th GSAB.
4. Consider awarding a contract for the City of Lawton's employee online benefits administration system to Liazon and authorize the Mayor and City Clerk to execute the contract. Exhibits: NFP Benefits Administration Services Evaluation, Liazon Bright Choices Exchange Agreement.
5. Consider relocation of the Private Electrical service to Eisenhower School located at W 52nd and Gore in accordance with the Memorandum of Understanding dated 9/22/16 transferring right of way for the construction of SW 52nd Street in exchange for this service and mitigation of the student drop off at the Elementary School. Exhibits: Public Service Company of Oklahoma Contribution-In-Aid-of-Construction form.
6. Consider extending contract for (CL14-032) Tire Recapping to Goodyear Commercial Tire & Service Center dba The Goodyear Tire & Rubber Company of Wichita Falls, TX for an additional year. Exhibits: Department Recommendation, Contract Extension Form, Price Sheet.
7. Consider awarding contract for Sodium Hydroxide to DPC Industries of Cleburne, TX. Exhibits: Department Recommendation, Abstract of Bids, Price Sheet.
8. Consider awarding contract for items No. 1-5 and 9 of Fire Hydrants Contract to American Waterworks Supply Inc. of Norman, OK; and Items No. 6 and 7 to Ferguson Waterworks of Oklahoma City, OK. Exhibits: Department Recommendation, Abstract of Bids.

Davis stated item number 5 says it has to be awarded to that company.

Afsaneh Jabbar, Director of Water/Wastewater, stated they have chosen American Waterworks for a fire hydrant that is specified in item #1, therefore any part that is for repair or installing has to match it, so #5 matches #1.

Davis stated there were other contractors that bid on the other items.

Jabbar stated it was a part for a different fire hydrant and we cannot install it on the one that we chose as #1.

Wells questioned why staff did not take the second bidder, Ferguson, for items #1 and #5 which is \$360 versus #1 and #5 for American Waterworks which is \$415.

Jabbar stated #1 has many subparts that goes with it, so it is just not the fire hydrant itself, it is #1 A, B, C, D, E, F, G, H, and I, all of those would go with #1.

Wells questioned if the rest of those would not work with the Ferguson hydrant, other than #5.

Jabbar stated items identified under item #1 A-I all go with the same fire hydrant.

Wells stated when you add those altogether it comes out cheaper.

MOVED by Wells SECOND by McGahee to award contract for items No. 1-5 and 9 of Fire Hydrants Contract to American Waterworks Supply Inc. of Norman, OK; and Items No. 6 and 7 to Ferguson Waterworks of Oklahoma City, OK. AYE: Morford, Jackson, Davis, Tanner, Phillips, McGahee, Wells. NAY: None. MOTION CARRIED.

9. Consider extending contract for (CL15-024) Mowing and Litter to Teen Challenge of Cache, OK (items 1 and 2) and Lawn Wizards of Lawton, OK (items 3, 4 and 5) for an additional year. Exhibits: Department Recommendation, Contract Extension Form, Price Sheet.

Phillips stated this came up in previous years and each year she calls in complaints about the trash not being picked up before they mow and the grass being left in the street. She stated the job does not seem to get completed. She is concerned that we continue to contract with them and it puts a burden on staff to go out and check and follow up on the issue.

Jack Hanna, Parks and Recreation Director, stated Teen Challenge has eleven of their sixteen contracts right now because they were the lowest bidder. In the past year and half they have gone through three supervisors that control that mowing area. The last supervisor that has been on board has done a good job and there has been some issues with the supervisor making their crews do what needed to be done. If they would have to go out for bid again on these areas there will be a 60 day window where nothing will be mowed. He feels that the current supervisor works well with park staff and will uphold the boundaries that are set in the contract. There were times when their performance was not good but staff kept calling and they would go back out until they met our standards. If they have to go back out it will put a burden on staff because they are currently out mowing.

Phillips questioned if there are others that bid on these projects.

Hanna stated yes, but they are the lowest bidder that falls within the parameters of the contract.

Phillips stated the time of our staff is worth something and she hates to have a contractor who we have to supervise.

Hanna stated it is part of the job of his staff to supervise these contracts, it is not an extra duty.

Wells stated in the past they were having trouble with all the contractors in town and they were letting grass go into the street. At that time parks staff were going to start cracking down on those contractors.

Hanna stated they did terminate one contractor and they split that area.

Wells stated it seems that staff has partially solved the complaint problem over time.

Hanna stated the supervisor in place now is very responsive and he knows our standards. He feels comfortable with him as long as he stays in place.

Phillips questioned if we get complaints on Lawn Wizards.

Hanna stated they get complaints on all the contractors.

Phillips questioned if Teen Challenge has the proper equipment to do this job.

Hanna stated yes.

Tanner stated last year along the Gore medians it seemed that they took too long in between mowings.

Hanna stated last year it was a wet season and they would rather wait for it to dry out than mow it and put ruts in the median.

Tanner stated toward the end of the season everything seemed to have improved immensely. He feels they should go ahead and go with Teen Challenge and give them another opportunity.

Phillips stated she would like to see us find some other people to bid. They may be a little higher, but it may be worth the money.

MOVED by Tanner SECOND by Jackson to extend contract for (CL15-024) Mowing and Litter to Teen Challenge of Cache, OK (items 1 and 2) and Lawn Wizards of Lawton, OK (items 3, 4 and 5) for an additional year. AYE: Morford, Jackson, Davis, Tanner, Phillips, McGahee, Wells. NAY: None. MOTION CARRIED.

10. Consider approving the continuation of Sulfuric Acid and Liquid Aluminum Sulfate contract with Southwest Chemical Services, Inc. of McAlester, OK after the merger with Watertech, Inc. of Ft. Smith, AR. Exhibits: Letter of Notice of Recent Merger of Contract from Southwest Chemical Services, Inc. to Watertech, Inc. of Ft. Smith, AR.

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

Mayor's Commission On The Status Of Women

Jennifer McGrail
1704 NW 76th Street
Lawton, Oklahoma 75505
Unexpired Term 09/22/17
New Member

Yvonne Landmark
606 NE Flower Mound Road
Lawton Oklahoma 73507
Unexpired Term 01/01/18
New Member

12. Consider approval of payroll for the periods of February 27 – March 12, 2017.

NEW BUSINESS ITEM:

13. Consider approving a transfer of excess funds totaling approximately \$3.34 million generated by completing projects well under engineer's estimates and sales tax collections exceeding projections from the City's 2012 Capital Improvement Program (the "2012 CIP") in order to fund an anticipated combined deficit from the City's 2005 Capital Improvement Program (the "2005 CIP") and the City's 2008 Capital Improvement Program (the "2008 CIP"). Exhibits: Debt Service Note and Financial Summary of 2005, 2008 & 2012 CIP's.

Ihler stated previously a question came up regarding funding for the pedestrian sidewalk across Gore Boulevard/I-44 Bridge. As he was looking at trying to find \$600,000 in matching funds for the ODOT grant in the amount \$700,000, he asked the finance department to provide him with some information from the 2012 CIP. They provided him with a detailed report as it related the amount of funds that had been collected in sales tax and debt service. He came back to council and recommended that they utilize the 2012 as the funding source for the \$600,000 match because finance had indicated there was approximately \$1.5 million additional that had been collected and was unobligated to any projects. He also asked staff to go back and give him the same detailed report for the 2005 CIP and the 2008 CIP. When he received that information it indicated that there was a shortfall in being able to pay back the debt services for the 2005 CIP and the 2008 CIP. There was a project where we had borrowed \$12,270,000 that was to be paid back with 50% from the 2005 CIP and 50% from the 2008 CIP, and all the projects were required by DEQ. Over the years, in the 2005 CIP, the identified projects came to about \$72.5 million and we collected \$89 million in sales tax to fund those projects. In the 2008 CIP, it was projected we would collect \$28 million and we actually collected just a few dollars less. One thing that was not taken into account was that \$12.2 million debt service. As the years have gone by with the 2005 and 2008 CIP's essentially they did additional projects with that funding. One was the wastewater treatment plant study which was required by DEQ and the other was a leak with the water storage tank at Medicine Park. There were also some funds spent on the new city hall back in 2010. If we were to pay off that loan which comes due on 2030-2031, we would be short. In the 2012 CIP we had some projects with significant savings and some unobligated funds and those funds would cover the cost of the shortfall in the 2005 and 2008 CIP's. He is recommending that the council transfer those funds from the 2012 CIP to cover that debt service. He stated there is the question of how this happened. They have had some major turnovers in the finance department and some major turnover in the City Manager's office and they have made some changes in the reporting mechanism where that will not happen again. They are also looking at doing some restructuring in the finance department and he feels confident that they will not run into that situation again. He also feels fortunate that we did have some savings in the 2012 CIP to be able to cover these costs.

Davis stated in the 2005 CIP we projected \$72.5 million to be collected and that was the cost of the projects that were identified at that time.

Ihler stated before they start a CIP program they identify how much money they think will be collected in sales tax and they determine the prioritized projects. They put together a program based on that amount of money.

Davis stated they actually collected \$89 million.

Ihler stated in the 2005 CIP there were actually sales tax collections of \$89 million.

Davis stated DEQ required us to do some projects and there were some emergency projects we were required to do that were not foreseen.

Ihler stated in the 2005 CIP there were a couple of projects that were unforeseen and required by DEQ which was about \$7 million. The water storage tank at Medicine Park water treatment plant replacement was somewhere around \$2.2 million then from 2010-2012 there was about \$5.6 million that was completed in construction for a phase of the new city hall. Those together came up to about \$15 million. There were some other smaller projects that were done that came up to a few million dollars.

Davis stated that we have spent \$15 million in unforeseen things required by DEQ.

Ihler stated it was approximately \$9.5 million.

Davis stated the shortfall of the 2005 and 2008 CIP was a total of about \$3.34 million. He stated as far as the mistake, Mr. Ihler stated that we have changed procedures and possible personnel in order to ensure that this does not happen again.

Ihler stated we are in the process of taking steps to correct this issue so it does not occur in the future.

Wells stated if the Oklahoma Water Resources Board (OWRB) will give us the authority to pay this off early then we will save a million dollars.

Ihler stated prior to this year the amount between the interest and the administrative fees that we still owe is approximately \$1.5 million. If they would allow us to pay it off next year we could save \$1.3 million.

Wells stated we have paid off about \$50 million in loans, and we have always paid off all CIP programs within about 6 months of completion of the program and for some reason these loans got extended out to 2027-2031. There was no further collections coming in but we had to make payments for twenty years and the council agreed that we needed to pay those off as quick as possible and we paid one out of the 2008 that was about \$40 million two years ago and this was the last one of those category loans that we need to pay off so that we are not in a position like this.

Ihler stated it is important to note that all the projects that were identified in the 2005 and the 2008 CIP's have been completed, will be completed or are under construction at this point with the funds that we have. In fact we were able to do about \$15-\$17 million in additional projects. There is one exception to that, at Lake Lawtonka and Lake Ellsworth we had dam improvements that were identified to about \$2 million in the 2005 CIP and as soon as we received notification that we needed to do some other things like the wastewater treatment plant early on, we said that

we were going to put that on hold as well as the Sante Fe bridge project until we know when we can do these projects. Because of the condition of the Sante Fe bridge, that became a high priority and we went ahead and did that project. We did do some improvements to the spillway out at Lake Ellsworth but we were not able to replace the gate seals at Lake Lawtonka.

Tanner stated according to the numbers we are going to have \$18,377 left.

Ihler stated there is potential for additional savings of projects in the 2012 CIP that are currently under construction, but he is not comfortable committing those funds to anything else until we are towards the end.

MOVED by Tanner SECOND by Phillips to approve a transfer of excess funds totaling approximately \$3.34 million generated by completing projects well under engineer's estimates and sales tax collections exceeding projections from the City's 2012 Capital Improvement Program (the "2012 CIP") in order to fund an anticipated combined deficit from the City's 2005 Capital Improvement Program (the "2005 CIP") and the City's 2008 Capital Improvement Program (the "2008 CIP"). AYE: Morford, Jackson, Davis, Tanner, Phillips, McGahee, Wells. NAY: None. MOTION CARRIED.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Wells reported the Lawton Fire Department just graduated nine young men.

McGahee stated there is a community garden in the Ranch Oaks Addition and they broke ground on Saturday. She stated she is very proud of these young people who are so civic minded. She stated they are also taking donations.

Davis stated he would like to respond to Councilmember Jackson's comments about citizens not coming to speak. He stated a couple meetings ago there were several people here to speak about the pedestrian bridge and they were not allowed to speak. He spoke with the Mayor after the meeting and everyone that wants to come and speak at this point forward will be allowed to do that. He thanked those that do come and speak and he understands their frustration.

Jackson stated he has been working on a project for a long time in conjunction with Jack Hanna, Parks and Recreation department, Mike Moore, LPS, Lawton Fort Sill Chamber and Cameron University. We are going to hold our first ever national girls basketball tournament in Lawton and there could be as much as 100 teams coming to town on the April 15th weekend. He stated now that we have our foot in the door there is the possibility of hosting more events and bringing in teams from all over the country. They will use almost every basketball arena in the city.

Ihler stated that some members of council have contacted him about questions regarding a couple of positions that are being filled. One of those was the planning specialist in the fire department and that position was filled. It was approved in the budget this fiscal year and was filled this past week. He stated several council members have talked about the need for a community relations/public information officer type position. Rather than fill the position of the assistant

city manager of administration he went ahead and reclassified that position and created a Community Relations/PIO Officer position and they are currently advertising for that position.

Tanner stated citizens have asked him about this new position and he just doesn't know what they are talking about. He requested that when a new position is created or an existing position is altered that the council is notified.

Ihler stated he should have done that before it was sent out and he will do that in the future.

Richard Rogalski, Community Services Director, briefed the council on the Lawton Downtown Park. (Conceptual Design is on file in the City Clerk's office). He stated the architect is taking comments and he will come back in about six weeks with another couple of concepts narrowing it down to what we are looking for. This information will be posted on Lawton Enhancement Trust Authority's (LETA) Facebook page.

Tanner stated he likes the idea but we have over 80 parks already in the city of Lawton and we have a proposal brought forward by the parks and recreation department because they are having a difficult time maintaining these park and we are in the process of reducing parks. He questioned why we would be adding parks when we can't afford to maintain the parks that we have. He stated they need to think about how much additional money it will take to maintain this park on a yearly basis. They want to revitalize the downtown and when Jeff Speck came into town a couple of years ago he spoke about live/work/play, and one of the big elements we are missing downtown is that everyone leaves downtown after 5:00 p.m. It would be nice if we could get some residential property downtown where people would live here. Mr. Speck said that once the people start moving downtown then you will have all these different services that will come in. He questioned if a park would be the best use for that property. He stated a local developer and banker approached him and asked for the opportunity to present something to the council about using this as a commercial space with shops and residential above. They backed off because they thought this was already decided.

Rogalski stated you try to draw people back downtown and create some interest. You have to think of this as more of an entertainment venue and that is what they are trying to build.

Tanner stated the property south of the library would be perfect for the farmers market and it is ready to go.

Rogalski stated the people associated with the farmers market want to build a building.

Tanner stated we already have some folks that will come up with most of the money to construct this building.

Rogalski stated through this conceptual design they may all decide that this does not work. The conceptual design is to determine what the community wants on that location.

Tanner stated at this point it is not necessarily what we want, it is what we can afford. We can't afford more parks from what he has heard the past six months. We are having a difficult time maintaining the parks we have and they will have to funnel more money to parks and recreation.

Rogalski stated this park will create a venue where we can actually charge people rent. The desire is that this park can pay for its own maintenance. The community process will work itself out.

Tanner stated he is not against it, he just wanted to throw out some other ideas.

The Mayor and Council convened in executive session at 7:52 p.m. and reconvened in regular, open session at 8:11 p.m. Roll call reflected all members present.

EXECUTIVE SESSION ITEMS:

14. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the pending damage claim of Ronald Smith Jr., and, if necessary, take appropriate action in open session. Exhibits: None.

Jensen read the title of item #14.

MOVED by Jackson SECOND by McGahee to approve a contract with Victor Albert of the law firm Ogletree, Deacons and Smoke and Stewart PC to serve as outside legal counsel if needed in any future lawsuit involving former Lawton Police Captain Ronnie Smith, Jr. including providing legal services in preparation for any such lawsuit and matters related to thereto and authorize the Mayor and City Clerk to execute the contract prepared by the City Attorney's office at the fee rate of \$240 per hour. AYE: Morford, Jackson, Davis, Tanner, Phillips, McGahee, Wells. NAY: None. MOTION CARRIED.

There being no further business to consider, the meeting adjourned at 8:12. p.m. upon motion, second and roll call vote.

FRED L. FITCH, MAYOR

ATTEST:

TRACI HUSHBECK, CITY CLERK