

MINUTES
LAWTON CITY COUNCIL REGULAR MEETING
MARCH 22, 2011 – 6:00 P.M.
WAYNE GILLEY CITY HALL COUNCIL CHAMBER

Mayor Fred L. Fitch
Presiding

Also Present:
Larry Mitchell, City Manager
Frank V. Jensen, City Attorney
Traci Hushbeck, City Clerk
COL Ray Lacey, Fort Sill Liaison

Mayor Fitch called the meeting to order at 6:06 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:

Bill Shoemate, Ward One
Michael Tennis, Ward Two
Rosemary Bellino-Hall, Ward Three
Jay Burk, Ward Four
Rex Givens, Ward Five
Richard Zarle, Ward Six
Stanley Haywood, Ward Seven
Doug Wells, Ward Eight

ABSENT:

None

PRESENTATION OF OKLAHOMA MUNICIPAL LEAGUE HONOR ROLL OF SERVICE.

Carolyn Stager, Executive Director of Oklahoma Municipal League, Mayor Fitch and Larry Mitchell presented certificates and 25 year service pins to City of Lawton employees.

CONSIDER APPROVAL OF MINUTES OF LAWTON CITY COUNCIL SPECIAL MEETING OF MARCH 7, 2011 AND REGULAR MEETING OF MARCH 8, 2011.

MOVED by Burk, SECOND by Tennis to approve the minutes of March 7 and March 8, 2011.
AYE: Wells, Shoemate, Tennis, Bellino-Hall, Burk, Givens, Zarle, Haywood. 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.

Mitchell requested item #2 be considered separately.

MOVED by Shoemate, SECOND by Tennis to approve the consent agenda with the exception of item #2. AYE: Shoemate, Tennis, Bellino-Hall, Burk, Givens, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

1. Consider the following damage claim recommended for approval: Paul and Terri Rutherford in the amount of \$729.70. Exhibits: Legal Opinions/Recommendations, **Resolution No. 11-13.**
2. Consider the following damage claims recommended for denial: Kwang Laboy in the amount of \$642.00, Kwang Laboy in the amount of \$223.00 and Tanja and Willard Williams in the amount of \$2,865.00. Exhibits: Legal Opinions/Recommendations.

Mitchell stated that Mrs. Williams has requested to speak regarding her claim.

Marlin Mallow, 801 SW Manning, is an employee of Hodges Plumbing and he stated they had a sewer problem at this location and they dug up the riser and they found that there had been a repair made to the city main and the house had not been connected back. He stated the city claims they did not make the repairs, but he does not know who did. Whoever did make those repairs did not tie back in.

Jensen stated there were two photos in the agenda packet, one that shows the original repair and one that shows our repair. He stated Jerry Ihler, Public Works Director, can attest that the city did not make the repairs in the first photograph.

Kelea Fisher, Assistant City Attorney, stated that the city plumbing inspector can verify that you can tie clay or concrete service line to the city's main. She stated the city's position on this incident is that the service line could have been connected and there was no issue with the service line that would require it to be replaced and it is not the city's liability or responsibility to replace or pay for the replacement of the service line. There is no evidence or any records of any sewer main repair at this address. The photographs don't indicate work done by the city. She stated the exhibit A photo shows the repair someone else made and exhibit B shows the city's repair.

Jerry Ihler, Public Works Director, stated the exhibit A photo shows a bell and spicket type repair and the city has not done that type of repair for many years. He stated exhibit B is the type of repair the city would do which is a sleeve type system. He stated their records show that crews were never called out for a repair at that location. He stated Okie Locate does not have any record of the city calling for a locate, and they would not do a repair without calling in a locate.

Mayor Fitch questioned how long the utilities have been turned on at the home with a dead end service line.

Tonja Williams, 406 SW 80th Street, stated she has owned this property since 1999. They have always had electricity and water. She stated they have had it snaked in the back yard but they were told that was because of roots.

Mayor Fitch questioned how this could be if the sewer has not been connected to the main line.

Ms. Williams stated she did not know. She has no idea who did this work or what really happened here. She stated her tenant had a sewer back up and her insurance would not cover the cost. She called Hodges and they told her she was not connected to the main.

Tenis stated the bulk of this claim was the replacement of the riser and the line into the house, so even if there was a problem with the city portion, 95% of the claim is something that the plumber did.

Ms. Williams stated she was actually offered \$1,615 from the City to settle this claim, and then she received a letter denying the claim.

Jensen stated there was no offer made by the City Attorney's office. The claims investigator did indicate that she was looking at possibly recommending a portion of the claim, but after further investigation the decision was made to recommend denial in full. He stated in their view, that line must have been connected because they cannot find evidence that there was seepage in the ground around the area of the connection to the main. We did not make that repair and we did not cause the replacement of the service line.

Ms. Williams stated she was asked by city staff if she would accept that amount and she stated she would have to get in contact with her husband, who is in Korea, and she would have to get back with her. She stated she has no problem paying the portion that is her responsibility but there is still the question about what happened and why was she not connected to the main line.

Burk questioned if the city actually made the repair.

Ihler stated city crews were called out to inspect once the plumber has dug out around the main. If the pipe is in bad shape then they replace that section to give them a good pipe to tap into. With this particular improvement, someone had made a repair that is shown in Exhibit A and the city crew did not feel that was satisfactory so they replaced the pipe and that was shown in Exhibit B.

Burk stated he does not feel the city can be held responsible for this repair.

Ms. Williams requested that the city staff look back in the records before 1999 to see if there were any repairs made. She stated someone repaired this problem.

Burk stated the good thing is that Ms. Williams now has a new sewer line, and even though she had to pay for it, that is part of the responsibility of owning property.

Wells stated there is no indication that raw sewage was seeping in around that area. It appears that the repair was done recently by the tenants that lived there or they hired a plumber.

Haywood questioned if Mr. Mallow saw any raw sewage when he dug out the line.

Mr. Mallow stated yes it was in the line, but he could not tell if it has been running in the line for a period of time.

Haywood questioned how far back they went from the house to where the main should have been.

Mr. Mallow stated they dug up the riser and when they could not find a decent riser they dug up the line. He stated there was not a fresh dig when he started it up so it had to have been six or eight months because the ground had already settled.

Haywood stated something had to have happened and that is why Ms. Williams requested they go back in the records.

Ms. Williams questioned who would do such a thing.

Haywood stated some plumbers would just go out and dig a hole and say they fixed it just to get paid.

Ms. Williams stated she only had people out to snake the line.

MOVED by Burk, SECOND by Zarle to deny the claim of Tanja and Willard Williams in the amount of \$2,865.00. AYE: Tennis, Bellino-Hall, Burk, Givens, Zarle, Shoemate. NAY: Haywood, Wells. MOTION CARRIED.

MOVED by Burk, SECOND by Zarle to deny the claims of Kwang Laboy in the amounts of \$642.00 and \$223.00. AYE: Bellino-Hall, Burk, Givens, Zarle, Haywood, Wells, Shoemate, Tennis. NAY: None. MOTION CARRIED.

3. Consider adopting a resolution ratifying the action of the City Attorney and the City Manager in directing our third party administrator to make payment on the judgment in the Workers' Compensation case of Thomas Perry in the Workers' Compensation Court, Case No. 2010-03759Q. Exhibits: **Resolution No. 11-14.**
4. Consider a release submitted by National American Insurance Company along with full payment for damages to a City-owned privacy wall that was struck by a truck on Rogers Lane between NW 67th and NW 78th Street, on April 30, 2010. Exhibits: Release for property damage.
5. Consider approving nomination for Mayor Fred L. Fitch to the District 9 seat on the Board of Directors of the Oklahoma Municipal League. Exhibits: Letter from OML dated 02/21/2011.

6. Consider approval of transferring \$ 5,000 from the Mayor & City Council Account 230 Contingency, to Mayor & City Council Account 265, Training and Travel, to fund Chamber Legislative trip to Washington, D.C. for Council members Burk, Givens and Tennis. Exhibits: None.
7. Consider approving Change Order # 4 for the Rehabilitation of Old Lawton High School Phase IV. Exhibits: Architect's Change Order No. 4, dated March 10, 2011.
8. Consider approval of Grant Agreement for the Lawton-Ft Sill Regional Airport in the amount of \$ 52,640.00. Exhibits: None.
9. Consider accepting playground equipment donation from the Woodland Hills Elementary School PTA for the Woodland Hills Park near the school. Exhibits: Letter of request from Woodland Hills School PTA.
10. Consider approving Early Entry Agreement between City of Lawton, a municipal corporation ("City"), the Lawton Economic Development Authority, an Oklahoma public trust ("Authority"), the Lawton Urban Renewal Authority, a public body corporate, ("LURA"), and Ruhl Scott 2nd Street Lawton, L.L.C., and Oklahoma limited liability company, ("Redeveloper"). Exhibits: Copy of Early Entry Agreement – March 3, 2011, Letter of approval from Ruhl & Ruhl - March 8, 2011 and Ruhl & Ruhl Master Plan for Phase IA- February 24, 2011.
11. Consider approving the proposed Memorandum of Understanding (MOU) between the City of Lawton and Comanche County Health Department (CCHD), and authorizing the Mayor and City Clerk to execute the agreement. Exhibits: Memorandum of Understanding (on file with the City Clerk).
12. Consider approving plans and specifications for the Santa Fe Bridge Replacement Project #2010-2 and authorizing staff to advertise for bids. Exhibits: None.
13. Consider approving the construction plat for Saint James Place, Part 2 subject to conditions. Exhibits: Plat Map.
14. Consider approving the record plat for West Hill Addition, Part 1B, and accepting the improvements, easements, and maintenance bonds. Exhibits: Plat Map. Maintenance Bonds and Easements on file in City Clerk's Office.
15. Consider awarding (CL11-011) Liquid Aluminum Sulfate to Chameleon Industries, Inc. of Mesquite, TX. Exhibits: Department Recommendation, Abstract of Bids.
16. Consider awarding (CL11-014) Precast Concrete Manholes to Primary Structures of Guthrie, OK. Exhibits: Department Recommendation, Abstract of Bids.

17. Consider extending the contract (RFPCL09-039) Cellular Telephone Service from US Cellular of Tulsa, OK. Exhibits: Department Recommendation, Price Sheet, Contract Extension Form.
18. Consider extending (RFPCL10-034) Health (Medical) Dental/Pharmacy and COBRA Network and Administration Services RFP to Blue Cross/Blue Shield of Oklahoma. Exhibits: Department recommendation, contract extension form.
19. Consider approval of payroll for the period of March 7 - 20, 2011.

NEW BUSINESS ITEMS:

20. Hold a public hearing and consider an ordinance changing the zoning from C-1 (Local Commercial District) to C-5 (General Commercial District) zoning classification located at 2414 West Gore Boulevard. Exhibits: Ordinance No. 11-____, Site Plan, Location Map, Application and CPC Minutes.

Richard Rogalski, Planning Director, stated this request is for Lots 15 – 18, Block 2, West Highland Addition, which measure 100 feet by 125 feet. The property owner is Randy Worthen, and the applicant is Cynthia Beavers. The purpose of the request is to allow a pawn shop that deals in jewelry only to operate in the existing building. Pawn shops are permitted uses in C-5. The zoning of the surrounding area is R-1 (Single-Family Dwelling District) and P-F (Public Facilities District) to the north, R-1 to the south, and C-1 to the east and west. The land use of the surrounding area is single-family residential and park to the north, single-family residential to the south, drainage channel and gas station to the east, and Text Book Brokers to the west. The 2030 Land Use Plan designates these lots as Commercial. Rocket Pawn and Jewelry has been operating at this location since last summer. The City has been working with the property owner and owner of Rocket Pawn and Jewelry to rectify the zoning issue. The owner of Rocket Pawn and Jewelry says the store will deal only in jewelry. The binding site plan submitted with the application states the proposed uses are all C-1 permitted uses and pawn of jewelry only.

On February 24, 2011, the City Planning Commission held a public hearing on this request. No one spoke for or against the request during the public hearing. The CPC, by a vote of 6 – 0, recommended approval of the request subject to the following conditions:

- a. Revising the site plan to show the existing drainage easement on Lots 15 and 16 and the new public utility easement on Lot 15.
- b. Submission of a utility easement for the existing 10-inch sanitary sewer line on Lot 15.
- c. Submission of an application for an administrative revocable permit for the parking area located on Lot 14, which is owned by the City of Lawton, for the new utility easement on Lot 15, and for the existing drainage easement on Lots 15 and 16.

The site plan has been revised accordingly and the property owner has submitted the utility easement and application for revocable permit.

Givens questioned if the site plan was binding forever.

Rogalski stated it is part of the zoning ordinance so it will go forward forever. The planning director can approve minor modifications to a binding site plan. He stated a major change to a binding site plan will require a brand new rezoning.

Givens questioned if the site plan was filed in the County Clerk's office.

Jensen stated he thought we were filing binding site plans. He stated he will check on that issue.

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

MOVED by Shoemate, SECOND by Tennis, to adopt **Ordinance 11-09**, waive the reading of the ordinance, read the title only. AYE: Burk, Givens, Zarle, Haywood, Wells, Shoemate, Tennis, Bellino-Hall. NAY: None. MOTION CARRIED

(Title read by City Attorney)

Ordinance 11-09

An ordinance changing the zoning classification from the existing classification of C-1 (Local Commercial District) to C-5 (General 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.

21. Consider approving a change to the FFY 2010 Consolidated One-Year Action Plan, Change 1 and authorize the Mayor and City Clerk to execute the implementing documents. Exhibits: FFY 2010, Change 1 is available for review in the City Clerk's Office.

Tim Libby, Assistant Director of Housing and Community Development, stated Change 1 to the FFY 2010 Consolidated One-Year Action Plan authorizes a project for the Lawton View subdivision, as authorized in the Consolidated One-Year Action Plan for FFY 2005. The original project, which set-aside \$25,000 for the Neighborhood Revitalization Stabilization Area (NRSA) Committee to use to assist the area, was cancelled due to program reaching the five year point without using the funds. In addition, the NRSA was closed, however, at that time, Housing and Community Development agreed to resubmit a request for funding from the Lawton View subdivision, once a suitable project had been identified. Councilman Haywood and Neighborhood Services Supervisor Tony Griffin requested funding to remove asbestos from Dunbar, the former Douglas School Building, as a group from Lawton View endeavors to save the facility from ruin, and use it for various community services to assist the low- and moderate-income residents of the Lawton View neighborhood.

Shoemate questioned if this was enough money for this project.

Haywood stated they set this money aside for Lawton View and this will involve everyone because it is going into Lawton View Neighborhood Association Trust where everyone will own Dunbar. It will be owned by the City of Lawton and the neighborhood.

Mayor Fitch questioned if they have an estimate for the cost of the asbestos removal.

Haywood stated someone from ASCOG has said it will take approximately \$15,000 to remove the asbestos. Most of it has already been removed.

Shoemate stated the Comanche Nation trains people for asbestos removal and maybe they could work out a deal.

MOVED by Haywood, SECOND by Wells to approve a change to the FFY 2010 Consolidated One-Year Action Plan, Change 1 and authorize the Mayor and City Clerk to execute the implementing documents. AYE: Givens, Zarle, Haywood, Wells, Shoemate, Tennis, Bellino-Hall, Burk. NAY: None. MOTION CARRIED.

22. Consider an ordinance amending Section 20-4-402, Article 20-4, Chapter 20, Lawton City Code, 2005, pertaining to obtaining a revocable communications cable and pipeline permit, providing for severability, and declaring an emergency. Exhibits: Ordinance 2011-____.

Steven Greb, Assistant City Attorney, stated this is a housekeeping measure to update an ordinance. Prior code refers to a position of a Building Development Director, and when there was a reorganization of city staff, that title ceased to exist. This ordinance will change that designation to Community Services Director.

MOVED by Burk, SECOND by Zarle, to adopt **Ordinance 11-10**, waive the reading of the ordinance, read the title only and declaring an emergency. AYE: Zarle, Haywood, Wells, Shoemate, Tennis, Bellino-Hall, Burk, Givens. NAY: None. MOTION CARRIED

(Title read by City Attorney)

Ordinance 11-10

An ordinance amending Section 20-4-402, Article 20-4, Chapter 20, Lawton City Code, 2005, pertaining to obtaining a revocable communications cable and pipeline permit by substituting the term Building Development Director with Community Services Director, providing for severability and declaring an emergency.

23. Consider approving an ordinance amending Section 17-1-6-163, Division 17-1-6, Article 17-1, Chapter 17, Lawton City Code, 2005, by amending the benefit of on-the-job injury leave (full salary) from 56 work hours to 90 days at the beginning of lost time until temporary total disability benefits are available, providing for severability and establishing an effective date of May 1, 2011. Exhibits: Ordinance No. 2011-_____.

Jim Russell, Human Resources Director, stated this ordinance will bring the non-union employees up to the same standards that were established in the 2010-2011 AFSCME contract.

MOVED by Shoemate, SECOND by Burk, to adopt **Ordinance 11-11**, waive the reading of the ordinance, read the title only and establishing an effective date of May 1, 2011. AYE: Haywood, Wells, Shoemate, Tennis, Bellino-Hall, Burk, Givens, Zarle. NAY: None. MOTION CARRIED

(Title read by City Attorney)

Ordinance 11-11

An ordinance pertaining to personnel policies and procedures amending Section 17-1-6-163, Division 17-1-6, Article 17-1, Chapter 17, Lawton City Code, 2005, by amending the benefit of on the job injury leave (full salary) from 56 work hours to 90 days at the beginning of lost time until temporary total disability benefits are available, providing for severability and establishing an effective date.

AUDIENCE PARTICIPATION: None.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Wells thanked Councilmember Bellino-Hall for all of her beautification efforts.

Shoemate requested staff look into the permitting process for the schools.

Mitchell stated they will look into the issue.

Bellino-Hall complemented the city staff, specifically Jason Powell, Jerry Ihler and Tony Griffith, for taking care of some issues in her ward.

Mitchell reminded everyone of the CIP workshop will be held on March 31st at 4:00 p.m.

There being no further business to consider, the meeting adjourned at 7:03 p.m. upon motion, second and roll call vote.

FRED L. FITCH, MAYOR

ATTEST:

TRACI HUSHBECK, CITY CLERK