

MINUTES
LAWTON CITY COUNCIL REGULAR MEETING
NOVEMBER 27, 2018 – 6:00 P.M.
LAWTON CITY HALL
COUNCIL CHAMBERS/AUDITORIUM

Keith Jackson, Mayor Pro Tem
Jay Burk, Mayor Pro Tem
Presiding

Also Present:
Jerry Ihler, City Manager
Frank Jensen, City Attorney
Traci Hushbeck, City Clerk

Mayor Fitch called the meeting to order at 6:04 p.m. Notice of meeting and agenda were posted on the City Hall notice board as required by law. Invocation was given by Pastor Terry Marsh, Carriage Hills Christian Church, followed by the Pledge of Allegiance.

ROLL CALL

PRESENT:

Bob Morford, Ward One
Keith Jackson, Ward Two
Caleb Davis, Ward Three
Jay Burk, Ward Four (arrived @ 6:08 p.m.)
Dwight Tanner, Jr., Ward Five
Sean Fortenbaugh, Ward Six
Onreka Johnson, Ward Seven
Randy Warren, Ward Eight

ABSENT:

Fred L. Fitch, Mayor

AUDIENCE PARTICIPATION:

Kimberly Jones, Founder and organizer of the event Teamwork Makes the Dream Work, which will take place on January 19, 2019 from 10 a.m. to 3 p.m. at Cameron University. She stated the purpose of the event is to encourage our youth to pursue their dreams. She stated over the past years several hundred youth have attended this event. The youth get the opportunity to learn about historical figures and interview local community and business leaders. Over the years they have partnered with local businesses, community leaders and Cameron University. They are requesting a meeting with city council members to seek partnership and sponsorship from the City of Lawton.

Paula Bowen, educator and historian, stated she hopes the City of Lawton will partner with them on this event. This event will add history to our city as well as our state. They will be inviting the Oklahoma Historical Society as well as the Governor and other key figures throughout the state.

Johnson stated she has participated and assisted them in their efforts the past four years and she feels that as a city, we can get together and partner with them on this.

CONSIDER APPROVAL OF MINUTES OF LAWTON CITY COUNCIL REGULAR
MEETING OF NOVEMBER 13, 2018.

MOVED by Warren SECOND by Davis to approve the minutes of November 13, 2018. AYE: Morford, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

CONSENT AGENDA:

Mayor Pro Tem Burk stated item #1 will be considered separately.

MOVED by Morford SECOND by Warren to approve the consent agenda with the exception of item #1. AYE: Morford, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

1. Consider the following damage claim recommended for approval: James and Carol Dean in the amount of \$1,186.39. Exhibits: Legal Opinion/Recommendation and Resolution 18-__.

Kelea Fisher, Deputy City Attorney, stated this claim is regarding a vehicle accident where a City of Lawton employee damaged the vehicle of James and Carol Dean. Mr. and Mrs. Dean did file a claim with their insurance company to take care of the damages to their vehicle. They originally filed a claim with the City requesting reimbursement for the towing cost and rental car expenses in the amount of \$1,186.39. They subsequently contacted her and asked her to amend their claim to include the cost they paid to purchase a tag for their new vehicle. That cost was \$2,225.03. It is her recommendation to amend the claim to include the additional amount. The total amount would be \$3,411.42.

MOVED by Davis SECOND by Jackson to approve **Resolution 18-85** approving the damage claim of James and Carol Dean in the amended amount of \$3,411.42. AYE: Morford, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

2. 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 Quinton Fixico in the Workers' Compensation Court of Existing Claims, Court No. 2016-03792R. Exhibits: **Resolution 18-86**.
3. Consider authorizing the City Attorney to accept the sum of Nine Thousand Eight Hundred Eleven and 23/100 Dollars (\$9,811.23) as settlement of the City's subrogation interest in the personal injury case of Bobby Don Finley. Exhibits: None.
4. Consider authorizing Lawton Farmers Market Institute to perform survey work and geotechnical investigation necessary to complete the building design for the permanent farmer's market location. Exhibits: None.

5. Consider approving the construction plans for a 6-inch waterline to serve Edison Elementary School located at 5801 NW Columbia Avenue, subject to the conditions listed. Exhibits: Location Map.
6. Consider approving the construction plans to modify two median openings on W Gore Boulevard to serve Eisenhower Middle School located at 5702 W Gore Boulevard. Exhibits: Location Map.
7. Consider approving an agreement and payment of \$2,219.00 to Mr. Donald Kerbo for the replacement of a portion of the residential driveway located at 2216 NW Cheyenne Ave., which was demolished in the course of completing a city waterline repair. Exhibits: Proposed agreement between the City of Lawton and Mr. Kerbo.
8. Consider adopting Street Light Resolution No. 496 to authorize the installation/removal of street lights at the locations listed in the Resolution. Exhibits: Street Light Resolution No. 496.
9. Consider accepting the 2017 CIPP Sewer Liner Project 17-5 SSES as constructed by Granite Inliner (formerly known as Layne Inliner). Exhibits: The Maintenance Bond is on file in the Field Utilities Maintenance & Collection Department's Office.
10. Consider extending the contract for Consultant Brokerage services concerning employee benefits to National Financial Partners Corporate Benefits (NFP), of Oklahoma City, OK. Exhibits: Contract Extension Agreement, Original Consulting Agreement.
11. Consider awarding (RFPCL19-011) Employee Physicals/Drug Screen Testing section A (Physicals) to the Center for Occupational Health, of Lawton, OK and section B (Drug/Alcohol Testing) to Allied Lab, Inc., of Lawton, OK. Exhibits: Department Recommendation, Proposal Price Sheets
12. Consider awarding contract (CL19-005) for Zinc Orthophosphate Corrosion Inhibitor to Water Tech Inc. of McAlester, OK. Exhibits: Department Recommendation, Abstract of Bids, Price Sheet.
13. Consider approval of payroll for the periods of November 5 – 18, 2018.

NEW BUSINESS ITEMS:

Mayor Pro Tem Burk stated they will be striking #17.

14. Hold a public hearing and consider a resolution amending the Land Use Plan from Residential/Low Density and Professional Office/Transition 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 2122 – 2128 NW Lake

Avenue and 2121 – 2127 NW Arlington Avenue. Exhibits: Resolution 18-___, Ordinance No. 18-___ with Site Plan, Location Map, Applications and Draft CPC Minutes.

Richard Rogalski, Community Services Director, stated this request includes Lots 11 – 18, Block 3, Lee Addition, which measure 300 feet by 220 feet. The proposed use is Braums Restaurant and Ice Cream Store. The applicant is McKee Enterprises, LLC. The zoning of the surrounding area is R-1 to the north and east, R-1 and C-1 to the south, and C-5 General Commercial District to the west. The land use of the surrounding area is single-family residential to the north and east, vacant and single-family residential to the south, and commercial shopping center (Hobby Lobby) to the west. The 2030 Land Use Plan designates Lots 13 – 16 as Professional Office/Transition and Lots 11, 12, 17, and 18 as Residential/Low Density. Currently Lots 14, 15, and 16 are zoned C-1, and Lots 11, 12, 13, 17, and 18 are zoned R-1. Several of the lots are currently vacant, and the other lots have single-family residential structures which will be removed. The applicant has submitted an application to the City Council to close the alley located between these lots and is preparing construction plans to relocate the sanitary sewer line currently located in the alley. The applicant is also working with the private utility companies on relocating their facilities. He stated another potential thing to talk about is the driveway that will line up with the exit from the shopping center across the street. There currently is a three way signal there. The driveway would be right in and right out. You would put a curbed island there that would restrict those movements to right in right out. They could decide to upgrade the traffic signal but they would have to add a left turn bay and then they would have a signal going the other way. They would have to meet City standard on both of these options and staff would agree with either option. On October 25, 2018, the City Planning Commission held a public hearing on this request. At the public hearing one person spoke against the rezoning, one person spoke in favor of the request, and two people did not object to the request but had concerns about traffic, street condition, and drainage. He stated Arlington is used as a cut through and he does not think this will hurt or help that situation. There is a flooding problem in this neighborhood and the storm drains are all undersized for this area, but there is a major storm drain upgrade that would be needed in this neighborhood. It is on our storm water plan.

Ihler stated it was originally ranked as number 8 as far as priority on the original storm water master plan. The original cost in 2003 was about \$2.5 million. Today's cost would be \$3.5 million to solve that whole flooding area.

Rogalski stated with this property, water does drain off into the road. They can drain this entire property into the storm drain so it could make the problem a little better. They would have to do retention and they could actually improve the situation. This is something they will work on with engineering. The CPC, by a 7 to 1 vote, recommended approval of the request subject to the following conditions: 1) revision of the site plan to show a twenty foot public access easement allowing access through the site from the public alley, 2) submittal of a landscaping plan and 3) the developer paying for the traffic signal modifications at the entrance on NW Sheridan Road (the entrance aligns with the entrance to the shopping center on the west side of Sheridan Road). Notice of public hearing was mailed to 47 property owners within 300 feet of the requested area on November 6, 2018, and proper notice was published in *The Lawton Constitution* on November 11, 2018.

Morford questioned if the alley stays open, will it turn into a cut through.

Rogalski stated you would be faster going any direction on one of the other roads.

Morford questioned if the alley was dirt or asphalt.

Rogalski stated it is probably gravel. It is a very long alley, about two blocks in length. You just can't dead in the alley, the best you could do is to allow access to that alley and an exit from there. That would be the best alternative.

Tanner stated the citizens are concerned about the flooding. This project will not add to the flooding problem and it might potentially help it since they are putting in a bigger drain line and we are going to make sure all that water flows away from the neighborhood. The other problem is that people cut through Arlington. He questioned if they might be able to install speed bumps along that one block between Sheridan and 21st Street. A lot of folks are probably going to want to take that alley way. The flooding problem starts around Ferris and the drainage pipes are just way too small and the water has nowhere to go. That area is very flat and it takes a while to drain.

Burk stated he wants to make sure that the landscaping that backs up to those homes is big enough so that we don't have noise issues. He is also concerned about the alley way not being a good gravel surface. He is afraid they will have dirt and mud in the parking lot. He would like to see gravel put in that alley. It would be perfect if they could put in asphalt because there are going to be people using this alley.

Rogalski stated you can put conditions on a rezoning. He stated the tree screen is a code requirement as well as an opaque fence. You can require a minimum caliber on those trees as a rezoning condition. You can require maybe putting new gravel on 100 feet of the alley or paving 20-30 feet. He is not sure how much the alley will be used since it is a really long alley and he does not see that as being a handy way for anyone to get to this facility.

Burk stated even if they did a couple hundred feet down the alley that would help the residents and it will help keep the new area nice. As far as the trees, he feels they need to go back and look at our landscape ordinance because it just calls for the bare minimum. Other communities are requiring two or three times more than ours. He would like to see bigger trees than what we are calling for today.

Rogalski stated you could put it as a condition that the tree be a certain size and that two inches of gravel would be added to a certain number of feet of the alley. These would be conditions that would be added to the site plan.

Fortenbaugh questioned why they just could close off the alley and not have access to Braums.

Rogalski stated they received some calls from citizens that were concerned about the alley being dead ended. The citizens want to be able to get out of the alley. The other public utilities still have lines in that alley and you would have to have a turnaround or you would have people

backing out and he is not sure that is a good solution. He suggested putting a speed bump in would help with the gravel issues as well as keeping the speeds down.

Davis stated if they had them asphalt that alley a 100 foot or so they are talking about \$6,000 to \$7,000 if they ran that 20 foot wide by 100 foot long. He stated that would go a long way in helping.

Rogalski stated you would be driving on a stable surface for longer before you get into the parking lot so that gravel would have time to come off. It is not a bad idea and he does not know how long would be the perfect amount. He feels that a bump would also help.

PUBLIC HEARING OPENED.

Max Sasseen, Realtor for McKee Enterprises, stated he currently has the property under contract with Braums. He feels good about the site plan they have so far. He stated some of these lots have been vacant for a long time and some of the neighbors are applauding this project. He stated this commercial property was too small for any type of significant development so the other houses had to be purchased. Three of the four properties that were purchased were uninhabitable, so the rezoning would take those dilapidated houses and remove them from the property and making the zoning match those lots on Sheridan Road. One of the challenges was the alley and they worked with the utility companies and they are all on board. He stated Braums would prefer not to have that opening but it would be unsafe to have a dead end alley without a sufficient turn around. The concession they made was to put that public access easement and allow people to exit through that parking lot. He feels the speed bump idea at the mouth of that alley would be wise because it would slow people down and maybe discourage exiting that way. He did not know there was a drainage situation until he attended the CPC meeting at he was curious about the solution. He met with the City Engineer and he explained about the sizing. Braums does not want to be in a place that has a serious drainage problem. He stated Lester Seigler has been hired as the onsite engineer on the project and he has drawn the site plan. He stated they may want to expedite the water off the property and get it to the storm drains as quickly as they can. He stated Mr. Seigler is working on this issue. He stated they also purchased the two lots to the south and they decided to give themselves an easement and they can take the sewer line across those lots which will save money and time during construction.

Warren stated this is a win/win deal and they get to built back up some properties inside the city limits and they don't have to build infrastructure. It provides the residents in that area with someplace to pick up groceries and he is in favor of this project.

Davis stated he is concerned that if we don't address keeping the parking lot clean from the alleyway then Braums will come up with their own way of keeping it clean and it might constitute a blocking off of the alley. He feels if they went 50 feet back with pavement and then put the speed bump in he feels it would keep that parking lot clean.

Mr. Sasseen stated the alley is not in great shape now and there is evidence that people cut through there. There is a chance that they will limit the traffic there and having you to go through the parking lot to get out of the alley will take it a little bit out of play. Right now you

can whip in off of Sheridan head east and pop out on 21st Street and he feels this will help slow it down. He is not opposed to keeping things clean and making things look great.

Morford questioned if a “No Exit” sign would help.

Warren stated maybe this would be a good place to look at installing a speed table rather than a speed bump.

Mr. Sasseen stated the three part program is to 1) acquire the property and get the zoning changed, 2) getting the utility companies to agree on vacating the alley and 3) it is a requirement that they talk to the homeowners in the neighborhood and 50% have to agree not to change the residential restrictions, but to simply remove these properties from those restrictions. He has done some mailings and some phone calls and he has overwhelming support from the neighbors. He has two no's and sixty yes'. He expects to have over 100 signatures from the 150 property owners. He is extremely sensitive to the concerns from the neighbors about the traffic and the drainage.

PUBLIC HEARING CLOSED.

MOVED by Jackson SECOND by Morford to adopt **Resolution 18-87**. AYE: Morford, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

Davis questioned the width of the alley.

Ihler stated typically they are about 20 feet wide.

Davis questioned if they should pave it back 50 feet by 20 feet.

Ihler stated that would really reduce the amount of maintenance that Braums would have to do on their parking lot. He does think that would be an improvement that would pay for itself.

MOVED by Davis SECOND by Tanner to adopt **Ordinance 18-36** to include the addition of a speed bump at the entrance of the alley, paving the alley 20 feet wide and extending 50 feet east and requiring 3-inch caliber trees.

Fortenbaugh questioned if a 3-inch tree is more than what is required by our current code.

Rogalski stated it is maybe 1-inch or 1½ -inch. It is not a very effective tree screen at 1½ - inches.

Fortenbaugh stated we have a standard out there and it is probably not good enough and we need to revisit it, but it does not seem fair to impose this on one business unless we go ahead and permanently change it. He does not like the idea of making Braums pay for pavement back there.

Davis stated he would withdraw the 3-inch caliber trees from his motion.

Burk stated he is concerned about the houses behind there and that is what will control the noise. The fence will help control trash, but the trees are going to make a huge difference. This is a rare instance where we back up to a residential area. He does not feel that we are asking that much to put in 3-inch trees.

Tanner stated he wished Council Member Davis would maintain his original motion.

Davis questioned the cost of upgrading the trees.

Burk stated it can't be more than \$100 a tree.

Jensen stated the council really needs to follow the existing ordinance and just make a request as a separate item for the addition of trees. It is not going to be that much money and they would probably consider doing it.

MOVED by Davis SECOND by Tanner to adopt **Ordinance 18-36**, waive the reading of the ordinance, read the title only to include the addition of a speed bump at the entrance of the alley and paving the alley 20 feet wide and extending 50 feet east. AYE: Morford, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 18-36

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 as amended on the floor; and authorizing changes to be made upon the official zoning map in accordance with this ordinance.

15. Hold a public hearing and consider an ordinance to close the alley adjacent to Lots 11-18, in Block 3, of Lee Addition, located east of NW Sheridan Road, between NW Lake Avenue and NW Arlington Avenue. Exhibits: Ordinance No. 18-____ and Location Map.

Rogalski stated this section of alley goes with the project that was just addressed. He stated without closing the alley they could not build the building.

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

MOVED by Tanner SECOND by Jackson to adopt **Ordinance 18-37**, waive the reading of the ordinance, read the title only. AYE: Morford, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 18-37

An ordinance closing the 20-foot alley adjacent to lots 11-18, in block 3, of Lee Addition.

16. Hold a public hearing and consider an ordinance to close the 50 foot wide platted right-of-way of NW 62nd Street, between Blocks 28 and 29, of Brockland South Addition, located south of NW Ferris Avenue between NW 61st Street and NW 63rd Street.
Exhibits: Ordinance No. 18-__ and Location Map.

Rogalski stated on October 23, 2018, Council voted to hold a public hearing for a request to close the 50 foot wide platted right-of-way of NW 62nd Street, between Blocks 28 and 29, of Brockland South Addition, located south of NW Ferris Avenue between NW 61st Street and NW 63rd Street. The requested area is approximately 50 feet by 132 feet. The right-of-way of NW 62nd Street, formerly known as Dorsey Avenue, was dedicated on the Brockland South Addition plat filed in 1951. The portion of NW 62nd Street to the north of NW Ferris Avenue, between Blocks 26 and 27 was closed and vacated at the request of Lawton Public Schools in 1964. The portion of NW 62nd Street to the south of NW Ferris Avenue is the requested area. The property to the south of the requested area was platted as residential lots as part of the Country Club West, Part 4, record plat. There is a platted public utility easement on the south 10 feet of the subject right-of-way. Public Works has requested that the easement be retained in order to maintain existing utilities that serve the subdivisions.

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

MOVED by Jackson SECOND by Morford to adopt **Ordinance 18-38**, waive the reading of the ordinance, read the title only. AYE: Morford, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 18-38

An ordinance closing the 50 foot wide platted right-of-way of NW 62nd Street, between blocks 28 and 29, of Brockland South Addition.

17. Consider discussing alternatives to incarceration for individuals who come into contact with City of Lawton Police Officers and may qualify for protective custody and also consider discussing records and training of the City of Lawton Jail Division and provide direction as deemed appropriate. Exhibits: Lawton Police Department Mental Health Offenders Policy 3.49.

This item was stricken.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Fortenbaugh reminded citizens of the Ware on C Avenue event next Thursday at 5 p.m.

Ihler requested a special meeting the following week to review the applicants for the city manager position.

Diane Branstetter, Finance Director, presented revenue and expenditure highlights for the period ending October 31, 2018. (On file in the City Clerk's office).

The Mayor and Council convened in executive session at 7:10 p.m. and reconvened in regular, open session at 7:17 p.m. Roll call reflected all members present.

EXECUTIVE SESSION ITEMS:

18. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the pending case in Comanche County District Court of Roy Vanderpool, as the Personal Representative of the Estate of Cody Vanderpool, Deceased v. City of Lawton, et al, CJ-2018-712, and if necessary, take appropriate action in open session. Exhibits: None.

Jensen read the title of item #18.

MOVED by Fortenbaugh SECOND by Tanner to retain Clay Hillis with Hillis Law Firm and Jim Gibbs with Goolsby, Proctor, Heefner & Gibbs, P.C. to represent the named police officer sued in his individual capacity in the lawsuit filed in Comanche County District Court styled Roy Vanderpool, as the Personal Representative of the Estate of Cody Vanderpool, Deceased v. City of Lawton, et al and authorize the Mayor and City Clerk to execute each retainer agreement. AYE: Morford, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

There being no further business to consider, the meeting adjourned at 7:18 p.m. upon motion, second and roll call vote.

JAY BURK, MAYOR PRO TEM

ATTEST:

TRACI HUSHBECK, CITY CLERK