
MINUTES OF THE CITY COUNCIL, CITY OF CONWAY, ARKANSAS

Conway, Arkansas
Tuesday 6:30 p.m.
September 26, 2006

On this date the City Council of the City of Conway, Arkansas met in regular session. The following members being a quorum were present and acting; Alderman Hawkins, Alderman Jones, Alderwoman Smith, Alderman Brewer, Alderman Grimes, Alderwoman Whitmore and Alderman Weeks and Alderman Bell. Also, present and acting: Mayor Tab Townsell, City Attorney Michael Murphy and City Clerk Michael Garrett.

1. *Invocation, Pledge, Call to Order*
2. *Roll Call*
3. *Minutes:* September 12, 2006

Alderwoman Whitmore stated that on page 2 item 6A1 of the September 12, 2006 minutes the description of the item should read "Lot 41R" instead of "Lot 41M". Alderman Bell motioned to approve the minutes with corrections. Alderwoman Smith seconded the motion. There was no discussion. The motion passed 8-0.

4. *Recognition of Guests:* Employee Service Awards

5 yrs – Larry Sanders, Travis Ragland, & Danny Collins, all with the Fire Dept.

10yrs – James Burnside- Parks & Rec., Officer Charles Townsend, Officer Tracey McDermont, Officer William Tapley, Officer Michael Welch, Officer Rhonda Hance, and Peggy Dodd – Street Dept.

25 yrs – Fred Gates – Fire Dept.

Mayor Townsell stated that after 23 years with the Police Dept., Major Benny Battles will be retiring effective October 1, 2006.

5. *Public Hearings:*

A. *Public hearing to discuss the closing of a drainage easement designated on the plat as Lot 41-R Cresthaven Subdivision Phase 2.*

1. **Ordinance closing the drainage easement shown on the plat as Lot 41-R Cresthaven Subdivision, Phase 2.**

Mayor Townsell opened the public hearing. There was no discussion. Mayor Townsell closed the public hearing.

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Alderman Bell motioned to waive the readings of the ordinance. Alderwoman Whitmore seconded the motion. There was no discussion. The motion passed 8-0. Alderwoman Smith motioned to adopt the ordinance and the emergency clause. Alderman Bell seconded the motion. There was no discussion. The clerk called the roll with the following voting "Aye": Alderman Hawkins, Alderman Grimes, Alderman Weeks, Alderman Jones, Alderman Brewer, Alderwoman Smith, Alderwoman Whitmore, and Alderman Bell. The motion passed 8-0.

Alderman Brewer motioned to suspend the rules to allow some citizens to address the council. Alderman Weeks seconded the motion. The motion passed 8-0. Mrs. Simmons stated that their property was annexed into the city in 1995 via a water district. Their property line goes down the center of an easement between them and Steve Gafner's property. After being annexed into the city the former owner of Mr. Gafner's property got a permit for a small building as an accessory to his home, but instead of building a small building, he built a commercial building that he used as a salvage business. Mrs. Simmons stated that the property got to looking pretty bad and feels the city was at fault for not watching what was being built. Once Mr. Gafner purchased the property he cleaned it up and talked about grandfathering in the building to use an automotive shop, but the Simmons' stated they told Mr. Gafner that the building could not be grandfathered in because it was built after the property had been annexed and informed him they didn't want a business there. In the fall of 2001 Mr. Gafner put a sign up on the building "Steve's Automotive" and another one at the corner of Sutherland Rd & Hwy 286. Mr. Gafner went before the council to have his property rezoned, but was denied on Jan. 17, 2002. Mr. Gafner then added a wrecker service and Mrs. Simmons stated this caused a lot of traffic and allowed them to have no privacy. Mrs. Simmons feels the council made the right decision in denying the rezoning request, but all Mr. Gafner did was take down his signs. The Simmons' have been told by the Mayor, code enforcement, Chief of Police, and the Planning Director that he is allowed to work on his own cars, but she stated he cannot own that many vehicles for personal use. They have called the code enforcement officer and he has gone out and talked with Mr. Gafner and he will clean up, but after a period of time all the cars are brought back. Mrs. Simmons stated at the last meeting they had with Mayor Townsell they were told that code enforcement and the Chief Aragon were to make sure Mr. Gafner was complying with the A1 zoning code. The Simmons' took pictures on Sept. 10, 2006 that show Mr. Gafner had 10 cars, 2 Virco trucks, 2 wreckers, and other cars behind closed doors. They expect retaliation every time they go to the police and Mrs. Simmons stated Mr. Gafner gets mad and vandalizes something and then denies it. He has cursed Mr. Simmons and he has sprayed trees they are trying to grow and killed them. Mayor Townsell stated he sent the code enforcement officer out there for 10 consecutive days looking for something, but he could not find anything. Mr. Simmons stated that you cannot pull into the driveway and then back out and find anything. Mayor Townsell stated that with the photos the Simmons' brought in tonight showing the Virco trucks and the other wreckers that are not Mr. Gafner's, this constitutes proof to him that Mr. Gafner is running a business out there and this is a code violation. Mayor Townsell asked City Attorney, Michael Murphy, can work with this proof? Mr. Murphy stated

that he is not sure if this is the time or the place to evaluate evidence to start filing warrants for code enforcement, but this is some evidence that can be reviewed along with anything else that can be gathered by either the Simmons' or code enforcement and this is a starting place. Mayor Townsell asked Mr. Murphy if it would be his job to review this. Mr. Murphy stated that if code enforcement wants to bring him a file along with anything the Simmons' want to bring him, he would be glad to review the evidence and look at the history.

6. Report of Standing Committees:

A. Community Development Committee (Planning, Zoning, Permits, Community Development, Historic District, Streets, & Conway Housing Authority)

1. Consideration of a request by Michael Cooper for a franchise agreement with the City for a taxi service.

Michael Cooper addressed the council and stated he would like to have a bus running to the casinos and also provide transportation service for Conway. He feels there are a lot of people in Conway in need of transportation even with the other taxi service. Alderman Hawkins asked Mr. Cooper if he would be operating on a regular schedule. Mr. Cooper stated yes. Alderman Hawkins asked how often he would operate this. Mr. Cooper stated he would probably operate this 3 times a week. Alderman Hawkins asked if the rest of the time he would be operating within the city limits. Mr. Cooper stated yes. Mayor Townsell clarified that he would only need the franchise to operate the service within the city limits. Alderman Bell asked if he would be using cars or vans. Mr. Cooper stated he would use cars for the taxi service and a shuttle bus for the UCA students. Alderwoman Whitmore stated the application shows the business is "Transit-Way" and that it's an individual business with liability insurance, but the insurance certificate of coverage is under the name of a Diane Jones DBA Transit-Way, which shows it's an individual business. Mr. Cooper stated yes that Ms. Jones is his sister and the driver of the bus. Alderwoman Whitmore asked Alderman Hawkins if a franchise is granted to an individual how does that work with the insurance under someone else's name. Alderman Hawkins asked Mr. Cooper if both names are listed on the insurance certificate. Mr. Cooper stated no only Ms. Jones. Alderman Hawkins asked if Mr. Cooper was the business owner. Mr. Cooper stated yes. Alderman Hawkins suggested that Mr. Cooper contact his insurance provider, and have his name added to the policy and list Ms. Jones as a driver, rather than having it listed as Diane Jones DBA Transit-Way. Mr. Worthy addressed the council and stated he did not feel that another taxi service is needed. Mr. Worthy explained his son runs the current cab company and he has 3 cabs; one is not used, one runs during the day and the other at night. If he needs any help during the day he calls another driver. Mr. Worthy and his son feel there is not enough business to have 2 taxi services and they are opposed to this request. Alderman Hawkins motioned to approve the franchise contingent on having the insurance

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paperwork corrected. Alderwoman Whitmore seconded the motion. There was no further discussion. The motion passed 8-0.

- 2. Ordinance providing for the establishment of a flood damage prevention program for the City of Conway.**

O-06-128

Alderwoman Smith motioned to waive the readings of the ordinance. Alderman Bell seconded the motion. The motion passed 8-0. Ronnie Hall, City Engineer, stated that FEMA inspected the city in July 2006 to verify our compliance with their codes and found us lacking in several areas and we are revising our operation to comply. Mr. Hall stated that we are to keep the building permit with the elevation certificate for each house located in or near the 100 year floodplain. City Inspector, Ben Wiedower, has destroyed all building permits after 3 years due to lack of space to maintain the records and this has since been corrected. Alderman Bell asked how long those records need to be kept. Mr. Hall stated it does not say how long. Mr. Hall went on to say this new ordinance adopts new floodplain maps that will become effective Dec. 19, 2006, and also a new flood prevention code that is more in line with the current FEMA rules and regulations. Alderman Brewer asked what are the implications in Section 5/D. Mr. Hall stated sewer lines are covered in more detail in the code. He stated the lines are required to be flood proof so that the sewage doesn't flow into the storm water, and stated that sewer lines are allowed to cross the floodplain. Alderman Grimes motioned to adopt the ordinance. Alderman Hawkins seconded the motion. There was no discussion. The clerk called the roll with the following voting "Aye": Alderman Hawkins, Alderman Grimes, Alderman Weeks, Alderman Jones, Alderman Brewer, Alderwoman Smith, Alderwoman Whitmore, and Alderman Bell. The motion passed 8-0.

- 3. Resolution agreeing to comply with FEMA requirements and required improvements in permitting, record keeping and documentation for developments in the floodplain.**

R-06-32

Alderman Hawkins motioned to adopt the resolution. Alderwoman Smith seconded the motion. There was no discussion. The motion passed 7-1. Alderman Hawkins voted in opposition.

- 4. Consideration of a bid to purchase a Trackhoe for the Street Department.**

Ronnie Hall, City Engineer, was present to answer questions and recommended that Hugg & Hall Equipment Co. be awarded the bid for the trackhoe at the cost of \$102,916.00. Alderman Hawkins motioned to accept the bid. Alderwoman Smith seconded the motion. Alderman Brewer stated he felt like we should take the lowest

priced bid that meets the specifications. Mr. Hall stated that after trying the equipment out they decided that saving money would be a good thing, but he doesn't have a problem with awarding the bid to Scott Equipment for the Case CX130. After much debate Alderman Brewer moved to accept the bid from Scott Equipment for the Case CX130. Alderwoman Smith seconded the motion. Mayor Townsell stated there is already a motion on the floor and that is what needs to be discussed. Alderwoman Smith called a question. The main motion on the floor was voted on. The motion failed 1-7. Alderman Hawkins voting in favor. Alderman Brewer's motion to accept the bid from Scott Equipment was voted on. The motion passed 8-0.

5. Discussion of the Conway Traditional Neighborhood Development Overlay Ordinance.

Planning Director, Bryan Patrick, stated this is an overlay ordinance that would allow the creation of a traditional neighborhood development, which would allow new neighborhoods to look and feel like old Conway. Alderman Hawkins asked Mr. Patrick if he was looking at this city wide or is going to allow the market situation dictate what will and won't sell. Mr. Patrick stated in his opinion it is a combination of both. Mayor Townsell stated that when we pass the T & D Overlay ordinance this will be another tool, it will not change the rule for any particular piece of property, yet. Alderman Brewer stated he is happy with this to facilitate the immediate boundaries of what Hendrix wants, but he doesn't want to see us extending this and mandating it for other lands to be developed. Alderman Brewer asked if this could be a PUD rather than an overlay. Mayor Townsell explained we are trying to adopt this as a T & D Overlay that is not specific to any area, then come back and adopt it to the village. If we want to come back and adopt it specifically anywhere else it would have to be approved by this body. Tim Floyd, President Hendrix College, spoke in favor of the T & D Overlay concept.

6. Consideration of a request by Robert French to utilize an easement for a sewer line for the North Hills Subdivision.

Kevin Watson was present to answer questions. Alderman Brewer motioned to grant the easement request and grant the Mayor authorization to sign. Alderman Hawkins seconded the motion. There was no discussion. The motion passed 8-0.

7. Ordinance rezoning property located on a triangular piece of land abutting the proposed Spencer Lake Dr immediately south of Spencer Lake PUD Phase 1 and approximately 250 feet south of the Padgett Road Bridge at Spencer Lake from R-1 to PUD.

O-06-129

Alderman Bell motioned to waive the readings of the ordinance. Alderwoman Smith seconded the motion. The motion passed 8-0. Alderman Hawkins motioned to adopt

the ordinance. Alderwoman Smith seconded the motion. There was no discussion. The clerk called the roll with the following voting "Aye": Alderman Hawkins, Alderman Grimes, Alderman Weeks, Alderman Jones, Alderman Brewer, Alderwoman Smith, Alderwoman Whitmore, and Alderman Bell. The motion passed 8-0.

Alderman Grimes motioned to suspend the rules and move item 6A12 up in the agenda to follow item 6A8. Alderman Bell seconded the motion. The motion passed 8-0.

8. **Ordinance rezoning property located on the east side of Padgett Road about 300 feet south of the intersection of Padgett Road and College Avenue (formerly Wescon Lane) at 700 Padgett Road from R-1 to RU-1.**

O-06-130

Alderwoman Smith motioned to waive the readings of the ordinance. Alderman Bell seconded the motion. The motion passed 8-0. Alderman Hawkins motioned to adopt the ordinance. Alderman Bell seconded the motion. There was no discussion. The clerk called the roll with the following voting "Aye": Alderman Hawkins, Alderman Grimes, Alderman Weeks, Alderman Jones, Alderman Brewer, Alderwoman Smith, Alderwoman Whitmore, and Alderman Bell. The motion passed 8-0.

Item 6A12 - Alderman Hawkins motioned to grant the conditional use permit. Alderman Bell seconded the condition. Kevin Watson asked if "Watson Children's Trust" could be added to condition #3. Alderman Brewer asked if this use could continue if the trust leased it for this type of business activity. Michael Murphy, City Attorney, stated yes, as it is written, it would be possible. Mayor Townsell asked if you want to limit it to the "use" or to "land". Alderman Brewer motioned to limit it to the use. Mayor Townsell suggested it should read "This conditional use permit for General Contractor facility is limited for the use of Kevin Watson and Michelle Watson and the Watson Children's Trust". There was no further discussion. The motion passed 8-0.

9. **Ordinance to rezone property located at 3005 Dave Ward Drive, approximately 400 feet west of South Salem Road from MF-3 to RU-1.**

O-06-131

Alderwoman Whitmore motioned to waive the readings of the ordinance. Alderwoman Smith seconded the motion. The motion passed 8-0. Alderman Hawkins motioned to adopt the ordinance. Alderman Grimes stated he would vote no because it does not adhere to the comprehensive plan. Alderwoman Smith seconded the motion. There was no discussion. The clerk called the roll with the following voting "Aye": Alderman Hawkins, Alderman Jones, Alderwoman Smith,

Alderman Whitmore, and Alderman Bell. The motion passed 5-3. Alderman Grimes, Alderman Brewer and Alderman Weeks voted in opposition.

10. Consideration of a conditional use permit for a transmission tower/station (cell tower) for property located at 3005 Dave Ward Drive.

Alderman Hawkins motioned to grant the conditional use permit. Alderman Grimes seconded the motion. Andy Cunningham, representing Verizon Wireless, addressed the council and asked if they could install a temporary “COW” also known as a Cell on Wheels which would allow them to get the network up and running. Alderman Whitmore asked how long before the permanent tower would go up. Mr. Cunningham stated no longer than 90 days. Mayor Townsell asked how tall the “COW” is. Mr. Cunningham stated approximately 60 feet. Alderman Grimes motioned to amend condition #2 to require a rod iron fence with shrubbery required. Alderman Hawkins was in agreement and also motioned to add a condition to allow the “COW” for 90 days. Alderman Grimes was in agreement. Condition #7 will allow for the temporary cell tower also know as a “COW” for 90 days on site within 25 ft. of the stated legal description. There was no further discussion. The motion passed 6-2. Alderman Weeks and Alderman Brewer voted in opposition.

11. Consideration of a conditional use permit for a transmission tower/station (cell tower) on an 18-foot by 33 foot area of a larger property that is at North Plaza Shopping Center (2125 Harkrider).

Alderman Hawkins motioned to grant the conditional use permit with the 5 conditions. Alderman Smith seconded the motion. Alderman Bell asked why this tower is 120 ft as apposed to 100 feet. Greg McKenzie, representing Diticom, LLC, addressed the council and stated this is what the engineer designed and this will help with a capacity problem in the ½ mile area. Alderman Weeks asked what other sites were looked at. Mr. McKenzie stated there was a 45 minute hearing with the planning commission about the issues of why this was a good site. He cannot name the property owners that were contacted but that Mr. Trent, who owns North Plaza Shopping Center, feels it would be good for the shopping center. Aaron Knight, 2014 Hutto; Conway, AR, addressed the council and stated he is against this tower and also stated that this property abuts multi-family and has residential to the South and to the immediate West. Mr. Knight suggested the council use a consultant on the front end for guidance to determine possible locations cell towers could placed. Alderman Grimes asked that some other C3 areas be looked at. Alderman Brewer motioned to hold this item in committee. Alderman Smith seconded the motion. There was no further discussion. The motion passed 8-0. Mayor Townsell stated the council would like to see other properties, and stated we asked Verizon to tell us why their tower could not be in alternate locations and why the coverage wouldn’t work. Mr. McKenzie stated the “why” is because the engineers told us this was the spot. Mayor Townsell stated there is a quarter mile radius of the spot were looking for and the

question we are asking is why in that quarter mile radius was that one spot chosen when there are other spots possible.

12. **Consideration of a conditional use permit for general contractor facility in RU-1 for property located on the east side of Padgett Road about 300 feet south of the intersection of Padgett Road and College Avenue (formerly Wescon Lane) at 700 Padgett Road.**

This item was move up on the agenda.

13. **Consideration of a conditional use permit for a duplex on property located approximately 100 feet south of the Hutto Street/East Street intersection with an address of 2120 East Street.**

Alderman Hawkins motioned to grant the conditional use permit with the following conditions.

- 1) One duplex-two dwelling units- allowed on this site.
- 2) Privacy fencing required on east property line.
- 3) Exterior building material will be brick.
- 4) Duplex must have a gable or hip roof.

Alderman Smith seconded the motion. There was no discussion. The motion passed 8-0.

B. Public Service Committee (Sanitation, Parks & Recreation, & Physical Plant)

1. **Consideration of a boat house on Lake Beaverfork for property located 14 Eagle Shore Drive.**

Earl Elliott was present to answer questions. Alderman Bell motioned to approve this application. Alderman Smith seconded the motion. The motion passed 5-2. Alderman Weeks and Alderman Brewer voted in opposition. Alderman Hawkins was absent at the time of the vote.

C. Public Safety Committee (Police, Fire, Dist. Court & City Att., & Animal Control)

1. **Ordinance appropriating additional funds to replenish the gasoline account for the CFD.**

O-06-132

Alderman Smith motioned to waive the readings of the ordinance. Alderman Bell seconded the motion. The motion passed 7-0. Alderman Smith motioned to adopt the ordinance. Alderman Whitmore seconded the motion. There was no

discussion. The clerk called the roll with the following voting “Aye”: Alderman Hawkins, Alderman Grimes, Alderman Weeks, Alderman Jones, Alderman Brewer, Alderwoman Smith, Alderwoman Whitmore, and Alderman Bell. The motion passed 8-0.

2. **Ordinance appropriating additional funds to purchase a new condenser for the outside air conditioning unit.**

O-06-133

Alderman Hawkins motioned to waive the readings of the ordinance. Alderman Bell seconded the motion. Alderman Hawkins motioned to adopt the ordinance. Alderwoman Smith seconded the motion. There was no discussion. The clerk called the roll with the following voting “Aye”: Alderman Hawkins, Alderman Grimes, Alderman Weeks, Alderman Jones, Alderman Brewer, Alderwoman Smith, Alderwoman Whitmore, and Alderman Bell. The motion passed 8-0.

7. ***Old Business***

- A. **Consideration of the proposed sign ordinance (v. 11).**

O-06-134

Alderman Grimes motioned to waive the readings of the ordinance. Alderman Bell seconded the motion. The motion passed 7-1. Alderman Brewer voted in opposition. Alderman Grimes motioned to adopt the ordinance and the emergency clause. Alderman Hawkins seconded the motion. Jap Burton, Cuerden Sign Co., addressed the council and referred back to the billboard issue and stated that the proposed ordinance changes the size to 300 sq. ft. which is a non-standard size and that is not what he understood the committee to say they wanted. It was determined that on *page 9 section 3.05* that the size of billboard signs should be 672 sq. ft. and Mr. Burton stated he has one billboard down and it was decided to make the billboard cap 33 in the same section. Mayor Townsell stated that Bryan Patrick, Planning Director, is suggesting a change in the “window sign” so it can be determined what the issue is in regards to signs hanging just behind a window, or if they are aimed at vehicles, this would maintain the illegal status of electric message boards in the windows or not in windows, they are still illegal. Alderman Grimes stated a business should be allowed to have a sign inside their building to say we have “these items today” and this sign could be flashing and have this sign out of their window. Alderman Grimes asked Alderman Hawkins if he was o.k. with the sign being back far enough where it can’t be seen from outside. Alderman Hawkins stated yes. Alderman Grimes stated he was o.k. with this as well. Alderman Hawkins asked where does a sign become “not advertisement”. Mr. Patrick stated the definition says “*intended to be viewed from the public right of way*”. Mayor Townsell stated it is o.k. back by the serving line, but if it is 13 inches back from the window it’s not o.k. Alderman Hawkins stated he

would like a definition of how far back Bob's Grill has to put their sign to be legal. Alderman Weeks stated 10 ft. Alderwoman Smith asked what if it can still be seen from the right of way. Alderman Weeks stated that anything beyond 10 ft. is o.k. The council agreed on 10 ft. Alderman Hawkins motioned to have the window sign definition read "*a sign directly applied onto or inside a window and within 10 ft. of that window*". Alderman Weeks seconded the motion. The motion passed 8-0. Mr. Patrick stated that *Section 2.04 Garage/Yard Sale Signs* should read "*No garage/yard sale signs shall be placed on public property any earlier than six (6:00) PM the night before the sale and must be picked up by seven (7:00) PM after the sale is over.*" Alderman Brewer stated that it should read "*No garage/yard sale signs shall be placed on public property any earlier than six (6:00) PM the night before the sale and must be picked up by seven (7:00) PM the day the sale is over.*". The council was in agreement. Mr. Patrick stated that in *Section 4.02.4* that the following language is what Jim Rankin approved. "*If the sign(s) advertising a building/development contains the majority of the businesses/tenants and the building/development undergoes major redevelopment such as demolition or expansion requiring a building permit.*" *The following exceptions would apply: (A) A remodel of an existing building will not cause the loss of legal non-conformity and (B) The construction of an additional building on the same property shall not cause the loss of legal non-conformity.* The council was in agreement. There was no further discussion. The clerk called the roll with the following voting "Aye": Alderman Hawkins, Alderman Grimes, Alderman Weeks, Alderman Jones, Alderwoman Smith, Alderwoman Whitmore, and Alderman Bell. The motion passed 7-1. Alderman Brewer voted in opposition.

B. Consideration of creating an Old Conway Design Overlay District.

Mayor Townsell stated that the council voted to have a special meeting to go over this and is asking to have this item held in committee. Alderman Bell motioned to hold this item in committee. Alderwoman Smith seconded the motion. The motion passed 8-0.

Mayor Townsell stated that our medical insurance carrier has notified us that they cannot renew our insurance at the same rates and there will be an increase or a plan adjustment of some kind. Mayor Townsell asked if the council wants the carrier to submit their numbers or do you want us to bid it out, so it will be a clean bid. The council was in agreement to bid it out.

8. New Business

Adjournment

There was no further discussion and the meeting was adjourned.

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PASSED this 26th day of September 2006

APPROVED:

Mayor Tab Townsell

City Clerk Michael O. Garrett