
MINUTES OF THE CITY COUNCIL, CITY OF CONWAY, ARKANSAS

Conway, Arkansas
Tuesday 6:30 p.m.
December 28, 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 Weeks, Alderman Brewer, Alderman Grimes, Alderwoman Whitmore and Alderman Bell. Also, present and acting: Mayor Tab Townsell, City Attorney Michael Murphy and City Clerk Michael Garrett.

1. *Call to Order*
2. *Roll Call*
3. *Minutes: December 12th, 2006*

Alderwoman Whitmore motioned to approve the Dec. 12, 2006 minutes. Alderwoman Smith seconded the motion. The motion passed 8-0.

4. **Recognition of Guests:** *Employee Service Awards - None*
5. **Public Hearings:** *None*
6. **Report of Standing Committees:**

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

1. **Consideration of nominations for the following City Boards: Oak Grove Cemetery Board, Advertising & Promotion, Tree Board USA, Board of Zoning Adjustment, CDBG Advisory Board, Historic District Commission, Public Art Project Committee, & Old Conway Design Review Board.**

Mayor Townsell stated that nominations for several city boards were submitted and the following were the individuals chosen:

Oak Grove Cemetery

- Chris Spatz – 5 year term
- Virginia Nutter – 5 year term
- David Anthony – 4 year term

Advertising and Promotion Commission

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- Mike Kraft – Term ending in 2008 (Replacing Greg Lock; Starting immediately)
- Angela Bagby – 4 year term (Starting May 2007)

Tree City USA

- Conway Area Chamber Member – Still vacant and searching
- City of Conway Member – Wes Craiglow
- Business Owner – Still vacant and searching
- Conway Corp Employee – Gary Manning
- Professional Horticulturist – T.D. Storie, Jr.

4 Members At Large for Tree City USA

- Quida Wright
- Jeff Allender
- Randy Romeo
- Sandra Hudson

Board of Zoning Adjustment

- Junior Story
- Douglas Weaver
- Boukary Baava
- Michael A. Waters

CDBG Advisory Board

- Lori Case
- Marilyn Nabholz
- Deanna Ott

Historic District Commission

- Jay Bernard
- Earnest Leroy Hendricks, Jr.
- Velton Daves

Public Art Project Committee

- Barbara Satterfield
- Gayle Seymour
- Bryan Patrick
- Caroline Hanson
- Becky Harris

Old Conway Design Overlay Committee

- Bill Graff – Planning Commissioner

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- Velton Daves – Member of Historic District Commission
- Betty Pickett – Homeowners in district
- Barbara Stroope – Homeowner in district
- Marianna Smith Welch – Homeowner in district
- David Carolina, Jr. – Homeowner in district

Alderman Bell motioned to approve the nominations. Alderman Grimes seconded the motion. There was no discussion. The motion passed 8-0.

2. Ordinance to rezone property located at Conway Towne Centre off Skyline Drive from PUD (C-4) to C-3.

O-06-170

Alderman Smith motioned to waive the readings of the ordinance. Alderman Jones seconded the motion. The motion passed 8-0. Alderman Hawkins motioned to adopt the ordinance. Alderman Smith seconded the motion. Alderman Bell asked the purpose of this request. Bryan Patrick, Planning Director, stated this was one of the first PUD's in Conway and any reconditioning or remodeling that is not in the original plan has to go through an amendment process which can be lengthy. Alderman Weeks asked who is seeking the rezoning. Mr. Patrick stated the owners came to the planning dept. with a proposal to move the movie theatre from its current location to where Sears is located which would involve tearing down a portion of the building and rebuilding. In order to do this the owners would have to go through the PUD amendment process and the planning dept. suggested they request rezoning to a C-3. Alderman Weeks stated he has concerns due to the difficulty of gaining access to Hwy 65 and stated there has been past discussions of connecting Lower Ridge Rd. to the stop light at the entrance/exit of the complex, and if the PUD zoning is changed the city will give up the right to work with the owners on this. Mr. Patrick stated the sight plan does take into account access to the highway and went onto say that he talked with the owner about bringing Lower Ridge Rd. through to the light and they did not agree to it, but they were not opposed to it either. Alderman Brewer asked if under the terms of the PUD would the city have any leverage to require them to create a tie in of Lower Ridge Rd. to the light. Mr. Patrick stated that would be true except that the Office Depot complex is not included in the rezoning request because it is not owned by Office Depot etc., it is owned by Hathaway Group out of Little Rock. Alderman Hawkins stated that the property in this request is the vacated Hardees property not about the property to the south. Mr. Patrick stated we asked them to do this separately because the properties are owned by two different companies and stated it would be most logical to link Lower Ridge Rd. to the light through the other property to the east. Alderman Hawkins stated he sees no problem with this rezoning because the current use of this property is C-3. Alderman Grimes asked if our access off Lower Ridge Rd. is a part of the property under consideration tonight or part of the property that would remain a PUD. Mr. Patrick stated that the master street plan shows that the drive north of the Office Depot complex would be the logical place for

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Lower Ridge Rd. to come through. Alderman Brewer asked what types of problems will the property owner's encounter to development this property as they desire if this property remains a PUD. Mr. Patrick stated they would possibly have to do a re-plat depending on what the original plan shows, which is not very much. They could possibly have to do a variety of things including land uses they can or can't do on the property which has never been created. Mayor Townsell asked if all this would have to come through the council. Mr. Patrick stated yes, they would have to do the amendment through the planning commission and ultimately come before the council and possibly back to the planning commission. Alderman Grimes asked if this is rezoned to C-3 do they get by without improving the property with landscaping. Mr. Patrick stated no, that is part of the sight plan review and the PUD requires green space as well. There was no further discussion. The clerk called the roll with the following voting "Aye": Alderman Jones, Alderwoman Smith, Alderwoman Whitmore, and Alderman Bell. Alderman Weeks, Alderman Brewer, Alderman Hawkins, and Alderman Grimes voted in opposition. The motion failed 4-4 due to lack of majority.

- 3. Ordinance to rezone property located at Conway Towne Center from PUD (C-4) to C-3.**

O-06-171

Alderman Brewer motioned to waive the readings of the ordinance. Alderman Bell seconded the motion. The motion passed 8-0. Alderman Brewer motioned to adopt the ordinance. Alderman Bell seconded the motion. There was no discussion. The clerk called the roll with the following voting "Aye": Alderwoman Smith and Alderman Bell. Alderman Weeks, Alderman Brewer, Alderman Hawkins, Alderwoman Whitmore, Alderman Jones and Alderman Grimes voted in opposition. The motion failed 2-6.

- 4. Ordinance appropriating funds for the Street Department for Timberpeg Subdivision & Front Street.**

O-06-172

Ronnie Hall, City Engineer, stated the concrete base had to be replaced on Front St. from the Log Cabin office to Mill St. due to the underlying base being cracked. Mr. Hall stated that Timberpeg needed repaired due to cracks in the concrete. This is a total of \$32,000. \$12,000 shall be appropriated from the Street Fund Balance Appropriation Account (02.990) to account (02.201.311) for Timberpeg, and \$20,000 shall be appropriated from the Street Fund Balance Appropriation Account (02.990) to account (02.201.317) for Front St. Alderwoman Smith motioned to waive the readings of the ordinance. Alderman Bell seconded the motion. The motion passed 8-0. Alderwoman Smith motioned to adopt the ordinance. Alderman Bell seconded the motion. There was no further 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.

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

1. Consideration to forgive past due accounts at the Conway Sanitation Department.

D. A. Campbell, Landfill Manager, was present to answer questions. Mayor Townsell stated there was a change of software in 2003 and the Sanitation Dept. is no longer able to access the old data, the old records can be researched individually in order to collect the past due accounts or the city can waive the fees. Mayor Townsell went onto say that some of these businesses no longer exist. Mr. Campbell stated that some of these will be difficult to prove due to the system that was in place prior to the software. Alderman Brewer asked if the city wrote off some other accounts some time back. Mayor Townsell stated yes. Alderman Brewer asked how these were overlooked. Mr. Campbell stated the amounts were taken from two different sources, the last time the list was obtained from the software, this time the list was calculated by hand tabs. Alderman Brewer asked how this amount was calculated. Mayor Townsell stated “balance forward”. Alderman Brewer asked if that was not good enough. Mayor Townsell stated that we still have the documentation but it would have to be assembled. Alderman Brewer stated that the businesses that still bring trash to the landfill should be cut off until they pay their past due amounts. Mr. Campbell stated there was no way to insert a beginning balance due in the new software. Mayor Townsell suggested that we go back and double check what businesses are closed and bring that amount back before the council to be waived, and the amounts owed by existing businesses needs to be researched and the businesses billed for the amount owed. Alderman Bell motioned to determine which ones are still in business, research the records, and bring the list to the council. Alderwoman Smith seconded the motion. There was no further discussion. The motion passed 8-0.

2. Consideration of reimbursing for unauthorized charges made on an account at the Sanitation Dept. (not Conway Recycling Center)

D.A. Campbell, Landfill Manager, stated that Watson Homes employed Randall Dykes for a period of time to clean job sites. After leaving the employment of Watson Homes, Mr. Dykes continued to come to the landfill and charge on the Watson Homes account. Mayor Townsell stated that Mr. Dykes did have his own account for a while, but was not paying, so he was not allowed to dump. Mr. Dykes then came to the landfill and started charging to Watson Homes again. Mr. Campbell stated since he was permitted to charge on the Watson Homes account they let Mr. Dykes charge. Alderwoman Whitmore asked if the city was notified that Mr. Dykes could not charge on the Watson Homes account. Mr. Campbell stated no, they were

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not notified. Ashley Jay, Watson Homes, and James Reed were present to answer questions. Ms. Jay stated she personally called the sanitation dept. and told them to take Mr. Dykes off of their account and sanitation did so, but Mr. Dykes started charging to their account again when he was unable to charge to his own account at the sanitation dept. Ms. Jay stated they did not realize this because they had a big project going on at High Point Apartments and thought everything was going through that project. After receiving new invoices with dumpster charges they contacted Conway Sanitation and told them they didn't have any dumpsters. They were told by Conway Sanitation that Mr. Dykes was coming through and Watson Homes told them that Mr. Dykes was not allowed to do that on their account, they are paying Mr. Dykes to do that anyway and Mr. Dykes should be paying the charges at Conway Sanitation. Ms. Jay went onto say that once they found out what the codes stood for on the statements they went back over their records and realized that Mr. Dykes had fraudulently charged \$11,306 worth of dump fees. Alderman Brewer asked if the city has a document from Watson Homes stating Mr. Dykes was not an authorized user of the account. Ms. Jay stated she never sent anything in because she thought this would take place and they never signed anything to allow Mr. Dykes to charge in the first place. Alderman Brewer stated he feels like this is fraud and Mr. Dykes should be prosecuted by Watson Homes and doesn't feel the city should get involved. Michael Murphy, City Attorney, stated it becomes a gray area since their has been a prior relationship with Mr. Dykes having authority and there not being a clear cut and dried methodology for cut on, cut off other than phone calls. Mayor Townsell stated that this method is going to change. Mr. Murphy stated that if Mr. Dykes did not have the authority on the subsequent charges and Watson Homes received no benefit from the subsequent charges then Watson Homes would have an action to pursue the civil debt and other matters if this is the case. Mr. Murphy went on to say that weather or not the city wants to undertake all that is an open question, but because of the power of relationship this would probably fall in the category of negligence and the city has immunity from negligence. Alderman Grimes asked if Mr. Dykes has been contacted about this. Ms. Jay stated yes we have tried to collect the money but Mr. Dykes has given numerous excuses as to why he hasn't paid. Alderman Hawkins stated that the city is involved and suggested getting with Mr. Watson and start sending out appropriate letters. Alderman Brewer stated he is for pursuing the reimbursement but not for cutting a check to Watson Homes. Alderman Grimes stated we should first see if we cannot collectively collect the \$14,000 and if we can't then we should address weather or not the city owes Watson Homes any money. Mayor Townsell stated if we are going to pursue this it needs to be together initially because we don't want one of the parties to be paid and not the other. Alderman Grimes motioned to pursue this with Watson Homes criminally and civilly. Alderman Hawkins seconded the motion. There was no further discussion. The motion passed 8-0.

- 3. Consideration to buy (2) additional residential trucks from Barloworld from a previous bid.**

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D.A. Campbell, Landfill Manager, was present to answer questions. Mayor Townsell stated beginning in 2007 the city is under new regulations by the E.P.A. that all diesel engines perform a catalytic burn which will affect our trash trucks. Mayor Townsell stated as he understands it when the catalytic burn takes place the truck shuts down automatically where ever it may be. We have the opportunity to get a 2006 engine and put them in a 2007 chassis from an old 2006 bid. Alderwoman Hawkins motioned to purchase two (2) trucks from Barloworld from the 2006 bid for \$180,621 per truck. Alderwoman Smith seconded the motion. There was no discussion. The motion passed 8-0.

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

1. Ordinance accepting seized vehicles awarded to the City through court order.

O-06-173

The vehicles have storage fees due and payable estimated at \$4,375 and the estimated value of the vehicles is \$13,175. Alderman Bell motioned to waive the readings of the ordinance. Alderwoman Smith seconded the motion. The motion passed 8-0. Alderman Bell motioned to adopt the ordinance and the emergency clause. Alderwoman Smith seconded the motion. Alderman Brewer stated his concerns over paying storage fees on vehicles that are not worth their estimated value and is curious as to why once the court order was signed the city did not immediately go and take possession of the vehicles and stop these storage fees. Lt. Jody Spradlin, Special Operations, stated that he took over the Drug Task Force in mid 2004 and from that time there were forfeitures backed up to as early as 1992 and it has taken a year to clear up the forfeitures from the 1990's. Lt. Spradlin stated the solution is for the prosecutors office to process these in a timely manner and explained that once property is seized a summons is issued by Marcus Vaden, Deputy Prosecutor, who handles asset forfeitures; it is then the responsibility of the investigator that worked the case to locate and serve the summons on the individual the property was seized from. Once this is done it is filed with the circuit clerk and returned to Mr. Vaden, at this point the city has done all it can. Alderman Brewer asked if we are not being notified when the court order is available. Lt. Spradlin stated that is correct and feels the city has done all they can to try to expedite the process. Lt. Spradlin stated that due to the issue of the storage fees that he has told his people not to seize any more vehicles unless it's seized federally, or unless we know it is a vehicle we will use. Michael Murphy, City Attorney, stated he will contact Mr. Vaden regarding the problems mentioned. Alderman Brewer asked if the city assumes any financial liability by not redeeming any of these vehicles and having the storage facility keep them and sell them. Mr. Murphy stated he believes the state statute allows the storage facility to sell the vehicles to recoup their fees and it is not the intent of the statute to burden the municipality to owe more in storage fees than what the property is worth. Alderman Brewer motioned amend the ordinance and accept item #2 (1992 Chevy

Caprice – VIN 26138), item #4 (1996 Mercury Sable – VIN 50728), and item # 6 (1995 Ford Pickup – VIN 75271). Alderwoman Smith seconded the motion. The storage fees for these 3 (three) vehicles will be \$621.12 and the estimated collective value is \$7,400. Alderman Grimes stated that we have left these vehicles at these facilities in good faith that the city would pay the storage fees we should possibly go ahead and pay them or get out of this type of arrangement. Mr. Murphy again stated he would need to research the statute and verify how it reads. Mayor Townsell stated the Wrecker Franchise agreement would need to be researched as well because the wrecker services pay a franchise fee and we agree to do business with them. Alderman Brewer called a question on the amendment. Alderwoman Whitmore seconded the motion. There was no further discussion. The amendment passes 7-1. Alderman Grimes voted in opposition. Alderman Brewer called a question on the main motion. Alderwoman Whitmore seconded the motion. There was more discussion on how to expedite the process of the court orders. Alderman Brewer called a question for the second time. The clerk called the roll with the following voting “Aye”: Alderman Hawkins, Alderman Weeks, Alderman Jones, Alderman Brewer, Alderwoman Smith, Alderwoman Whitmore, and Alderman Bell. The motion passed 7-1. Alderman Grimes voted in opposition.

D. Finance

1. Consideration to remove property from the fixed assets (inventory) list.

Mayor Townsell stated there are some internal discrepancies that have not been worked through, some items were signed off on in 2003 and 2005 but not in 2006 and there is a question if these items even existed in 2003 and 2005. Robin Scott, Chief Financial Officer, stated that DTF wanted to transfer 3 (three) items to another location and we never processed that transfer and the receiving department didn't know to inventory it. All the other items cannot be located. Mayor Townsell stated we would like to pull the 3 (three) items mentioned until we can tell the council what happened to them. Alderwoman Smith motioned to approve the modified list. Alderman Bell seconded the motion. There was no further discussion. The motion passed 8-0.

E. Personnel

1. Consideration to add two journeyman & license master pay to the Sanitation Department pay scale.

Mayor Townsell stated the city is mandated to have someone with a master's license on site and this allows us more flexibility to have people who have gone through the ADEQ training. D.A. Campbell, Landfill Manager, stated they are requesting 2 (two) of their personnel be allowed to obtain a journeyman's license, one office clerk and one mechanic. Mayor Townsell stated the pay grid is showing what the scale would be; the request is actually for one clerk and one

mechanic. Alderman Brewer motioned to add 2 (two) journeyman's licenses for one office clerk and one mechanic. Alderman Bell seconded the motion. There was no further discussion. The motion passed 8-0.

7. Old Business

A. Ordinance to adopt the budget for FY 2007.

O-06-174

Alderman Brewer motioned to waive the readings of the ordinance. Alderwoman Whitmore seconded the motion. The motion passed 8-0. Alderman Grimes motioned to adopt the ordinance and the emergency clause. Alderman Weeks 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.

8. New Business

A. Consideration to move the January 9th City Council date.

Mayor Townsell stated that this is the inauguration date for the new Governor and some individuals would like to attend the festivities. Alderman Grimes motioned to reschedule the council meeting to Monday January 8th, 2007. Alderwoman Smith seconded the motion. There was no discussion. The motion passed 8-0.

Mayor Townsell gave a brief synopsis of what would take place if Conway decides to be involved in obtaining a sister city from a Morocco. The Mayor also stated that the cost of hosting a group is approximately \$15,000 and then they would host a group from Conway at their expense. Alderman Brewer stated he is against the idea. Mayor Townsell stated that you need a good reason to do this or it should not be pursued. Alderman Grimes stated that the airfare to Morocco is the bulk of the cost and perhaps we should pay for their delegates to stay here and anyone who wants to go with Conway's delegation should pay their own airfare.

Alderman Hawkins motioned to suspend the rules to allow presentations. Alderman Grimes seconded the motion. The motion passed 8-0. Alderman Brewer and Alderman Weeks heard words of praise from the council and Mayor Townsell for their six year tenure as public servants on the city council.

Alderman Brewer motioned to suspend the rules to allow the council to go into executive session. Alderman Grimes seconded the motion. The motion passed 8-0.

Adjournment

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There was no further discussion and the meeting was adjourned.

PASSED this 28th day of December 2006

APPROVED:

Mayor Tab Townsell

City Clerk Michael O. Garrett