
MINUTES OF THE CITY COUNCIL, CITY OF CONWAY, ARKANSAS

Conway, Arkansas
Tuesday 6:30 p.m.
September 12, 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 Bell, Alderwoman Smith, Alderman Brewer, Alderman Grimes, Alderwoman Whitmore and Alderman Weeks. Alderman Hawkins and Alderman Jones were not in attendance. 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:* August 22, 2006, August 29, 2006, & August 31, 2006

Alderman Weeks motioned to approve the August 22, 29 & 31, 2006 minutes. Alderman Bell seconded the motion. The motion passed 6-0.

4. **Recognition of Guests:** Mayor Townsell noted the passing of Mr. Carl McFarland who was the first employee to retire under the non-uniformed pension plan.
5. **Public Hearings:**

A. Public hearing to discuss the vacating of a street/alleyway at the portion of Museum Road lying west of Lots 22 & 23 Lachowsky Subdivision and later replatted on Hanks re-plat as lots 22-R & 23R.

1. **Ordinance vacating the street/alley at the portion of Museum Road replatted as Hanks re-plats Lots 22-R & 23-R.**

O-06-115

Mayor Townsell opened the public hearing. Don Potter, Tyler Surveying, and representing Hank's Furniture stated that the 70 ft. section they are requesting to be closed is located in front of Hank's Furniture Store and they want to enhance the front of their building and parking. Alderman Bell asked how the Antique Barn would be accessed. Mr. Potter stated that according to the ordinance they will provide them a 25 ft. access easement. Alderman Brewer stated he did not see the language in the ordinance granting the 25 ft. access easement. Mr. Potter noted the property is zoned C-3. Bryan Patrick, Planning Director, stated Mr. Potter may be referring to the zoning ordinance which allows one to access a C-3 piece of property without street frontage by having a 25 ft. access easement and feels that would need to be created with a deed. Mayor Townsell asked Michael Murphy, City Attorney, if a deed

restriction would satisfy our requirements. Mr. Murphy stated no, this would have to be done between the property owners. Mayor Townsell closed the public hearing. Alderman Bell motioned to waive the readings of the ordinance. Alderwoman Whitmore seconded the motion. The motion passed 6-0. Alderman Bell motioned to adopt the ordinance. Alderwoman Smith seconded the motion. Alderman Brewer asked if the utility easement needs to be named in the ordinance. Mr. Murphy stated yes. Alderman Brewer motioned to amend the ordinance to include the necessary utility easement language. Alderman Bell seconded the motion. The motion passed 6-0. There was no further discussion. The clerk called the roll with the following voting "Aye": Alderman Bell, Alderwoman Smith, Alderman Brewer, Alderwoman Whitmore, Alderman Weeks, and Alderman Grimes. The motion passed 6-0.

A. Public hearing to discuss the Old Conway Design Overlay District.

1. Ordinance creating an Old Conway Design Overlay District.

Mayor Townsell opened the public hearing. Jack Jumper stated he is opposed because he feels to restrict design criteria on individual privately owned new construction or renovations is not the proper role of government. Marion Welch, President of Old Conway Preservation Society, stated that the ordinance and design book represent protections for Conway that are long overdue and asked that the members of the long term design review board consists largely of people who live in the proposed neighborhoods. Alice Gray stated she is torn between being for or against the proposed ordinance because some the design guidelines would work well for homes built prior to 1960, but would not apply to some of the homes from the 1960's and 1970's. Tim O'Brien spoke in favor of the proposed ordinance. Mayor Townsell closed the public hearing. Alderman Brewer motioned to send this to committee so it can be reviewed. Alderwoman Smith seconded the motion. It will be reviewed at the September 26, 2006 committee meeting at 5:30 p.m. There was no further discussion. The motion passed 6-0.

6. Report of Standing Committees:

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

1. Resolution setting a public hearing to discuss the closing of a drainage easement shown on Lot 41R Cresthaven Subdivision Phase 2.

MINUTES OF THE CITY COUNCIL, CITY OF CONWAY, ARKANSAS

Alderman Bell motioned to adopt the resolution. Alderwoman Smith seconded the motion. The public hearing will be held September 26, 2006 at 6:30 p.m. There was no discussion. The motion passed 6-0.

- 2. Ordinance to rezone property at 1008 E. Oak Street between Days Inn and Boomerang Car Wash from R-1 to C-3.**

O-06-116

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

- 3. Ordinance to rezone property on the north and west sides of the soccer park extension of Trey Lane, across the street from Central Arkansas Golf Academy from A-1 to O-1.**

O-06-117

Alderman Grimes motioned to suspend the rules to move item 6A/7 up on the agenda to follow item 6A/3. Alderman Bell seconded the motion. The motion passed 6-0. Alderman Bell motioned to waive the readings. Alderwoman Smith seconded the motion. The motion passed 6-0. Dewayne Wilson, Pastor of Faith Fellowship International Church, was present to answer questions. Alderman Bell motioned to adopt the ordinance. Alderwoman Whitmore seconded the motion. There was no discussion. The clerk called the roll with the following voting "Aye": Alderman Brewer, Alderman Bell, Alderwoman Smith, Alderwoman Whitmore, Alderman Weeks, and Alderman Grimes. The motion passed 6-0.

Item 6A/7: Alderman Grimes suggested eliminating "Monday through Friday" on condition # 1. The council was in agreement. Alderwoman Smith motioned to grant the conditional use permit. Alderman Bell seconded the motion. Alderman Brewer asked if this language indicates clearly that this is only for the Net Café usage. Michael Murphy, City Attorney, stated no, in the past that has been put in as a separate condition. Alderman Brewer motioned to amend the conditional use permit by adding a condition that states "The conditional use permit is only for the non-profit restaurant affiliated with Faith Fellowship International Church". Alderwoman Smith seconded the motion. The motion passed 6-0. There was no further discussion on the main motion. The motion passed 6-0.

4. **Ordinance to rezone property immediately east of the former Shoney's (Panda Café) in front of Faulkner Plaza Shopping Center (Hobby Lobby) from C-3 to RU-1.**

O-06-118

Alderwoman Smith motioned to waive the readings of the ordinance. Alderwoman Whitmore seconded the motion. Joe Don Winningham, of Brazil, Adlong, & Winningham Attorneys at Law, representing Verizon Wireless spoke in favor of the rezoning. Bill Adkisson, Attorney at Law, representing Faulkner Plaza Shopping Center stated that the owners and tenants of the plaza are in opposition of the rezoning due to the visual clutter of the cell tower as well as safety concerns if the tower were to fall. Daniel Goodwin, Attorney at Law, speaking on behalf of Verizon Wireless spoke in favor of the rezoning. Alderman Brewer motioned to adopt the ordinance. Alderwoman Whitmore seconded the motion. There was no discussion. The motion passed 5-2 with Mayor Townsell voting with the majority. Alderman Grimes and Alderman Brewer voted in opposition.

5. **Consideration of a conditional use permit for transmission tower/station (cell tower) for the property which is located immediately east of the former Shoney's (Panda Café) in front of Faulkner Plaza Shopping Center (Hobby Lobby).**

Alderwoman Smith motioned to approve the conditional use permit with the five conditions. Alderman Bell seconded the motion. There was no discussion. The motion passed 5-1. Alderman Brewer voted in opposition.

6. **Consideration of a conditional use permit for a transmission tower/station (cell tower) for property that is located at 3715 Prince Street on the site with West Conway Mini Storage.**

Joe Don Winningham, of Brazil, Adlong, & Winningham Attorneys at Law, representing Verizon Wireless spoke in favor of the conditional use permit. Steve Boone, citizen, voice concerns about the tower and wanted to know more specifics on it. Tracey Wooden, Attorney at Law, stated the tower would be located inside the mini storage compound and stated the tower is of stealth design, is 100 ft. tall and the antennas will be located inside the thin structure. Mr. Wooden went onto say that there is no other structure in this area that they could locate on. Mayor Townsell asked Bryan Patrick, Planning Director, if there was anywhere in our zoning ordinance that states telecommunication towers can go in by right. Mr. Patrick stated no. Mayor Townsell and Michael Murphy, City Attorney, stated that the Telecommunications Act passed by the U.S. Government states that municipalities and states cannot unreasonably discriminate among providers of functioning equivalent services, and depending on what the vote is, the city is required by Congress to give substantial evidence of reasons for denial of the location. Mr. Wooden stated that if there was another tower near this proposed sight it would be

MINUTES OF THE CITY COUNCIL, CITY OF CONWAY, ARKANSAS

completely legitimate for you to ask us to locate on that tower and we would, but there is just not a tower in the area. Alderman Grimes motioned to ask Verizon to look around at other locations and hold this item in committee. Alderwoman Whitmore seconded the motion. There was no discussion. The motion passed 6-0.

7. **Consideration of a conditional use permit for a non-profit restaurant as part of church use (Net Café) for property that is located on the north and west sides of the soccer park extension of Trey Lane, across the street from Central Arkansas Golf Academy.**

This item was moved up on the agenda.

8. **Consideration of a conditional use permit for in home child care for property that is located at 1 Cedar Oaks at the northwest corner of the intersection of Meadowlake Road and Cedar Oaks.**

Mayor Townsell stated that this request was denied by the planning commission by a vote of 9-0. Amanda Pendley addressed the council and stated since opening her current daycare on Donaghey there have been no more than 3 cars there at one time, including her own and one assistant if needed. The other traffic is in and out. Ms. Pendley touched on concerns of neighbors which included traffic, noise, number of cars parked at residence, and negative impact on property value. Rocky Midge, citizen, spoke for the character of Mr. and Mrs. Pendley. Tiffany Dunlap spoke in favor of the daycare center and feels the Pendley's will do what they can to ease their neighbors concerns. Michael and Kathy Murphy, neighbors, spoke in favor of the daycare center as they have children enrolled there. The Murphy's have offered to allow parking at their home if it is needed, and they feel the noise and parking will not be an issue and stated the Pendley's have made this property look better by the improvements they have made. Margaret Jones and Sara Elder, neighbors, spoke against the daycare center being located in their neighborhood. Brittany Melaney, spoke in favor of the daycare center as she has a child enrolled there. Quenton Singleton, neighbor, spoke against the daycare center being put in the area. David Jones, neighbor, spoke against the daycare being put in the area. Mayor Townsell stated that a conditional use permit can be specific to the property, it is not a full rezoning. Jamica Tipton, neighbor, spoke against the daycare center being put in the area. Alderman Bell motioned to approve the conditional use permit and that the permit would cease with the Pendley's moving or closing the daycare. Alderman Brewer seconded the motion. Alderman Bell asked if conditions could be added because there were none given and added this to his motion. Alderman Weeks stated he does not want any permanent changes made to the interior of the home. Bryan Patrick, Planning Director, stated there were 7 conditions suggested in the report for this conditional use permit. 1) Hours of operation 7 am to 7 pm. 2) Lighting should be inward, downward, shrouded. 3) Number of children allowed has to be set. 4) Where to park, loading and unloading. 5) Fencing screens no less than 6 ft tall around play area. 6) Sound system, if one is wanted or not. 7) Signage, to allow or

not. Alderman Weeks stated there should not be any sound system or lighting. Alderman Brewer stated that lighting would be necessary especially in the winter months and should be inward and downward. Alderman Bell stated there could be residential style lighting allowed. Alderwoman Whitmore stated she would like to see the number of children be limited to what the current requirements of the home allows for as it is, if that is 10 children that is the limit she would like to see. Alderman Brewer proposed she be allowed to have 13 children to accommodate for her own children. Alderwoman Whitmore stated she meant 10 children in addition to her own. Alderman Brewer suggested that parking be on Cedar Oaks. Mayor Townsell clarified that client parking will be on Cedar Oaks and employees will park to the north of the shop area. The council was in agreement. There will be no signage or sound system allowed and the fencing will comply with the zoning ordinance and be 6 ft. completely around the play area. The permit will be allowed only for the daycare. Mayor Townsell asked Alderman Bell if these were all a part of his motion. Alderman Bell stated yes. Mayor Townsell asked Alderman Brewer if these were all a part of his second. Alderman Brewer stated that the condition is with the operator of the daycare center in this specific location only. Mayor Townsell stated this is a total of 9 conditions. Alderman Bell stated the days of operation should be Monday – Friday. Alderman Brewer was in agreement. There was no further discussion. The motion failed 3-3 due to lack of majority.

9. **Ordinance amending the Conway subdivision ordinance to require sidewalks along residential and minor residential streets.**

O-06-119

Mayor Townsell stated while we want to make sure the city engineer gets to set the rate of the assurance bond he suggested adding the following to the existing subdivision ordinance, *“An owner/developer may appeal to the sidewalk construction requirement in lieu of fee to the city council. The council may use the above waiver feature to determine if an exception should be made. If the council makes an exception the owner/developer may construct the equivalent amount of sidewalk in a location designated by the city council”*. Mayor Townsell stated this would move away from the \$20.00 a linear foot to \$15.00 a linear foot in lieu of fee. Mayor Townsell, speaking in reference to the next item 6A/10, stated when the subdivision ordinance was amended to require sidewalks on every street, there were a few subdivisions that had already received preliminary plat review approval. Michael Murphy, City Attorney, was under the opinion, that is an agreement we had with the subdivision developers to some degree; since they invested in a particular design based on existing ordinances and standards, and we have acknowledged it in a preliminary plat approval that we have to recognize this. Mayor Townsell stated that in the second ordinance we are recognizing that those subdivisions were in the pipeline and received preliminary plat approval, and that we are not going to require them to provide assurance that the sidewalks will be all built out completely in the subdivision no matter how the lots sell, the homes are built. The developers will no

MINUTES OF THE CITY COUNCIL, CITY OF CONWAY, ARKANSAS

longer be required to provide assurance on the interior sidewalks in those subdivisions that have a preliminary plat approval prior to October 31, 2005. This does not release them from building the boundary streets, nor does it release the builder. Alderman Grimes motioned to waive the readings of the ordinance on item 6A/9. Alderman Bell seconded the motion. Alderman Grimes motioned to adopt the ordinance. Alderman Weeks seconded the motion. There was no further discussion. The clerk called the roll with the following voting "Aye": Alderman Brewer, Alderman Bell, Alderwoman Smith, Alderwoman Whitmore, Alderman Weeks, and Alderman Grimes. The motion passed 6-0.

- 10. Ordinance to allow developers of subdivisions that received preliminary plat approval prior to October 31, 2005 exemption from sidewalk bonding for residential streets as required by the Conway Subdivision ordinance.**

O-06-120

Alderman Grimes motioned to waive the readings of the ordinance. Alderwoman Smith seconded the motion. The motion passed 6-0. Alderman Grimes 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 Brewer, Alderman Bell, Alderwoman Smith, Alderwoman Whitmore, Alderman Weeks, and Alderman Grimes. The motion passed 6-0.

Alderman Grimes motioned to suspend the rules to move item 7A up on the agenda. Alderwoman Smith seconded the motion. The motion passed 6-0. Alderwoman Smith motioned to grant the request. Alderman Grimes seconded the motion. There was no discussion. The motion passed 6-0.

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

- 1. Ordinance appropriating funds for gas & diesel for the Sanitation Department.**

O-06-121

Alderman Bell motioned to waive the readings of the ordinance. Alderwoman Whitmore seconded the motion. The motion passed 6-0. 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 Brewer, Alderman Bell, Alderwoman Smith, Alderwoman Whitmore, Alderman Weeks, and Alderman Grimes. The motion passed 6-0.

- 2. Ordinance appropriating matching funds to the Parks and Recreation Department budget for the 2004 Arkansas State Parks Matching Grant.**

O-06-122

Alderman Bell motioned to waive the readings of the ordinance. Alderman Grimes seconded the motion. The motion passed 6-0. Alderman Bell 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 Brewer, Alderman Bell, Alderwoman Smith, Alderwoman Whitmore, Alderman Weeks, and Alderman Grimes. The motion passed 6-0.

- 3. Ordinance waiving the bid process for the purchase of equipment to be used at the YBMA Fairgrounds.**

O-06-123

Alderwoman Smith motioned to waive the readings of the ordinance. Alderman Bell seconded the motion. The motion passed 6-0. Alderwoman Smith motioned to adopt the ordinance and waive the bid process. Alderman Bell seconded the motion. There was no discussion. The clerk called the roll with the following voting “Aye”: Alderman Brewer, Alderman Bell, Alderwoman Smith, Alderwoman Whitmore, Alderman Weeks, and Alderman Grimes. The motion passed 6-0. Alderwoman Smith motioned to adopt the emergency clause. Alderman Bell seconded the motion. There was no discussion. The clerk called the roll with the following voting “Aye”: Alderman Brewer, Alderman Bell, Alderwoman Smith, Alderwoman Whitmore, Alderman Weeks, and Alderman Grimes. The motion passed 6-0.

- 4. Ordinance appropriating funds to the Parks and Recreation Department for the removal of structures at the YBMA Fairgrounds**

O-06-124

Alderwoman Whitmore motioned to waive the readings of the ordinance. Alderman Bell seconded the motion. Alderman Bell 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 Brewer, Alderman Bell, Alderwoman Smith, Alderwoman Whitmore, Alderman Weeks, and Alderman Grimes. The motion passed 6-0.

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

- 1. Ordinance appropriating funds to the Conway Police Department to replenish operating line items.**

O-06-125

Alderman Bell motioned to waive the readings of the ordinance. Alderwoman Smith seconded the motion. The motion passed 6-0. Alderman Bell motioned to adopt the

MINUTES OF THE CITY COUNCIL, CITY OF CONWAY, ARKANSAS

ordinance and the emergency clause. Alderwoman Smith seconded the motion. There was no discussion. The clerk called the roll with the following voting "Aye": Alderman Brewer, Alderman Bell, Alderwoman Smith, Alderwoman Whitmore, Alderman Weeks, and Alderman Grimes. The motion passed 6-0.

2. **Ordinance appropriating funds to the Civil Service Commission for operating & other expenses.**

O-06-126

Alderman Bell motioned to waive the readings of the ordinance. Alderwoman Smith seconded the motion. 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 Brewer, Alderman Bell, Alderwoman Smith, Alderwoman Whitmore, Alderman Weeks, and Alderman Grimes. The motion passed 6-0.

7. ***Old Business***

- A. **Consideration to construct sidewalks at Fairgrounds and Favre Lane in lieu of required subdivision construction.**

This item was moved up in the agenda.

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

Jasper Burton, Cuerden Sign Co., read a letter he drafted opposing the proposed sign ordinance. Alderman Grimes motioned to waive the readings of the ordinance. Alderman Weeks seconded the motion. The motion failed 5-1. Alderman Brewer voted in opposition. This item will be tabled until the next city council meeting.

8. **New Business**

- A. **Consideration of a proposal from the Faulkner County Extension Office for a proposed horticulture position for the City of Conway.**

Bill Dodgen, County Extension Agent-Staff Chair was present to answer questions. Mayor Townsell stated the city would be picking up \$25,000 of the \$82,500 for the year. Alderman Bell motioned to approve the request. Alderman Weeks seconded the motion. There was no discussion. The motion passed 6-0.

Adjournment

MINUTES OF THE CITY COUNCIL, CITY OF CONWAY, ARKANSAS

There was no further discussion and the meeting was adjourned.

PASSED this 12th day of September 2006

APPROVED:

Mayor Tab Townsell

City Clerk Michael O. Garrett