
MINUTES OF THE CITY COUNCIL, CITY OF CONWAY, ARKANSAS

Conway, Arkansas
Tuesday 6:30 p.m.
April 27, 2010

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, Alderwoman Smith, Alderwoman Whitmore, Alderman Rhodes, Alderman Grimes, Alderwoman Mehl, Alderman Vaught, and Alderman Jones. Also, present and acting: Mayor Tab Townsell, City Clerk Michael Garrett, and City Attorney Michael Murphy.

Call to Order

Roll Call

Minutes: April 13th, 2010

Alderwoman Whitmore motioned to approve the April 13, 2010 minutes as submitted. Alderwoman Smith seconded the motion. The motion passed 8-0.

Announcements/Proclamations/Recognition:

Conway High Boys Basketball Team:

Mayor Townsell recognized the 2010 State Champion Conway High School Boys Basketball team and read a proclamation recognizing their outstanding season.

1. Report of Standing Committees:

A. Economic Development Committee (Airport, Conway Corporation, Conway Development Corporation, Chamber of Commerce)

1. Consideration of the nomination of Jim Isom to the Conway Tree Board.

Alderwoman Smith motioned to accept the nomination of Jim Isom. Alderwoman Whitmore seconded the motion. There was no discussion. The motion passed 8-0.

2. Consideration of a request regarding property for the new Conway Airport.

Mayor Townsell stated that Jack Williams has requested to be allowed to plant soybeans on the land he sold the city for \$50.00 an acre; he is aware that construction could damage the crop and understands the city would not be responsible for any damages. Alderwoman Smith motioned to

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enter into this rental agreement. Alderwoman Whitmore seconded the motion. There was no discussion. The motion passed 8-0.

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

1. Ordinance to rezone property located at 805 Crosspoint Road from R-1 to O-2.

Alderwoman Smith motioned to waive the readings of the ordinance. Alderwoman Whitmore seconded the motion. The motion passed 8-0. Chance Norman, 2915 Dave Ward Dr Ste. 8, explained this location is approximately 2,000 feet from his existing location which would be beneficial to his patient base as it would not inconvenience them in anyway, and he would still be located on the Dave Ward arterial which offers good access to his business. Mr. Norman stated originally we did not have a very visual site plan and proceeded to show the audience and council his site plan. Mr. Norman stated he intends to have the same business hours he has had since September 2007. We open at 9:00 am, which is after most residents of the area have left for work, and his last patient of the day would be leaving as residents are commuting home. Mr. Norman explained there will be no parking on the city streets; our parking will be in a 10-space parking lot that will be enclosed entirely by an existing 6 foot privacy fence, we do not plan on changing any of the Crosspoint Rd property frontage, we will enter the property from an existing curb cut which is owned by Don Hendrickson, and we will have a cross-over connection into our parking lot. Mr. Norman explained that the surrounding properties are zoned MF-3 and C-3 and he does not believe they would be encroaching upon anyone and explained he chose the O-2 zoning because it will restrict the future use of the property. Mr. Norman explained he is not a high volume doctor and only sees 10-12 patients daily. Mr. Norman went onto explain that he currently only has 2 parking spaces at his current office which is simply not enough. Tim Holtwood, 16 New Oxford Rd, explained he is a patient of Mr. Norman's and stated he is not a high volume doctor because he takes as much time with his patients as necessary and spoke in favor of the proposed rezoning. Bobbie Pemberton explained she has owned this property for over 10 years; it has been rental property which has been problematic and feels that if the rezoning is approved the property would be well kept, there would be minimal traffic and believes that the chiropractic clinic would enhance the neighborhood. Ms. Pemberton explained the property has been listed for sale for almost 1 year and once interested buyers find out it is on Dave Ward Dr. they are no longer interested in it as a residence. Bobby Caple, current owner of 805 Crosspoint Rd, explained he has owned the property for 5 years and concurred that it has been listed for sale for almost 1 year

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and explained they have been unable to sell the property and spoke in favor of the proposed rezoning. Ted Gibson, Marilyn Pike, and Larry Patrick all spoke in favor of the proposed rezoning. Bryan Patrick, Planning & Development Director, explained that the Planning Commission felt that this was an intrusion into a residential neighborhood and the use would change the character of the neighborhood and explained there was a lot of opposition from the neighborhood. Mr. Patrick went on to explain that the entrance to the property from Dave Ward is owned by someone else and there is no guarantee that that will always be available and this should be considered only for the use of the land. Alderwoman Mehl asked if the 10 parking spots adequate for the zoning. Mr. Patrick stated yes. Alderman Hawkins stated that he does not feel that this property should be rezoned and motioned to deny the rezoning request. Alderwoman Smith seconded the motion. Ms. Pemberton stated as being the property owner for several years she recalls several corner properties on Dave Ward Dr have been converted to a business and wonders what the difference is with this property as opposed to some of the other properties. Mayor Townsell stated that Donaghey is a different classification of road than Crosspoint is; that corner sits at two major roads. Lee Early, 2745 Long Bow, spoke in opposition of the proposed rezoning due to an already increased flow of traffic from the Lake Point Apartments using Long Bow to travel west and there are a lot of children who play on this street and he is concerned for their safety. Charles Russell, 2785 Bowman Ln, spoke in opposition to the proposed re-zoning. Molly McGeer, patient Living Well Chiropractic explained that during his business hours most individuals will be at work and children will be in school and feels this rezoning will not impact the neighborhood in a derogatory way and is in favor of the proposed rezoning. Mayor Townsell reminded the guests in the audience that the issue tonight has nothing to do with the existing clinic site, the issue is the suitability of this one lot and we need to only hear discussion regarding this lot. James Eric Catcher, Crosspoint Rd. resident, believes that it would be a mistake not to approve the re-zoning as 110 feet of this property is on Dave Ward Dr and feels that a ten car parking lot is not going to add that much more traffic to the area. Shawn McNaulty, Crosspoint Rd. resident concurred with Mr. Catcher and spoke in favor of the proposed rezoning. Alderman Jones asked if the property has an entrance from Dave Ward Dr. Alderwoman Mehl stated he does not own the property and that property is not a part of this request. Mayor Townsell stated we cannot guarantee that access off of Dave Ward Dr. Alderwoman Whitmore explained though sympathetic to Dr. Norman's patients, the council members are charged with making a decision on a rezoning that will stay with this piece of property from this point forward until someone else either buys or rezones the property in question. Mayor Townsell stated

we have heard an abundance of information from both side of this issue and stated we will allow Mr. Norman and the property owner to speak one final time before taking the issue to the council for a vote. Bobby Caple, current property owner, stated if all corner lots could potentially be rezoned and cause rezoning down into a subdivision then this could be an issue all over Conway and he will have no choice but to rent this property out or sell it to someone who cares about the community. Mr. Norman again explained that he plans on entering this property from Dave Ward Dr and stated there will be no parking on Crosspoint Rd. Alderwoman Smith asked Mr. Norman how he would access the property if Mr. Hendrickson sells his property. Mr. Norman stated he could buy a portion of his property and asked if this could be tabled until he can work out a purchase agreement with Mr. Hendrickson. Mayor Townsell explained that ingress/egress is not the only issue here; the other issue is a rezoning inside a subdivision. Alderwoman Whitmore asked if Mr. Norman was aware that he could do what he is requesting with a conditional use permit. Mr. Norman stated yes, his first request to the Planning Commission was for a conditional use but he was told he could absolutely not do this as they were not allowing any conditional uses for his type of business. Mr. Patrick stated he is unaware of what Mr. Norman is referring to and there was possibly some miscommunication. Mr. Norman asked if he can withdraw his request at this time and pursue a conditional use request. Alderman Grimes stated he will not vote for this as conditional use because this area is shown on our comprehensive plan as single family residential. There are other places in the vicinity that are commercial that you could move your business to. Alderman Jones stated not having access to the property from Dave Ward Dr. is a problem as is encroaching on a subdivision. Mr. Patrick stated he needs to correct himself, when the ordinance was changed we did not include conditional use in an R-1 zone so a conditional use cannot be used for this property. Mr. Norman stated he still wished to withdraw the request so the property owners can do as they wish. Mayor Townsell stated the request is withdrawn.

2. Ordinance amending the mechanical permit fees for the construction and alternations of mechanical systems in buildings in the City of Conway.

Alderwoman Smith motioned to waive the readings of the ordinance. Alderwoman Whitmore seconded the motion. The motion passed 8-0. Lynn Hicks, Asst. Planning/Development Director, explained this is in an effort to create a permit fee for those types of permits that are more reasonable than we have had in the past as these were all lumped under one \$30.00 fee. Mr. Hicks explained this probably worked fine for single

family dwellings but is not sufficient for commercial work. Alderman Hawkins asked if this only affected commercial. Mr. Hicks stated it includes remodel and/or renovation for both residential and commercial. Jack Sotallaro stated it was just stated that this has nothing to do with anything except remodeling and/or renovation, yet the ordinance says renovations, alterations, replacement, and repairs; which would mean if your air conditioning unit goes out and needs replaced this ordinance states you would have to get a permit and you pay for it. Mr. Hicks apologized as he had not read it through but explained it lumps remodel, renovation, alterations, replacement, and repairs, which we do currently require a permit for, but stated they currently falls under one \$30.00 permit fee for any work of that type. Mr. Hicks explained that this ordinance breaks it down into individual components and sets a fee for that work. Alderman Jones asked if we are adding another fee for each item inspected instead of having one standard fee. Mayor Townsell stated this would scale the fee to the size of the project. There was discussion among council in regards to whom is responsible for these fees, the homeowner or the business performing the work. Mayor Townsell stated we rely on the contractor to know a permit is required and asked how much notice was given to our HVAC contractors. Mr. Hicks stated it was posted in the paper on March 18, 2010 and we also handed it out to our contractors as they came in. Mayor Townsell stated since we still need to bring the Commercial Plan Review ordinance back does council wish to give contractors more time to review these changes and bring this proposed ordinance and the Commercial Plan Review ordinance back to the agenda at the next council meeting. Alderman Grimes asked if we could discuss this at a committee meeting as he does not understand some of these changes. Mayor Townsell asked if council wishes to have these on the council agenda the same night it is discussed at committee. Alderman Grimes stated that is fine, it can always be withdrawn. Mr. Jumper asked that council consider imposing a single fee for residential change out because if one has to replace the entire system, including the heat unit inside, then this would cost \$150.00 due to connection of the ductwork, a boiler change out, and the HVAC unit. Alderman Grimes motioned to hold this item in committee. Alderwoman Mehl seconded the motion. There was no discussion. The motion passed 7-1. Alderman Jones voted in opposition.

3. Consideration to amend an agreement with the Arkansas State Highway Department that would provide LED Traffic Signals for the City of Conway.

Ronnie Hall, City Engineer, was present to answer questions. Alderman Jones motioned to approve this agreement. Alderman Hawkins seconded

the motion. Mr. Hall stated this will complete the intersections chosen for the change to LED. There was no discussion. The motion passed 8-0.

- 4. Resolution expressing the intent of the City to accept the Transit Feasibility Study prepared by Metroplan.**

R-10-13

Alderman Hawkins explained that this is strictly closing the study period and motioned to adopt the resolution. Alderman Grimes seconded the motion. There was no discussion. The motion passed 8-0.

- 5. Resolution authorizing the Mayor to enter into an agreement with the AR State Highway Department for the construction of a new Interchange on Interstate 40 at the Southern terminus of the Conway Western Arterial Loop.**

R-10-14

Ronnie Hall, City Engineer, was present to answer questions. Alderman Hawkins motioned to adopt the resolution. Alderman Jones seconded the motion. Alderman Vaught asked if federal funds do not become available does this put the city on the hook for money we do not have and probably will not have. Mayor Townsell stated we actually have this money; \$10 million of this money is coming from the state which is our portion, so our liability is only \$5 million and we will dedicated our pay as you go street monies to this project. There was no discussion. The motion passed 8-0.

C. Public Safety Committee (Police, CEOC, Information Technology, Fire, District Court, City Attorney & Animal Welfare)

- 1. Ordinance accepting a donation to the Conway Police Department (Communication Center).**

O-10-40

Alderwoman Smith motioned to waive the readings of the ordinance. Alderwoman Whitmore seconded the motion. The motion passed 8-0. Alderwoman Smith 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, Alderwoman Mehl, Alderwoman Smith, Alderman Rhodes, Alderwoman Whitmore, Alderman Grimes, Alderman Jones, and Alderman Vaught. The motion passed 8-0.

2. Ordinance accepting restitution & appropriating funds for overtime performed by the Conway Police Department.

O-10-41

Alderwoman Smith motioned to waive the readings of the ordinance. Alderman Jones seconded the motion. The motion passed 8-0. Alderman Jones 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, Alderwoman Mehl, Alderwoman Smith, Alderman Rhodes, Alderwoman Whitmore, Alderman Grimes, Alderman Jones, and Alderman Vaught. The motion passed 8-0.

3. Consideration to enter into an agreement with AT&T for plexar and long distance services for the City of Conway.

Mayor Townsell asked this item be pulled from the agenda. Alderman Hawkins motioned to pull this item from the agenda. Alderwoman Mehl seconded the motion. The motion passed 8-0.

Alderwoman Whitmore motioned to suspend the rules to allow the addition of 2 items to the agenda. Alderwoman Smith seconded the motion. The motion passed 8-0.

Consideration of a change order from Salter Construction for the fairgrounds complex.

Mayor Townsell stated we are asking for an additional \$1.2 million in order build the configuration of the fairgrounds we discussed in January. This change order will allow us to have a completely concrete floor inside the open pavilion, the complete mezzanine, restrooms, offices, and storage rooms in the expo hall heated and cooled. Mayor Townsell stated this will also allow us to fully brick an enclosed shell of the special events center that will be floored, and will also allow more parking to the east of the building. Alderwoman Smith asked how we will pay for this. Mayor Townsell stated we are using the \$3.5 loan and the authority given back in January to tap out the other A & P pay as you go and the parks impact fees to finish this and the monies over the bond issue amounts for the boy's baseball station. Lowell McClanahan, CFO, stated the bad news here is that we have over spent in every single project; the good news is we will be able to meet our responsibilities on this project and by the end of the year it will be paid for assuming that these numbers are good and we have no more change orders. After some discussion Alderman Hawkins

motioned to approve this change order. Alderman Rhodes seconded the motion. There was no further discussion. The motion passed 8-0.

Consideration of a Compromise, Settlement, and Release agreement for City of Colleges Park in regards to a drainage issue.

Mayor Townsell explained over the past 8 months we have had a continual drainage problem along the back and side fences at City of Colleges Park and this agreement authorizes a French Drain System to be built to correct the drainage problems. Neither Nabholz Construction (construction manager) nor Jacobs Carter Burgess (designer) feel this is any fault of theirs as one of the drains was built according to plan specs that were different on 2 of the 3 pages of the plans, thus making one of the drains 1 foot taller than the others. Mayor Townsell stated now that it is dry enough the contractor wants to go back and build this drain according to the correct plans but we feel that fix is too invasive at this point. Mayor Townsell went onto say that this agreement is a compromise, settlement and release of any responsibility and the cost of the French Drain System is \$10,506.00; Nabholz has agreed to pay two-thirds of the cost and Jacob Carter Burgess has agreed to pay one-third of the cost and it does release either party of any responsibility should the French Drain not correct the problem. Alderwoman Smith stated if this does not fix the problem then we will be responsible for it. Mayor Townsell stated yes, but we feel this will solve the problem. Alderwoman Smith motioned to approve this agreement. Alderwoman Whitmore seconded the motion. There was no discussion. The motion passed 8-0.

D. Old Business

E. New Business

Adjournment

PASSED this 27th day of April 2010

APPROVED:

Mayor Tab Townsell

City Clerk Michael O. Garrett