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MINUTES OF THE CITY COUNCIL, CITY OF CONWAY, ARKANSAS

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Conway, Arkansas  
Tuesday 6:30 p.m.  
November 23, 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, Alderman Rhodes, Alderwoman Mehl, Alderwoman Whitmore, Alderman Jones, Alderman Vaught, and Alderman Grimes. Also, present and acting: Mayor Tab Townsell, City Clerk Michael Garrett, and City Attorney Michael Murphy.

*Call to Order*

*Roll Call*

*Minutes:* November 9<sup>th</sup>, 2010

Alderwoman Whitmore motioned to approve the November 9, 2010 minutes as submitted. Alderwoman Smith seconded the motion. There was no discussion. The motion passed 8-0.

*Announcements / Proclamations / Recognition:*

*Employee Service Awards*

**5 Years:**

Karen Francis - City Clerk's Office

**10 Years:**

Stan Knopp - Parks Dept.

**20 Years:**

Donna Clifton - District Court Clerk

**1. Report of Standing Committees:**

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

**1. Consideration of the nomination of Tony Davis & Lee Washington for the Planning Commission.**

Alderwoman Smith motioned to accept the nominations of Tony Davis and Lee Washington. Alderman Grimes seconded the motion. These terms are for 5 years each. There was discussion to the lack of representation on the Planning Commission from the Ward 2 area. The motion passed 7-1. Alderwoman Mehl voted in opposition

**2. Consideration of the nomination of Jason Hansen to the Oak Grove Cemetery Board.**

Alderman Hawkins motioned to accept the nomination of Jason Hansen to a 5 year term on the Oak Grove Cemetery Board. Alderwoman Smith seconded the motion. There was no discussion. The motion passed 8-0.

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MINUTES OF THE CITY COUNCIL, CITY OF CONWAY, ARKANSAS

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3. **Resolution requesting the Faulkner County Tax Collector to place certified liens on property located at 1515 Freyaldenhoven Lane as a result of incurred expenses by the City.**

**R-10-74**

Alderman Hawkins stated the cost of cleanup was \$219.23 plus 10% collection penalty. There was no one present to speak to this issue. Alderman Hawkins motioned to adopt the resolution. Alderwoman Smith seconded the motion. There was no discussion. The motion passed 8-0.

4. **Resolution ordering the demolition and/or repair of structure located at 1463 Scott Street.**

**R-10-75**

Alderwoman Smith motioned to adopt the resolution. Alderwoman Whitmore seconded the motion. There was no one present to speak to this issue. There was no discussion. The motion passed 8-0.

5. **Ordinance to rezone property located at 855 Salem Road & 2945 Prince Street (Kroger Rezoning) from O-3 and C-2 to PUD (Planned United Development).**

**O-10-126**

Jim Hathaway, speaking on behalf of Kroger, explained the opposition that exists to this particular PUD consists primarily of some of the residents who live nearby, and to the best of his knowledge there is no wide spread opposition throughout Conway; in fact there is evidence of support within the overall community. Mr. Hathaway explained that Kroger has attempted to respond to the neighborhood concerns in the way the PUD has been put together and does not feel that any reasonable person that has followed this process in detail would fail to conclude that they have made an effort to address these concerns and asked council to vote up or down on the proposed PUD. Mr. Hathaway explained that in addition to what has been proposed to you, we have changed the 6 ft fence, to be around the perimeter, be changed to an 8 ft fence, and that the roof top HVAC units would be screened with sound buffering materials. Robert Brown, Development Consultants, explained that he is dealing with the buffering issues on the western side explaining that the original plans have been changed and he gave a synopsis of those changes in the way of a visual presentation. Mr. Brown explained that in the fuel center area has also had enhancements to increase the screening elements to this area. Dennis Cobb, Kroger Co., explained he has 20 years of experience with Kroger and has a degree in Civil Engineering. Mr. Cobb explained they listened very carefully to city staff, planning dept. employees, and residents at the last Planning Commission meeting and stated they wish to address all the concerns raised. Mr. Cobb stated since that meeting Kroger has worked to determine what can we do to improve our operations in response to these concerns and as a result Kroger has included the following conditions in the PUD application before council. Mr. Cobb stated these conditions along with the buffering ideas discussed earlier have been proposed in an effort to address the concerns they have heard. Ernie Peters, Peters and Associates Engineers, explained his involvement revolves around traffic issues

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## MINUTES OF THE CITY COUNCIL, CITY OF CONWAY, ARKANSAS

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and stated that there will be an increase in traffic and in order to address that we have done a simple comparing analysis which was presented to council. Carol Martin, Pickering Firm, read a letter to the City of Conway from Bank of Little Rock which supports the benefits of this proposed rezoning to neighboring businesses. Mayor Townsell opened the floor for public comment. Brad Lacey, CDC, spoke in favor of the proposed rezoning; one reason being the economic impact would be tremendous as we fight hard for every new job we get in this community. Mr. Lacey stated this store would bring revenue into Conway from other parts of this region. Tom Powers, 906 Heather Circle, presented council a list of signatures that oppose this proposed rezoning and stated one of his concerns is this would be a 24 hour store that will be generating traffic 24 hours a day. Mr. Powers also stated that the fuel station will be the largest in Conway and will allow the emissions of more toxic fumes and carcinogens and references his letter he sent to council, that shows living next to, or near a gas station is hazardous to health of humans. Mr. Powers went onto say that the proposed rezoning would decrease the property value of the area homes and asked council to not approve this PUD. Warfield Teague, Heather Circle resident, stated he researched the studies in regards to the risk of cancer from gasoline fumes and he presented a visual graph presentation to council that is based on modeling and on ground instruments that was put together by the US Environmental Protection Agency. Mr. Teague stated it represents an increased risk in addition to the normal risks in our environment and stated there is some risk because most people get cancer, and some of it is environmentally implicated; this study is based on many factors, with the main risk being Benzene, which is a known carcinogen. Mr. Teague stated that Benzene has been removed from laboratories all over the country; unfortunately it is a component of the production of gasoline from crude oil and stated there are two important recovery systems, Phase I, which is at the tank which recovers the vapors and removes it back to the truck. Phase II is at the pump/nozzle, it picks up the fumes from the nozzle and takes them back to the storage tank. Mr. Teague feels that the fence should be brick as it would be a better barrier than wood in regards to the drift of gas fumes. George Thompson spoke in opposition of the proposed rezoning. John Gericke, Conway resident, spoke in favor of the proposed rezoning. Rod Miller, 904 Heather Circle, spoke in opposition of the proposed rezoning. Vicky Teague, Heather Circle resident, spoke in opposition of the proposed rezoning. Erma Gail Hatcher, 916 Heather Circle, spoke in opposition of the proposed rezoning. Gene Barley, 894 Heather Circle, spoke in opposition of the proposed rezoning. Amy Ness, 917 Heather Circle, spoke in opposition of the proposed rezoning. Mr. Hathaway stated Kroger operates 1,000 centers across the country and they are very mindful, as a corporate citizen, of what the environmental rules and regulations are and what the concerns and factors are. Mr. Hathaway stated the PUD application before you provides better buffering and conditions, better than originally proposed, but better than what would be the case if this property is ultimately developed as per its existing zoning. After much discussion among council Mr. Cobb stated he would be willing to move the fuel center eastward and add a Stage II vapor recovery system to this fuel center. After more discussion among council and audience members Alderman Hawkins motioned to adopt the ordinance with the conditions as stated (1-24) with the 3 additional items added; moving the fuel station 50 ft eastward, adding Phase II vapor recovery system, and cross-access discussions with the banks. Alderman Rhodes asked if the motion included the fence change and the 75 day change on moving the historic rock home. Alderman Hawkins stated yes. Alderwoman Mehl seconded the motion. There was no discussion. The clerk called the roll with the following voting "Aye": Alderman Hawkins, Alderwoman Mehl, Alderwoman Smith,

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## MINUTES OF THE CITY COUNCIL, CITY OF CONWAY, ARKANSAS

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Alderman Rhodes, Alderwoman Whitmore, Alderman Grimes, Alderman Vaught, and Alderman Jones. The motion passed 8-0. The motion passed 5-3. Alderwoman Smith, Alderman Grimes, and Alderman Rhodes voted in opposition. The conditions are listed below:

1. The proposed project shall comply with the submitted site plan, building elevations, and other submitted plans subject to development review requirements.
2. Landscape buffer areas as shown on submitted plans which exceed development review standards shall be required. Buffer area width shall not be less than 40 feet.
3. Dense landscaping exceeding development review standards as described in the submitted Development Plan Report, including at a minimum, 161 new evergreen trees, planted at 8-10 foot heights will be applied to residential buffer areas. These trees shall be evergreen varieties that have full massing from the ground up, tolerant of Arkansas' seasons, and reach a mature height of 20 to 40 feet.
4. Existing significant trees along residential buffer areas will be preserved.
5. Existing vegetation along residential buffer areas will be utilized where appropriate.
6. An 8 foot wooden fence privacy fence as submitted to City Council shall be provided and maintained by Kroger along all abutting residential properties. Submitted drawing depicts a fence with 8 foot high panels consisting of overlapping 1x6x8 pickets with 1x4 trim and a 2x4 cap mounted between capped box posts (see attached submitted drawing).
7. Berms and dense planting as submitted shall be used in the fuel center/residential buffer area.
8. The proposed western curb cut/driveway may not be constructed without the closure of other commercial driveways within 100 feet.
9. Internal curb cuts are encouraged.
10. Public access easements are required along the main entry drives from Prince Street as follows:
  - East Drive - From Prince St south to the rear lot line of First Security Bank.
  - West Drive - From Prince St south to the sought property line of the car wash lot, thence east along the south property line of the car wash lot to Salem Rd.
11. New lighting shall be provided for the entire parking lot area. Lighting shall conform to development review regulations; i.e. cut off shielded, height, lumens at property perimeter, etc.
12. Hours of operation - Store may operate 24 hours.
13. Building height shall be no more than 35 feet as allowed in the C-2 Conway zoning regulations.
14. No external sound system.
15. Screening with appropriate approved sound barriers shall be required for all existing and new roof-mounted HVAC equipment.
16. Hours of operation - Fuel Center shall operate 6 am to 11 pm.
17. Lighting - Canopy lighting shall be turned off during hours of non-operation.
18. Canopy height shall be no more than 28 feet including pitched roof.
19. No external sound system.
20. No banner signs or incidental signage allowed.
21. Kroger distributed truck deliveries shall be limited to the hours of 6:00 am to 11:00 pm subject to weather delays and/or other circumstances beyond reasonable control. Delivery hours shall not apply to the limited number of vendors that are not under direct Kroger control.
22. Parking lot sweeping shall be performed during the hours of 5:00 am to 11:00 pm.
23. Trash shall be serviced between the hours of 6:00 am to 4:00 pm.
24. The historic home at 2945 Prince Street shall be relocated and/or reassembled in a historically sensitive manner preserving the unique masonry. If a suitable relocation site cannot be provided by a community group, historically minded citizen, or the city no later than 75 days after publication of the PUD rezoning ordinance, the structure may be demolished.
25. The fuel center shall be located an additional 50 feet to the east from submitted location increasing the amount of space between the fuel center and the residences to the west.
26. A Stage 2 (Phase 2) recovery system shall be provided for all fuel dispensers at the fueling center.
27. Kroger shall enter cross access agreements with abutting parcels to provide cross access between the Kroger parking/drives and abutting parking areas.

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

**1. Consideration of bids for the carpet removal & replacement at the Central Fire Station.**

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Mike Winter, Assistant Fire Chief, stated the carpet at the Central Fire Station has been in place since 1999 and needs replaced. Alderwoman Smith motioned to accept the low bid from Morrison Homes & Remodeling Inc. in the amount of \$26,071.75. Alderwoman Whitmore seconded the motion. There was no discussion. The motion passed 8-0.

**2. Ordinance appropriating insurance funds to the Conway Animal Shelter.**

**O-10-127**

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 Jones 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 Vaught, and Alderman Jones. The motion passed 8-0.

**3. Ordinance appropriating & accepting grant funds and insurance funds from various entities for the Conway Police Department.**

**O-10-128**

A.J. Gary, Chief of Police, briefly explained the various appropriations:

\$705.00 to be appropriated from account 01.911 to PD buy money account 01.113.297

\$4,392 to be appropriated from account 01.944 to PD accountable equipment expenditure account 01.113.354

\$7,535.01 to be appropriated from account 01.935 to the following PD expenditure accounts:

\$4889.49	01.113.920	Capital communication equipment
\$2645.52	01.113.331	Office Supplies

\$13,834.50 to be appropriated from account 01.944 to the following PD expenditure accounts:

\$796.00	01.113.331	Office Supplies
\$13,038.50	01.113.945	Capital audio visual equipment

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

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MINUTES OF THE CITY COUNCIL, CITY OF CONWAY, ARKANSAS

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Mayor Townsell asked council to consider going into executive session to discuss the employment of a new parks director. Alderman Grimes motioned to adjourn into executive session. Alderwoman Mehl seconded the motion. The motion passed 8-0. Council returned from executive session and Mayor Townsell called the meeting to order. Mayor Townsell announced that the city has hired a new Parks & Recreation Director, Steve Ibbotson, explaining he will be making the same as our previous Parks & Recreation Director.

*C. Old Business*

*D. New Business*

**Adjournment**

**PASSED this 23<sup>rd</sup> day of November 2010**

**APPROVED:**

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**Mayor Tab Townsell**

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**City Clerk Michael O. Garrett**