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MINUTES OF THE CITY COUNCIL, CITY OF CONWAY, ARKANSAS

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Conway, Arkansas  
Tuesday 6:30 p.m.  
August 9, 2011

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; Alderwoman Smith, Alderwoman Mehl, Alderman Rhodes, Alderwoman Whitmore, Alderman Jones, Alderman Vaught, and Alderman Grimes. Also, present and acting: Mayor Tab Townsell and City Clerk Michael Garrett. City Attorney Michael Murphy and Alderman Hawkins were not in attendance.

**Call to Order**

**Roll Call**

**Minutes:** July 26<sup>th</sup>, 2011

Alderwoman Whitmore motioned to approve the July 26, 2011 minutes as submitted. Alderwoman Smith seconded the motion. The motion passed 7-0.

**Announcements / Proclamations / Recognition:**

**1. Report of Standing Committees:**

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

**1. Consideration of several condemnations for Conway Corporation related to Tupelo Bayou Wastewater Treatment Plant.**

**R-11-38**

Greg Dell, Conway Corporation, stated the Ladell Brown, Trustee for Heirs of Lee Andrew Brown need to be removed from the agenda for tonight. Mr. Dell stated the James and Sonya Burton needs one signature which we can obtain tomorrow and would like to leave this one on the agenda. Mr. Dell stated we won't use the condemnation if it is not necessary, and will continue to negotiate with the property owners up until the day that a judge would have to make a decision. Mr. Dell explained the need for each easement and there are ongoing negotiations with Lois Cooper, Karen Cooper and the Spatz family. Karen Cooper stated she has not received a check and what she has received are contradicting documents; when negotiating one should tell all aspects, not just certain pieces. Alderwoman Smith asked what was no disclosed. Ms. Cooper said the documentation show a sewer line on her property and she stated she was never told about this; she just knew of the water line. Mayor Townsell asked if the right of way and easement was sent. Mr. Dell stated yes explaining he has the entire file which includes the letter and maps, and apologized if Ms. Cooper did not receive these and stated they were sent on July 27, 2011. Mr. Dell stated he met with Ms. Cooper on her property and stayed approximately 4 hours discussing all the options, and we also visited about the cattle and cross fencing. Mr. Dell stated Ms. Cooper asked for consideration of a smaller easement or possibly a different location so we drew up 3 new easements and maps and mailed these, asking if any of these were acceptable to Ms. Cooper and asked for a reply

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by August 5, 2011; when a response was not received prior to this meeting I wanted to make sure Ms. Cooper was in possession of these documents and she was not interested in signing these before we proceeded with the condemnations. Mr. Dell stated I called Ms. Cooper today even though I have been asked not to do so because it is required that everything has to be in writing. Mr. Dell stated I have documentation of everything and would be glad to share it with Ms. Cooper and explained it is difficult to correspond only via US Postal Service and send and receive answers back and forth all the while the clock is ticking on the project. Alderwoman Smith stated you visited with her for 4 hours and does not understand the issue. Mr. Dell stated it has been over a year since we first communicated with Ms. Cooper and they were not interested, so we began looking for alternative; we did acquire more easements and also have changed sides of the road on a couple of occasions as we gained easements; at the moment the Cooper easement is the only thing stopping us from getting water down Lollie Rd. Mayor Townsell asked if it is material that multiple utilities use the same easement cost wise. Mr. Dell stated when we purchase an easement, it is to our benefit to be able to use it for any of the utilities, but right now the only plan is water. Mr. Dell stated that was one of the discussion items that we had but he believes that easement can just say water. Mr. Dell stated that power is in across the road and there are no plans to run the sewer in that area, there are no maps that shows a sewer in the area, it is only a water line easement that we need right now; generally speaking, easements in the City's name are utility easements and are used for whatever utility that is needed. Mayor Townsell stated this easement does not say specifically which utility. Mr. Dell stated if council approves this we are still willing to work with Ms. Cooper and if she is not we will try to place the easement where it is the least impact on their property. Alderman Grimes asked how long negotiations will continue if condemnation passes tonight. Mr. Dell stated the earliest we could have right of entry would be approximately August 22, 2011 which would actually be a questions for City Attorney Michael Murphy. Mr. Dell stated we had an appraisal done when came to the first road block and did not think it was going to go any further; we had an appraisal done and it came back showing our offer was more than what the appraised value of the easement was but we stayed with our initial offer. Harton Spatz, representing the Spatz family, stated Conway Corp contacted them about obtaining an easement to run power lines along the south side of Dave Ward Dr. Mr. Spatz explained there are already power lines along the north side of Dave Ward Dr.; Conway Corp has placed power poles along Lollie Rd and put both lines on the same pole, but they do not want to do this on our property, they want to put in new power lines on the south side and we do not want this and feels they should use the poles already in place. Mr. Spatz stated he was under the impression the water service to Lollie Bottoms would go down Cooper Lane and intersect with Lollie Rd and into and on into the bottoms. Mr. Spatz stated he does not feel there would be a need for a water line unless a development were to be put in place and stated they did not request to be annexed into this 3,000 acre annexation; we were told that the water line would go down Cooper Lane; Mr. Spatz stated they have been offered five cents per square foot for our easement and that came after we declined donating an easement. Nona Spatz concurred she did not know anything about the water line and one of her biggest objections is they are offering five cents a square foot to over our farm land for this waste water sewer line and we have spent thousands of dollars to purchase the land plus precision level it for crops; the 40 foot easement will interfere with many crops and they are wanting to go under the water table which we use to water our crops; this is a gamble as it could interfere with our wells which also cost thousands of dollars. Ms. Spatz stated they stated these concerns to

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Conway Corp back in April via certified mail, and the only response we have gotten back is the same five cents per square foot offer. Ms. Spatz feels it is not right to allow Conway Corp to condemn the property when none of this has been worked out with the property owners. Mr. Dell stated we have been working on two parcel with the Spatz' and there is a provision in the easement document that states the soil has to be put back into the same condition as it was prior to the easement placement. Mr. Dell stated because we understand that when a property owner relies on their crops for income we, in addition to buying the easement, have offered to lease the property for 2 years during construction of the project at a higher lease rate than what the going rate is in the Lollie Bottoms and believes they should be made "whole". Mr. Dell stated that easement is not on the agenda tonight, but we are continuing to work on the sewer easement, which has also come down to an issue of money; they offered an amount that is 3 times more than what everyone else has signed easements for. Mr. Dell stated we will continue to work on that; but once we do enter the property it will up to the courts to have the final say on what the easements are worth. Mr. Dell stated the power lines along Dave Ward Dr. are for electricity only at the current time; there is no immediate plan to place the water line in that easement. Mr. Dell stated as far as crossing the street, that is an Entergy power line and also a telephone fiber installed and there is not enough room behind the Entergy line to get a power line and a water line on the north side of Dave Ward Dr.; we have looked at the different options and the south side of Dave Ward Dr. is the best location. Alderman Rhodes asked if you can power and water underground in the same easement. Mr. Dell stated yes. Ms. Spatz stated that would be preferable. After some discussion Mr. Dell stated if council approved this today we would get all the necessary information to Mike Murphy, City Attorney, while we continue to work with the property owners; once Mr. Murphy files we could gain entry within 5 days. Mr. Dell went onto say he believes if the condemned property can ask for a jury trial or let the judge make the decision. Mayor Townsell stated that would only apply to the issue of value. Alderman Rhodes stated it sounds like there are quite a few uncertainties between the property owners and there is a meeting planned for next Monday night and suggested delaying this until after that meeting. Mr. Dell stated if council is comfortable waiting 2 weeks, he is dedicated to negotiating with the property owners to reach an agreement if it is possible. After some discussion among council Alderman Jones motioned to hold these items in committee. Alderwoman Smith seconded the motion. There was no discussion. The motion passed 7-0.

Alderwoman Smith motioned to suspend the rules to add an item to the agenda addressing a request from Conway Corporation. Alderwoman Whitmore seconded the motion. The motion passed 7-0.

**Resolution authorizing Conway Corporation to temporarily suspend late payment fees for residential customers.**

**R-11-38**

Richie Arnold, Conway Corp, explained they would like to suspend the late payment fees for a period of 2 months in order to help their customers who are paying high electric bills due to the extreme heat we have experienced. Mr. Arnold stated once the bill is mailed, the customer has 20 days to pay the bill, if it is not paid a 2.5% penalty is added to the bill and after 30 days you become subject to cut off. Alderwoman Smith

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motioned to adopt the resolution. Alderman Jones seconded the motion. There was no discussion. The motion passed 7-0.

Michael Murphy, City Attorney, entered the meeting in progress.

**2. Resolutions requesting the Faulkner County Tax Collector to place certified liens on certain properties as a result of incurred expenses by the City.**

**R-11-39**

Mayor Townsell stated the property address is 1515 Freyaldenhoven; the cost of cleanup was \$167.02 plus 10% collection penalty. There was no one present to speak to this issue. Alderwoman Smith motioned to adopt the resolution. Alderwoman Mehl seconded the motion. There no discussion. The motion passed 7-0.

**R-11-40**

Mayor Townsell stated the property address is 2235 Nature Trail Dr; the cost of cleanup was \$184.33 plus 10% collection penalty. There was no one present to speak to this issue. Alderwoman Whitmore motioned to adopt the resolution. Alderwoman Smith seconded the motion. There was no discussion. The motion passed 7-0.

**R-11-41**

Mayor Townsell stated the property address is 1415 Lincoln; the cost of cleanup was \$2,321.93 plus 10% collection penalty. No one from the audience was present to speak to this issue. Ottie Cowgill, Code Enforcement Officer, explained this was a condemnation; bids were taken and we selected the lowest bid in which a complete demolition was performed. Mr. Cowgill stated the roof had imploded, the foundation had cracks, the windows were broken, etc; and it had been in this condition for some time. Alderwoman Smith motioned to adopt the resolution. Alderwoman Whitmore seconded the motion. There was no discussion. The motion passed 7-0.

**3. Consideration to enter into an agreement with Charlie Bocksnick for testing services of traffic lights conflict monitors.**

Allen Alvey, Street Dept, explained this is a renewal of an annual contract explaining ted the conflict monitor is the device in the cabinet that ensures nothing happens illegally in an intersection, i.e. "having opposing signals green at the same time". Mr. Alvey stated the manufacturer requires testing annually and protects the city from lawsuits pertaining to failures at an intersection (Mr. Bocksnick will be paid \$50.00 for each monitor tested and for which certification is provided). Mr. Alvey stated Mr. Bocksnick is a sole source vendor and also performs cleaning and servicing inside the cabinet. Alderwoman Smith motioned to approve entering into this agreement pending revamping of language changed to be more fairly written for the city of Conway. Michael Murphy, City Attorney, stated there are some changes to the contract that need to be discussed pending approval, mainly paragraph 6 and 7. There was no further discussion. The motion passed 7-0.

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4. **Ordinance appropriating funds for the Farris Road Improvements (Bruce Street to Dave Ward Drive) and for Museum Road Improvements (Siebenmorgen to Lower Ridge Road).**

O-11-60

Alderwoman Smith motioned to waive the readings of the ordinance. Alderwoman Whitmore seconded the motion. The motion passed 7-0. Mayor Townsell the funding of the \$1,522,791.00 will be appropriated from Street Impact Fees. Alderwoman Smith 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 Rhodes, Alderwoman Smith, Alderwoman Mehl, Alderwoman Whitmore, Alderman Grimes, Alderman Vaught, and Alderman Jones. The motion passed 7-0.

5. **Ordinance accepting & appropriating grant proceeds for the Historic District Commission to be administered by the Planning & Development Department.**

O-11-61

Bryan Patrick, Planning and Development Director, was present to answer questions. Mayor Townsell stated the amount of the grant proceeds is \$2,475.00. Alderwoman Smith motioned to waive the readings of the ordinance. Alderwoman Whitmore seconded the motion. The motion passed 7-0. Alderwoman Smith 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 Rhodes, Alderwoman Smith, Alderwoman Mehl, Alderwoman Whitmore, Alderman Grimes, Alderman Vaught, and Alderman Jones. The motion passed 7-0.

6. **Consideration of a request from Randy Dryer for an extension of the condemnation order on property located at 912 Front Street.**

Lynn Hicks, Chief Building Inspector, stated as you know this body has hired a structural engineer to make inspections and recommendations on how to deal with this building safely, and have condemned the building; there is a 30 day timeframe after condemnation (which ended August 7, 2011) at which point the city is to pursue the condemnation. Mr. Hicks stated the structural engineers verbal recommendation are to shore the building, then proceed with demolition or if the owners, or the city chooses, to repair the building. Mr. Hicks stated everyone has agreed that the repairing the building is not economically feasible which only leaves the demolition process; we have advertised bids for demolition contractors to shore the building then phase II would follow with the demolition. Mr. Hicks went onto say he received a letter from the Dryer's attorney asking the city to allow them to step back into the process and allow them to do the demolition; they also requested additional time to do so. Mayor Townsell stated the letter explained the Dryer's attorney feel that they and the city would rather the Dryer's perform the demolition but realizes everyone's concern is to how to accomplish this safely and without doing damage to the adjacent buildings. After some discussion Alderwoman Smith motioned to extend the condemnation order for 2 weeks (August 23, 2011) and grant the Dryer's the right to proceed. Alderwoman Whitmore seconded the motion. There was no further discussion. The motion passed 7-0.

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

**1. Ordinance appropriating asset forfeiture funds to the Conway Police Department.**

O-11-62

A.J. Gary, Chief of Police was present to answer questions. Alderwoman Whitmore motioned to waive the readings of the ordinance. Alderwoman Smith seconded the motion. The motion passed 7-0. 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 Rhodes, Alderwoman Smith, Alderwoman Mehl, Alderwoman Whitmore, Alderman Grimes, Alderman Vaught, and Alderman Jones. The motion passed 7-0.

**2. Consideration to accept bids for a new fuel card system for the City.**

A.J. Gary, Chief of Police, stated presently we fuel our vehicles at the street dept. and we have had some issues with that fuel over the past few years as the quality of the fuel has caused some maintenance issues. Chief Gary stated in looking at other options we discovered the fuel card system that is used by the Arkansas State Police; a card will be issued to each vehicle and the officers can fuel up at least 8 different stations within the city limits and some outside the city limits. Chief Gary stated it also is a good way to log the fuel consumption, not only by vehicle, but also by each officer that drives that vehicle will have a separate pin number. Chief Gary recommended to council to accept the bid from Coulson Oil Co. as they will give an additional two cents off if we use over so many gallons of fuel explaining this system is not going to cost us any more money and it could allow us to purchase fuel at a lesser cheaper price per gallon. Alderwoman Mehl asked if the reports would be electronic. Chief Gary stated yes, we can go online and retrieve them. Alderman Jones motioned to accept Coulson Oil Co. as a fuel card vendor. Alderwoman Smith seconded the motion. There was no discussion. The motion passed 7-0.

**C. Finance**

**1. Ordinance authorizing a change in staffing levels for the Finance Department.**

O-11-63

Lowell McClanahan, Interim CFO, explained we would like to reclassify two positions; (1) full time Budget Analyst II position to (1) Accounting Manager Position and (1) part time Payroll Officer II to (1) Payroll Officer I/Budget Analyst I position. Mr. McClanahan explained this will help the finance office succession plan as other long term employees retire. Alderwoman Smith motioned to waive the readings of the ordinance. Alderwoman Whitmore seconded the motion. The motion passed 7-0. Alderwoman Whitmore motioned to adopt the ordinance. Alderwoman Smith seconded the motion. There was no discussion. The clerk called the roll with the following voting "Aye":

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Alderman Rhodes, Alderwoman Smith, Alderwoman Mehl, Alderwoman Whitmore, Alderman Grimes, Alderman Vaught, and Alderman Jones. The motion passed 7-0.

Mr. McClanahan stated it appears that the sales tax is going to be less than the budgeted 3% but with the state of the economy that may have been too aggressive; we had a potential problem of \$450,000.00 if we missed the 3%. Mr. McClanahan stated the money we did receive in July (which is actually for May) was up 2.4% from May of 2010 he does hope this continues but that is an unknown with the economy. Mr. McClanahan stated all the department heads have been tasked at finding the savings to cover that shortfall.

Mayor Townsell introduced Tyler Winningham the cities new Chief Financial Officer who will begin work September 1, 2011. Mr. Winningham spoke briefly thanking the city for this opportunity to serve.

**Adjournment**

**PASSED this 9<sup>th</sup> day of August 2011**

**APPROVED:**

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**Mayor Tab Townsell**

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**City Clerk Michael O. Garrett**