

and his request was that could he get back from the city a parcel of land, at that time he stated four or five acres, that the city took at the time they built the reservoir out there for the flood detention in the Lawton-Fort Sill community. I said Ben, let me clear the air, if you've come to ask that the city give this land back to you or give it back to you at the same price that it was sold to the city for, I won't listen to that. He said I'm not interested in it, what the city gets out of that property is the city's business and none of mine, all I'm asking for is enough land to make to meet the needs of acres that they have requested. That person who is a realtor representing that company, and I'll place my hand on the Bible right now, I asked the question, there is a council person in this room right now that was sitting in my office when I asked the question what is the name of this business, he said I had rather not, I have been requested by the company not to reveal the name of the company, however, it is a large retail outlet. I have never heard from that person that it was a supercenter or a Wal Mart.

Dobberstein: I guess my concern...

Mayor Powell: Believe what you want to...

Dobberstein: I guess my concern, Mayor, is...

Mayor Powell: Let me go ahead and finish, sir, I'll let you finish, let me go ahead and finish. I have not heard that out of that man. I've got reason to believe 100% that that's what it is. The point I'm trying to make is nothing has been held in secrecy from anybody whatsoever. Two weeks ago, was it two weeks ago, when the Council agendaed the item for the sale, or the offer of sale of the 2.68 acres is what it was and that's been revealed and the way that it can be dispersed of either by a sealed auction or a sealed bid or a public auction. Those things are written in the form of government that Lawton-Fort Sill enjoys or does not enjoy. There's nothing been held from anybody, that's the only action that has been taken. I've told you everything that I know about it and if somebody else knows more about it, I'd be happy to hear. I just wanted to clear the air about any secrecy of anything that's been held by any council member or by the Mayor of this community.

Dobberstein: Well, then I guess I would voice my concern with you people being elected by us wanting to do what you did without knowing who it was, especially if it is a super center, and I'm not against competition, we've got a super center here already, we've got the commissary, we've got competition, I'm not against competition, but most of us know hopefully what another super center could do to this community and could do to the small business person. That should be you people's concern. So if you're telling me that if we sold this, put this bid and did all this and we're all clean because we didn't know what it was, that doesn't set very well with me. We should know what's going out there.

Mayor: I think, as I stated a while ago, we're 100% sure of what the projected is going out there. The only point I'm trying to make and you made the initial point that we knew something that you don't know, we don't know anything that you don't know, sir, we've been very open about this entire thing.

Shanklin: Mayor, can I say something?

Mayor: Mr. Baxter and then you.

Baxter: I want to say something. We were talking about being open. When we did our little deal two weeks ago or ever how long it was ago to agree that that property was surplus and to allow for bids to be sent in on that property, looks to me like it was a cover up at that time. I don't think it's right for this city, it is not right for this city to print in this book and release it that says four miles north and two point six east and one mile south and, these people don't know what that is but everybody up here knew what it was and it's not fair to those people and if we were going to sell that property we should have put proposed Wal Mart site. We may not have been able to legally do that.

Mayor: Mr. Baxter, you was in my office at the time that I asked the question can you reveal the name of this proposed retail outlet and the answer was no. Is that correct statement?

Baxter: He said that he would like not to.

Mayor: All right, thank you.

Baxter: And I asked him two questions at that time.

Mayor: Yes sir.

Baxter: I said is that retail outlet already established in Lawton and his answer was yes. I said does that retail outlet sell groceries. His answer was yes. I asked him what the square footage of that building was, he told me 189,000 square feet. It don't take a dummy to figure out that it's a Wal Mart.

Mayor: The only point I was trying to make, which I said very clearly that it was never stated in that office that it would be a super center or a Wal Mart.

Baxter: I agree with that, that guy did not say it was a Wal Mart, he did not say that.

Mayor: That's all I wanted to clarify. Bob.

Shanklin: Well, the only problem I have, it's not in my end of town, but you cannot stop private enterprise any more than anybody could try to stop you from putting one in where you're in now. Let's assume that, are we talking about two point acres, two point eight acres?

Mayor: Two point six eight tenths I believe.

Shanklin: Two point acres, what would your posture be if they didn't need the two point eight acres? How could you, how could we possibly stop them?

Dobberstein: My posture would be different.

Shanklin: Sir?

Dobberstein: It would be different because my city officials, elected officials didn't, didn't belly up the land to make it work. That's what happened. I'm not saying I can keep them out of here and I'm not trying to keep them out of here, but I've got a concern of 240 employees, my job is to keep them working and keep a future for them.

Shanklin: You have 240 employees?

Dobberstein: Yes.

Shanklin: Well, that's a bunch.

Dobberstein: And we, we have, we've also heard the comment about business and new business, and now, yes, I could probably agree if this community did not have a super center that there would probably be some new business from the outside areas that it could bring some new dollars to this town. We already have that. They have one in Duncan, two in Wichita Falls, I think they're getting one in Chickasha, there's one in Altus. All we're talking about here is shifting revenue and all we're talking about is possibilities of eliminating some choices for people to shop. And I'm here to say that I stepped out for this town, I came to this town, I brought my family to this town, I bought a home in this town and I got my name and my wife's name on a big debt. I'm committed to Lawton. I don't feel very committed up here to what I committed to. I've got a bunch of people out here that we have raised their standard of living and we hopefully can convince to you people that we've raised the shopping experience in this town since we've been here.

Shanklin: I'll agree with that.

Dobberstein: So what do we get for it? Not even consideration to even talk about what's....

Shanklin: I resent that you think we stabbed you in the back because I haven't stabbed anybody in the back. Sure have not. And the other answer to the deal is, do ya'll really know how to combat this? We need to tell the people who are listening what the problem is and that two point eight acres, how it has to come about as a referendum that you can get, Bill Malone has a list but he hasn't followed the instructions that was given to him, he can't accept signatures until he puts that list to the City Clerk's Office. You didn't know that, Bill, but it's in that piece of paper. (response from audience was inaudible) You did? Well, you're collecting signatures and she doesn't have a copy of it, you just told me you did. (response from audience was inaudible) Standing right there. No, Bill, I'm trying to help you. Do it right if you're going to do it. But we need to tell them the process so that they know what the process is. I'm not for sure that I do.

Mayor: Yesterday morning at 8 a.m. I asked Mr. Vincent to explain the process and he did explain the process very, very good. I'll ask you one more time to do that, sir.

Shanklin: I want to hear it myself.

Vincent: On the 27th of November the City Council passed an ordinance, well first of all they declared the property surplus and then they passed an ordinance that because the property is valued at over \$50,000 if a referendum petition is properly drafted and filed with the City Clerk, and it has to be prefiled and the appropriate number of signatures obtained and then filed again by the 27th of December it would require a city-wide election before we could sell the property. That is one way to stop this action. There is another way to stop it and that is the City Council, you don't file a referendum petition and the City Council goes out for bids and under our notice of bid we

do have a pre-established minimum bid price and if the bid price doesn't come in that high then they can't sell it, but if a bid comes in over that they have the option of whether they want to sell it or not sell it. They can reject all bids at that time. There is no done deal at this point.

Shanklin: No done deal.

Vincent: And I have a copy right here of the state statutes and the City Charter if anybody wants it on how to file a referendum petition.

Mayor: This has been very open. This same thing was explained yesterday morning, I stuck my neck out on a limb because it wasn't an agenda item and we didn't have any audience participation in that but I still stuck my neck out and asked him because we did have a few people yesterday concerned about this and I asked him to explain it.

Dobberstein: Yesterday we were told not to talk about it.

Mayor: Sir?

Dobberstein: We were told not to talk about it.

Mayor: Did you explain this same thing yesterday morning at 8 a.m.?

Dobberstein: Yeah.

Vincent: Yes, I did but I didn't...

Mayor: All right, I'm getting tired of being called a liar up here.

Dobberstein: OK, I appreciate that. And in closing, I mean I'm here for my industry, our industry, supermarket industry, but as we all know, we talked about the vacant space up and down these streets and we're just, we're just foolish if we don't think that that's just going to start in the rest of these strips or put some more people somewhere else because these guys, they're good, I'm not saying they're not good, we have one and I think one's enough but they're good, but they affect everybody and this town is supposed to be about everybody, not just a few of us.

Shanklin: Well, we know that we used to have five or six women's clothing stores, we have zero now. We had several men's clothing stores and we have one as a result of that.

Mayor: OK, thank you, Brad.

Purcell: Mayor, can I ask a question?

Mayor: Yeah, just a second, Mr. Purcell wants to ask a question.

Purcell: Well, I just have one question. So I understand what you're saying, you're saying you don't want one at all anywhere in Lawton as opposed, I'm sure we're going to hear some other people just say we don't want it where it's going, but your contention is you don't need it anywhere in Lawton, is that correct? (there was not an audible answer due to applause from the audience; end verbatim transcription)

Anneliese Heston, 2315 Crosby Park Boulevard NW, said they selected a lot in Crosby Park Estates to build a house and were attracted to the neighborhood because it is somewhat secluded, quiet, has no through traffic and the area is clearly defined. She said they felt with similar houses in the area, their investment would be secure, but now they find all of this is endangered by a commercial development of immense dimensions; in their immediate back yards they will have a 24 hour commercial operation with blinding lights, noise, dense traffic and debris carried into their area by the strong winds. Heston said residents adjacent to the area will no doubt see their property values decrease while the tax assessments steadily increase, and because of the changed living conditions, many will ultimately be forced to move.

Heston said she was not opposed to the construction of a second Wal Mart store in Lawton, but once apprised of the residents' objections, she could not imagine that a well-run company like Wal Mart would intentionally alienate a great many potential customers in these residential areas.

Heston said it should be important to the City Council to uphold property values in Lawton; city planners should not only be interested in attracting commercial and industrial establishments, they should also be guided by what is in the best interest of the citizens of Lawton, voters and taxpayers. She said if the construction of the Wal Mart store or any large retail establishment depends on the sale of the city-owned 2.8 acres, she believed the City Council should weigh the consequences for the residents they represent and reconsider the decision of November

27, 2001.

James Stephens, 6007 NW Lincoln, said he came to speak about this issue also and had three requests. He said the City Attorney explained something he saw in the newspaper about the 27th of December, and this is the midst of a holiday season when people have already gone on vacation and that should be taken into consideration in obtaining signatures on a petition. Stephens said he would ask that Council revisit actions on Item 34 on November 27, 2001, which concerned 2.8 acres of land located off of Highway 62 and 67th Street, asking to extend the period from December 27 to allow signatures to be obtained since this sale of land was not fully disclosed in the Council meeting. He asked that the City not accept any bids on this property but to postpone solicitation of bids until they could have adequate time to obtain the proper documentation to submit.

Mayor Powell asked the City Attorney to address the concerns about the dates. Vincent said on the question as to whether the date can be extended, the City Charter Section C-4-3 states that this ordinance shall be referred to a vote of the electors of the city if a sufficient and lawful referendum petition is properly filed within thirty days after its passage, otherwise it shall go into effect on the 30th day; Section 2-19 of the City Charter says that the referendum and initiative petitions will follow state statutes. Title 34, Section 1 of the State Statutes says for city, county or other municipalities the length of time on referendum petitions shall be thirty days, so we have no ability to extend that.

Shanklin said Council has the right to turn down the bid and asked if they had the right to withdraw the offer to sell it. Vincent said on January 8 there could be an item to repeal the ordinance and declare the property not surplus. Stephens said that would be his request. Devine said he would make a formal request that such an item be considered on January 8. Baxter said it was in his ward and he would request it as well and agreed with Devine.

Dennis Mull, 6107 NW Williams Avenue, said his house is right beside this 2.7 acres of land that was to be sold. His concern was if the land were made into a commercial parking lot, it would detract from the residential nature of their neighborhood. He said he had not seen a proposed site plan but looked at the survey stakes and could not figure out what was included. Mull said he attended a meeting when the water retention facilities were being considered and they said there would be a walking path and recreation area around it, and he uses that jogging and walking path which is nice, and he did not know if they were planning to take that away.

Mull said when he was here previously the statement was the land would be zoned for small professional offices and asked if that had changed. Baxter said it falls under the same zone. Mull said he supported the Council agreeing to reconsider this and that he would appreciate more facts being presented before final actions are taken.

Dr. Ernest Sheppard, 2406 NW Lake Front Drive, Grayson Mountain Addition, said this is not a good location for a Wal Mart; traffic on 67th Street has to sit through two and three stop lights many times before they can get through; 67th Street is an asphalt road and they are talking about entry into a Wal Mart from that which would cause the road to soon be torn up from heavy traffic and heavy truck traffic. He said access would not be much better off of Quanah Parker Trailway.

Sheppard said it seemed the Council was under the impression that revenues would be enhanced from a Wal Mart store going in this location but he saw it only as a transfer of revenues from one location to the other; it will not create any super, high income jobs and it will make the residential areas worth less. He said we do not want that in our community; there are enough areas where commercial is right next to residential and we need to preserve some areas so they will be livable and allow people to have a quality life style. Sheppard encouraged that every step possible be taken to refrain from selling the 2.8 acres in a public sale.

Shanklin said he would support not selling the acreage. He said we do not have the right to tell someone else that they cannot use their land for what it is zoned for. Sheppard said he understood.

Mr. Monostori, 2303 NW Crosby Park Boulevard, said he chose the place he lives because he likes it and would request the City Council rezone this area so there will not be any retail establishments built there. He said a city is supposed to take care of its own but there are potholes all over the place, and if there is additional traffic, someone will have to take care of additional potholes. He said crews make small repairs that are inadequate. Monostori said a retail establishment does not belong between these two subdivisions and he did not want to leave town if he did not have to but was considering moving because the property values would go down. He said Council was concerned about many things but apparently not the residents; no one had asked him what he thought about it and he is a citizen and had a right to know what was going on rather than having it camouflaged.

Bill Malone, 2302 NW Crosby Park Boulevard, said NIMNFY means "not in my neighbor's front yard". He said his back yard will be right next to the property in question and his greatest concern about this big business going up right next to his back yard is of his wife's health condition and he distributed a list of her medications, stating she has been diagnosed with acute asthma and severe degenerative arthritis. Malone said his wife is an outdoor person, has a small garden and likes to work in the yard; the strong smell of diesel that will come from all the trucks loading and unloading will have an adverse effect on her health. He said doctors advised her to swim from

30-60 minutes twice a day, which she is able to do right now because they have an enclosed, heated pool in their back yard; this is the only way she can get exercise. Malone said when the diesel trucks are unloading, they do not turn their engines off, therefore, the diesel fumes that pollute the air will be very strong in his back yard and this will eliminate his wife's outside activities and all opportunities for her to exercise. He said she is on a lot of medication, up to 16 pills a day, but none of the medicines will prevent the effect the diesel fumes will have on her. Malone said he had owned 18 wheelers since 1966 and knew all about the fumes they release into the air.

Malone held up a clean air poster that was put out by the City. He said he wanted this considered and put on record because this could kill this lady, she's had it since she was 49 years old and she is 66 now and they had lived together 47 years and he was not looking for another one.

Dr. Swinney said he was sure the members gave it long and hard thought before selling the land, but to drop a Wal Mart in the middle of a residential area was totally beyond him, and asked if anyone would like to say what their thoughts were in that direction because he would like to hear them. He asked how this would help the community grow; it will be low paying jobs and the money will not stay in Lawton. He said the elected members are supposed to help the residents grow the town and he did not see that happening in this particular instance and did not think many in the audience thought the town would be helped by putting a Wal Mart in; do we want to be known as the town that has two super Wal Marts, that is not something to be proud of.

Mike Scott, 2406 NW Crosby Park Boulevard, said the neighborhood is secluded, with one way in and one way out, and two doors south of him there is a street cut going west and it might be designated as NW Lincoln. He said residents were concerned as to the possibility of that street being opened to whatever commercial activity is put in, and that being used as a short cut or back way to a major retailer, whatever it might be. Scott asked if it would be possible to consider an item to close and vacate that piece of street, turning the property back over to the owners on either side of it, and preventing it from ever being opened and progressing westward. Baxter said it would be his responsibility as their councilman to ask that the street be closed, and when the times comes, he would make sure that gets done and now is not the right time. Scott asked if they had a commitment that it would happen. Baxter said he would attempt to make that happen with this council when the time comes.

Mayor Powell said the government in Lawton is for the people, by the people and of the people, and that he did not have the power or ability if someone comes to his office and asks if land can be made available and take it to the Council, if he was going to represent every person without bias or prejudice, that was how he would continue to do it. He said he did not have the ability to tell Ben Horton he would not take his request to Council, and he did not have the ability to do that for residents either. He said it is considered in meetings such as this and everyone has their chance to speak and let the Council respond to it, and that was the way it would work as long as he was in office.

The following statement is included verbatim:

Purcell: I just have a question, let's say the Council does have the power to reject the bids on the 2.8 acres, let's say we do that, I mean I think there's enough consensus here that that's probably going to happen. But I'd like to hear from someone what happens when we do that and Wal Mart or someone else decides they're going to build there anyway? What are you going to expect us to do because I was concerned about this being zoned C-3 and does anyone know when this property was zoned C-3? Is there anyone in the audience that knows when the property we're talking about was zoned C-3? Yes sir. (inaudible response from audience) OK, I don't know how we do that, I don't know if we can legally do that going back the other way, OK, sir, I understand. This thing was zoned C-3 in June 1978 so it's been quite a while that this property was zoned C-3. It was zoned C-3 before, I'm not knocking it, before Grayson Estates was even started. It was not, I don't think, zoned C-3 necessarily before Crosby Park, but I'd like to hear from someone, we can stop part of this by saying we're not going to buy or, I'm sorry, sell the 2.8 acres, but it doesn't stop Wal Mart or any other commercial activity that's in C-3 zoning from building there. What is someone going to expect us to do? Can someone please address that for me? I'd like a, I'm sorry, I'm not sure we can rezone it. That's an easy answer that you want us to do.

Sheppard: Can I speak to that?

Purcell: Sure.

Sheppard: I don't think there's a whole lot you can do but what we do expect you to do is to not sell that 2.8 acres. If that kills the deal for Wal Mart, that's great, OK. If it doesn't, then that's zoned C-3 and that's the way life goes. However, I would like for you to consider one thing. In Lawton, Oklahoma, I've heard many times from patients that have come in to see me from other cities, they say why is this commercial area right next to a residential area, why is this residential area stuck in the middle of a commercial area. I'm sure you gentlemen and ladies have heard that before. Here we're getting ready to do the same thing again. If there's any way in the future or with this particular location that you can reconsider some of those ramifications for a community I think it would greatly benefit the community to have zoning in a proper place so people have a quality lifestyle and build homes as these people have talked about and keep the property values and lifestyles they appreciate." (end verbatim)

Mayor Powell said an agenda item will be on the agenda for January 8 regarding this acreage.

Upon motion, second and roll call vote, the Mayor and Council were in recess from 7:35 to 7:40 p.m. with roll call reflecting all members present upon reconvening the meeting at that time.

CONSENT AGENDA :

The City Attorney asked that Item 1 be considered separately.

MOVED by Shanklin, SECOND by Baxter, to approve the Consent Agenda items as recommended with the exception of Item 1. AYE: Haywood, Baxter, Bass, Hanna, Devine, Purcell, Shanklin, Moeller. NAY: None. MOTION CARRIED.

1. Consider the following damage claim recommended for denial: Mike and Nancy Lydens. Exhibits: Legal Opinion/Recommendation.

Michael Lydens, 1520 NW 43rd Street, asked that the claim be approved. He said the City sent a lady to his house who knew nothing about mold and he did not see how an engineer from the insurance company could have viewed the damages because he has dogs in his back yard that would have prevented someone from entering. Lydens said the contention is the mold was caused by lack of drainage but he did not see that problem, they have had the house for seven years and have not had problems like this until there was an eight foot sewer geyser come out of the sewer and hit the side of their house. Baxter asked if the house had a gutter and Lydens said yes. Lydens said the covers over the exterior foundation vents were put up to keep the sewage water from running under the house.

Tim Wilson, Assistant City Attorney, distributed photographs of the residence and recommended denial of the claim. He said the Lydens filed a claim with their insurance company before filing the claim against the City; the insurance company hired a civil and structural engineer to inspect the property and the engineer determined the cause of the mold was surface and roof runoff, and not the sewer backup. He said the repaired cracks indicate there have been water problems with the property for a long time. Wilson said a picture shows the sewer clean out, as well as where drainage comes off of the roof and the wall where the claimants allege mold is growing inside the house. He said it is clear the water comes off the roof right next to that wall where there are cracks and that was what the structural engineer determined to be primarily the cause of where the mold was coming from.

Wilson said the claim came to Council in November and he contacted the engineer to confirm he actually went to the residence and he advised over the phone that he spoke with the claimants, they were aware he was coming to the residence, when he arrived no one was home and there was a dog in the back but it did not give the engineer any problem and he was able to get in the back yard, inspect and make a conclusion. He said this is a \$14,000 claim and the claimants have the burden of proving the damage to their property, the mold, was caused by the sewer backups. There were sewer backups on January 9, 11 and 13; prior to that date the last reported sewer backup at this property was November 29, 1998. In August 2001 there was a backup determined to be from a private sewer line problem and not the main. He said rainfall records indicate December 1.5 inches, January 2.41 inches, February 2.7 inches, March .61, so 7.22 inches for those months combined, and the engineer stated the rain could have caused the mold and was adamant that the sewer backup was not sufficient to cause the mold and it is more a rainwater problem. He said the claimants can pursue the claim further through the court system and if they want to get an expert to testify, they could do so, but based on what he had heard to date, he found insufficient evidence to approve the claim.

Baxter said one photograph shows a crack that was caulked between the slab and the sidewalk and asked when that was done. Lydens said about a week before the pictures were taken, their insurance advised them they might try that.

Hanna said one photograph shows a wall with a very significant crack in it. Lydens said that is the side of the garage and it was there when they bought the house, it is from settlement of the garage and not the interior of the house. Lydens said the mold came up over the window onto the wall and they never had a mold problem before this happened; crews did not sanitize this the first two times it happened because of the rain, the third time is when they sanitized it and they had to call them twice to do this.

Hanna asked if there was a drain going down the side of the wall from the hot tub in the photograph. Lydens said it is a drain that runs into the yard; it does not go to the house. Hanna said it is going down along the walkway. Lydens said they do not use the spa, there is no water in it and it is actually the back yard where the water is going into.

Moeller said she was looking at the picture of the air conditioning unit and asked if that was where Lydens was saying the mold was. Lydens pointed to the picture saying the mold started at the window in the back. Moeller said she asked Legal who the engineer was and they said it was a structural engineer from Oklahoma City, so that clarified one question. She said the crack on the garage is something you see every day. Lydens said there are few

houses in Lawton without a crack. Moeller said it is a settlement crack and we see them all the time and disagreed that water caused that crack. She said she was not advocating either way but the mold is on the opposite side of the crack; the crack is on one side of the house and the mold is on the other side of the house so that was not logical. Lydens said water will never even get on the sidewalk on an average rain, but the day when the sewer exploded, the whole back yard was covered in feces.

Purcell said he was inclined to rely on the engineer's opinion, but if water was not getting across the sidewalk, why was it caulked, and if mold was growing in that wall, there had to be some kind of water getting there. Lydens said the insurance agent recommended they caulk and the mold started behind the air conditioner in the dining room area, not at the caulking. Purcell said water was likely getting under there for some period of time or he would not have recommended caulking. Lydens said he just thought that might have been a reason, when the sewer backed up he said it might keep it from going under the house again, not the water, the sewer. Lydens said the sewer busted the cap off of the line and sprayed eight feet in the area and hit the whole side of his house.

Baxter asked Devine, as a plumbing expert, if it was possible for that to happen. Devine said yes.

Bass asked if the sewage got in the house through the tub and toilet rather than coming in through the cement wall. Lydens said at first it was coming up the tub, out of the toilet, it covered the bathroom floor into the hallway; it busted the cap off and blew for two to three hours the first time.

Shanklin asked if Lydens had collected from the insurance company. Lydens said the insurance company told him it was a city issue from the sewer and to contact the city and they washed their hands of the deal; they said it was caused from sewer and the city was at fault. Shanklin asked if there was mold inside the house now too. Lydens said yes.

Bass asked Lydens if he had replaced the carpet and the other items. Lydens said no, they told him not to do anything until they got a judgment. Lydens said they had no evidence of an engineer coming to their house.

Purcell said he did not believe the city should be paying for the mold problem, but there was a sewer backup and the city does pay for sewer backups if there has been a problem before. He asked if there had been sewer backup problems in this area before or if this was the first time. Wilson said before January 2001 the last reported backup was in November 1998. Purcell said we have had notification on the sewer backup in the past, two years before, so can we separate the cost of what the sewer backup did with rugs or damage or clean up, as opposed to mold. He said he would support paying sewer backup damages but could not support paying for the mold clean up problem because he did not think it was caused by this. Discussion was held on this point and Vincent said they could attempt to make that determination and return the claim in January if the claimant agreed. Shanklin said he would so move.

Bass asked if the house had been cleaned up since this incident. Lydens said they had cleaned the rugs and his wife has to clean the rugs at least once a day from where it is spreading; as far as cleaning, they told them it would not get rid of it because it came from under the house. Lydens said the insurance turned them down, they contacted an attorney with the environmental health and she said this could cause mold or it could not but she could not get involved until the city turned them down and the insurance turned them down, so he could not get her opinion on it until it got denied.

Devine said he would make a motion to deny the claim and he would strongly encourage Lydens to seek legal representation and see if he can't get help elsewhere because he thought he had a good, legitimate claim on the sewer backup but not on the mold. Mayor Powell said Shanklin had a motion on the floor.

MOVED by Shanklin, SECOND by Baxter, to table this and separate the mold from the sewer backup damage, then bring it back to us. AYE: Baxter, Bass, Hanna, Devine, Purcell, Shanklin, Moeller, Haywood. NAY: None. MOTION CARRIED.

2. Consider the following damage claims recommended for approval and consider passage of any resolutions authorizing the City Attorney to file a friendly suit for claims which are over \$400.00: Nicky and Manuela Britten, Southwestern Bell, LeRoy and Susan E. McCoy, David and Nelda Cooper and Ruby V. and Bocifus Robison. Exhibits: Legal Opinions, Recommendations; Resolution Nos. 01-177 and 01-178. Southwestern Bell - \$103.81; McCoy - \$250.00; Robison - \$133.00.

(Title) Resolution No. 01-177

A resolution authorizing and directing the City Attorney to assist Nicky and Manuela Britten in filing a friendly suit in the District Court of Comanche County, Oklahoma, against the City of Lawton; and authorizing the City Attorney to confess judgment therein in the amount of One Thousand Six Hundred Forty-One Dollars and 31/100th (\$1,641.31).

(Title) Resolution No. 01-178

A resolution authorizing and directing the City Attorney to assist David and Nelda Cooper in filing a friendly suit in

the District Court of Comanche County, Oklahoma, against the City of Lawton; and authorizing the City Attorney to confess judgment therein in the amount of Four Hundred Fifty-One Dollars and 75/100 (\$451.75).

3. Consider authorizing an exception to Council Policy 8-2 and authorizing construction of a median opening on East Gore Boulevard. Exhibits: Council Policy 8-2; Drawing; Letter. Action: Approval of item.
4. Consider authorizing the City to accept permanent and temporary easements which have been donated by Aline F. Lowry, Wesley and Mary Sue Silk, and June Barrington in the Northeast Quarter of Section Twenty-four, Township One North, Range Twelve West, situated in Comanche County, State of Oklahoma, and authorize the Mayor and City Clerk to execute the Acceptance. Exhibits: None. Action: Approval of item.
5. Consider authorizing the City to accept a permanent utility easement in the Southwest Quarter of Section Six, Township One North, Range Eleven West, situated in Comanche County, State of Oklahoma, which has been donated by Larry J. and Shirlene M. Pinchback and Paul S. and Lorri V. Pinchback, and authorize the Mayor and City Clerk to execute the Acceptance. Exhibits: None. Action: Approval of item.
6. Consider adopting the Memorandum of Understanding between the City of Lawton and the Lawton Metropolitan Area Planning Commission (LMAPC) for Congestion Mitigation Air Quality Campaign during Fiscal Year 2001-2002 and authorize the Mayor to execute. Exhibits: MOU. Action: Approval of item.
7. Consider endorsing an amendment to Federal Fiscal Year 2001-2003 Transportation Improvement Program (TIP) to include Congestion Mitigation Air Quality (CMAQ) funds. Exhibits: None. Action: Approval of item.
8. Consider endorsing an amendment to the Federal Year (FY) 2001-2002 Unified Planning Work Program (UPWP) for continuation of Congestion Mitigation Air Quality Funds (CMAQ). Exhibits: None. Action: Approval of item.
9. Consider approving the extension of the loan of "Songs of the Past", a sculpture by Allan Houser to the Museum of the Great Plains from January 1, 2002, through December 31, 2002. Exhibits: None. Action: Approval of item.
10. Consider approval of an agreement for mutual aid in fire protection and hazardous materials incident response with Sheppard Air Force Base Fire Department. Exhibits: None. Action: Approval of item.
11. Consider approving the following contract extensions: A) Electric Motor Repair with J & W Electric Motor Company; B) Work Clothing with Woodward's Department Store; C) Practice Ammunition with DT Distributors, Inc. Exhibits: None. Action: Approval of item.
12. Consider awarding contract for SCBA 2.2 Complete. Exhibits: Recommendation; Abstract. Action: Award to Wayest Safety, Inc.
13. Consider awarding contract for Pebble Quicklime. Exhibits: Recommendation; Abstract. Action: Award to Global Stone St. Clair
14. Consider approval of appointments to boards and commissions. Exhibits: Memo.

Citizens Advisory Committee on CIP: J.B. Fencil, Term: 1/26/02 to 1/26/05, Mayor's appointee

15. Consider approval of payroll for the period of December 10 through 23, 2001, and December 24, 2001 through January 6, 2002.

BUSINESS ITEMS:

Mayor Powell asked that Item 19 be considered at this time.

19. Consider adopting an ordinance amending Section 23-605, Chapter 23; Lawton City Code, 1995, relating to traffic; authorizing the City Council to set parking restrictions on public property; and providing an emergency. Exhibits: Ordinance No. 01-36.

Shanklin offered a motion to table this to the next meeting when a decision is made on the bus transfer station. Purcell said this will allow the Council to take action regarding that or any other location.

MOVED by Purcell, SECOND by Baxter, to approve Ordinance No.01-36, waive reading of the ordinance, read the title only, and declare an emergency.

(Title as read in agenda item) Ordinance No. 01-36

An ordinance amending Section 23-605, Lawton City Code, 1995, authorizing the City Council to set parking restrictions on public property, and declaring an emergency.

VOTE ON MOTION: AYE: Bass, Hanna, Devine, Purcell, Shanklin, Moeller, Haywood, Baxter. NAY: None. MOTION CARRIED.

Mayor Powell asked that Item 18 be considered at this time.

18. Consider adopting a resolution setting a two hour parking limit in the Library Plaza parking lot. Exhibits: Resolution No. 01- _____.

MOVED by Shanklin, SECOND by Hanna, to table this item until the next Council meeting. AYE: Hanna, Devine, Purcell, Shanklin, Moeller, Haywood, Baxter, Bass. NAY: None. MOTION CARRIED.

Item 20 was considered at this time due to technical problems in presenting Item 16.

20. Consider approving a resolution authorizing the modifications to the City of Lawton general pay plan necessary to incorporate the mid-year pay increase authorized by the City Council on June 12, 2001. Exhibits: Resolution No. 01-179; Revised General Employee Pay Matrix.

Baker said Council approved a 3% cost of living adjustment as part of the budget to be effective for six months of the fiscal year. If this is adopted, general employees will get the first pay raise in January. He recommended approval.

MOVED by Hanna, SECOND by Devine, to approve Resolution No. 01-179. AYE: Devine, Purcell, Shanklin, Moeller, Haywood, Baxter, Bass, Hanna. NAY: None. MOTION CARRIED.

(Title) Resolution No. 01-179

A resolution approving revisions to the City's existing pay plan to reflect authorized pay increases for general employees, and declaring an effective date.

17. Hold a public hearing to consider adopting a City Council resolution to support a Low Income Housing Tax Credit (LIHTC) application by McSha Properties, Inc. to the Oklahoma Housing Finance Agency (OHFA), receive input from citizens, and authorize the Mayor and City Clerk to execute the document. Exhibits: Resolution No. 01-____; Letter.

Mayor Powell asked if this was the property on 52nd Street and response was yes. He said he had received signatures in protest and had found no one in favor of it.

Theresa Goss, McSha Properties, 100 48th Avenue SW, Norman, Oklahoma, said Larry Shaver was also present and was one of the principals of McSha. She said the item is to propose to build an apartment complex with the use of the housing tax credit funds; the name is somewhat misleading because it says low income housing. She said it certainly is not public housing, it is not Section 8 housing, it is to serve low to moderate income tenants. Goss said the income base for a family of four is almost \$24,000 which is not low income housing. She said they have a property in Lawton now called Willow Park Apartments on Maple, and probably 50% of those tenants could qualify to live in this apartment complex, so the name is somewhat misleading.

Baxter said there were a lot of pictures in the book Goss distributed and asked which picture this particular building would look like. Goss said one photo is a project they just finished in Wagoner, Oklahoma, and it will be the exact same product, it is in the very back. She said she had also included a summary of the number of unit breakdowns, the rent that will be charged and the income limits.

Baxter said he had been contacted by quite a few people who live in the Country Club area, mainly people on 45th Street, they have sent a letter with 27 signatures on it and they all do oppose the construction of that apartment complex in their back yard.

Goss said when people hear low income housing, they think it will be bus loads of people who will terrorize the area and are without jobs or cars. She said McSha is the second largest apartment owner, manager in Oklahoma, they have about 7,000 apartment units and the company takes great pride in the care of them, having won many awards from the apartment association. There are strict tenant selection guidelines; no felons are allowed, tenants must have jobs and credit references and anyone that has a grease fire in the kitchen is evicted because it could affect all of the neighbors and the community. Goss said with the housing tax credit funding, they are obligated to keep and maintain these properties for 40 years, not only by the State of Oklahoma but also by the Internal Revenue Service.

Goss said she had spoken with Marsha Moody in Lawton who advised her she went door to door and that she is

also a Section 8 landlord and feels that apartment dwellers are not what this city needs, but rather home ownership. She said she agreed that was important but many people do not want the upkeep of the home or cannot have a home so there is a need for apartments in Lawton. Goss said they do extensive studies before going to any community because it is a big investment so they consult market analysts and the State Housing Department to see where there is a need, and they have investors on the line and must guarantee they have tenants in the units. She said they already have an apartment complex in Lawton so they are already part of the community.

Moeller said Goss said they own Willow Park and that is one of the cleanest areas on the street and is well maintained. She said the rents are not low income rents, they are from \$369 for one bedroom to \$615 for three bedrooms.

Hanna asked if security would be provided. Goss said the on-site manager will live there, they have limited access gates and courtesy patrols. Hanna asked if the gates are locked. Goss said they have different types, key pads, locks. Hanna asked if the property would be closed to the general public. Goss said they are still in the design phase, but all of their other properties have limited access. Hanna asked if security cameras would be on site. Goss said they are working with the architect and must meet with the city about building codes. Hanna said the cameras do a good job at other complexes in Lawton.

Purcell asked if it would cost the City of Lawton any money to do this, either from CDBG or HOME or any other source. Frank Pondrom, Director of Housing and Community Development, said the application is competitive and points are given for having support from the city, and the McSha Properties have not requested financial assistance from the city at this point in time.

Purcell said from the information and the pictures, the apartments did not appear to be low income. Mayor Powell asked why the agenda item says low income if that is not the case. Purcell said that was his question. Goss said that is the name the Internal Revenue Service gave the program in 1986. Mayor Powell said then it is low income, if that is the name they gave it, then that is what it is. Goss said based upon the income limits, it really is not. Mayor Powell asked if the rentals were based upon the amount of money a person makes or does not make. Goss said there is a maximum they cannot make. Baxter asked if a man making \$50,000 a year could rent one of the apartments. Goss said the maximum is \$24,000 per family.

Haywood asked if these are Section 8 homes. Goss said they are not Section 8 and there is no public assistance in this; if a Section 8 tenant came in with a voucher and met the criteria, they could not discriminate against them because they are Section 8.

Shanklin said there is an advantage somewhere for somebody and asked if it was borrowing federal money. Goss said they apply for housing tax credit through the State, and if they are awarded those credits, they will sell them to an investor and if it costs them \$8 million to build this development and they are granted \$4 million in tax credits, their investor will buy those tax credits at 70 or 80 cents on the dollar, which will leave them with \$4 million of a loan that they will have to debt service, rather than \$8 million. Goss said it is a tax write off for the investor who provides them upfront cash that they do not have to debt service, and it provides the rents are market rate.

PUBLIC HEARING OPENED.

Marsha Moody said she and her husband own property at 16 SW 50th and in Country Club Heights. She said she is a private owner, landlord and approximately 50% of her housing is Section 8 and all her rent homes are low income. Moody said she was not afraid of mixing residential and commercial, but this neighborhood would not be a good site for the apartments because it is all one story homes and the proposed site is at the top of a hill so it will be in all the back yards. She said 52nd is the only one lane thoroughfare left that is not projected to be converted to two lanes in either the five or ten year plan; there is also the railroad track and the school and throwing 90 more families into that congestion would not be good.

Moody said Country Club Heights and Eisenhower schools are pretty full already. She said this is an eight acre site but there is a railroad on one side, there have to be easements and had heard they had to have at least a 100 foot easement off the railroad track, so that would take off of the eight acres, then you have 90 units on whatever amount of land is left. Moody said she was having a problem getting answers on exactly what was planned.

Moody said a 50 unit low income housing project has already been approved for Lawton this summer. She said the 2000 census figures have not been received so no one really knows what the housing needs are, but many subdivisions have many empty houses and many are boarded up or need to be. Moody said there is not a need for more low income housing. She said the minute Rita Love's office got 300 Section 8 vouchers left over from Tulsa, people were running to get out of apartments and wanted single family homes. Moody asked why apartments needed the security systems and said the reason for the need should be considered. She said this project is still in the planning stages and the city does not know what the need is until the census figures are received.

Purcell asked if Moody objected because it was low income housing or if she would object anyway because they are going to build 90 units. Moody said she objects because of the site, which is only eight acres, it is a bad location, and all the homes in the area are one story. She said the neighborhood is not designed to pick up 90 units, the roads are not adequate for it. Purcell said if these apartments were high income, Moody would still object. Moody said she would object to having apartments on that site. Baxter said the apartments would be two story and the residents did not want people looking in their back yards.

Devine asked Goss if they were totally set on having the apartments at this location. Goss said they had spent several months in Lawton looking at land; it is close to schools and in a nice neighborhood. Goss said they are not targeting the low income tenants but were targeting newly weds, secretaries, people just starting out in their careers that are on their way up to buying a home. Devine said there are vacant, dilapidated apartment complexes that could possibly be bought for a little bit of nothing. Goss said they do not do a lot of rehab. Mayor Powell asked if they could get any tax credits on them. Goss said you can but there are a lot of hidden costs in rehab; they like this site, it is zoned multi-family so anyone could actually build an apartment complex there and they are just asking the city for approval because they want to be part of the community and be upfront about what they were doing.

Jim Rush, 114 SW 45th Street, said he did not want this in his back yard, just like the other man that did not want the Wal Mart. He said he turned in the names in protest, he has lived in this same place for 35 years and did not want it in his back yard. Rush said the lady can say they will take care of it but the first thing they will do is sell it to someone else then there will be a junk yard back there.

Goss said they are obligated for 40 years and cannot just sell it; they are obligated to the State and to the Internal Revenue Service to not only make sure that it is rent restricted but also that it is maintained to meet health and safety codes, so they have a lot of eyes on them and it is not like a regular landlord that could walk away from it, they have too many investors at stake.

Mayor Powell asked how many persons would be housed in one unit. Goss said there will be 10 three bedroom units, 14 one bedroom units, and 66 two bedroom units. Mayor Powell said 90 units on seven acres is a legitimate concern. Goss said they have one in Duncan that is seven acres that has 90 units, and a similar one in Pryor. Goss said they are working with the architect and engineer to place the buildings to comply with the city requirements about the railroad footage; the other concern was the two story, and many of their apartments are next to residential homes so they always put up stockade fences and landscaping so that they are not looking in anyone's back yard.

PUBLIC HEARING CLOSED.

Mayor Powell said he received a petition today stating we the property owners in Country Club Heights strongly oppose the 90 unit low income housing project to be located at 610 SW 52nd.

MOVED by Baxter, SECOND by Shanklin, that we do not allow them to develop a 90 unit low income housing area on that land behind Country Club.

Devine asked the location of the apartments in Duncan and Goss said they have not started construction on them yet and they will be on 27th and Green. Devine asked if the photographs are of other properties and it is just something they are planning to build. Goss said it is the same product layout as the one at Wagoner which is completed. Devine asked if they do not have any in Duncan at this time. Goss said no, they were just approved to start construction.

VOTE ON MOTION: AYE: Shanklin, Baxter, Bass, Devine. NAY: Purcell, Moeller, Hanna. ABSTAIN: Haywood. MOTION CARRIED. (Note: Haywood and Devine passed on initial roll call.)

16. Consider the Consolidated Annual Performance and Evaluation Report (CAPER) for Federal Fiscal Year (FFY) 2000, hold a public hearing, receive a briefing on the CAPER, receive input from citizens, and approve the report for submission to HUD. Exhibits: None.

Frank Pondrom, Director of Housing and Community Development, gave a power point presentation of the CAPER explaining funds available and expended in CDBG and in HOME in the various categories. The year started with \$1,088,660; the entitlement during the year was \$1,121,000, there was a prior year adjustment of \$160,000 and program income of \$65,794, so we started the year with funds in the Kansas City Treasury letter of credit of \$2,115,454. During the year there were expenditures of \$1,276,424, leaving at the end of the year a balance of \$839,030 and those funds were earmarked for projects but not yet expended. HUD's performance criteria is you cannot have greater than 1.5 times your annual entitlement in the bank at the end of the year and we were well within that criteria.

Pondrom said at least 75% of the expenditures, excluding admin and planning, must be for activities to benefit low

and moderate income persons. The total expenditure was \$1,276,424; planning and admin funds were \$227,666, so the funds subject to the low and moderate criteria were \$1,048,758; that percentage was 94.8%, which well exceeded the HUD criteria in this particular performance.

Pondrom said no more than 15% of the expenditures may be for public service activities; at the end of the year we had expenditures on public service activities and a net obligation of \$186,973; program income received during the preceding year was \$81,730; the entitlement grant was \$1,121,000 and the sum of the grant and program income was \$1,202,730. This represented 15.5%; the benchmark criteria was 15% so we failed to meet that by half of a percent. He had advised the area office about it and they said it would not be too big of an issue as this is a multi-year program; during the year we spent funds that had been allocated from the year before so it was a carry over and that was why we went over the 15%. A procedure has been instituted where we earmark funds at the end of the year so we spend them during that fiscal year so this problem should not happen again.

Pondrom said no more than 20% of the expenditures can be for administration; we had \$227,666 for admin. The amount subject to the planning and admin cap was \$1,186,794 so we are at 19.2% which is within HUD's criteria.

Pondrom gave a breakdown of expenditures stating \$227,666 was spent for administration; \$265,169 for housing rehabilitation; \$53,669 in emergency home repair; \$2,000 in the housing improvements program; \$30,400 in housing counseling; \$187,036 in public services; economic development \$152,157; \$35,786 in park improvements; \$99,986 in public facilities; \$116,750 in street improvements, and \$111,652. He said that is where the total of \$1,276,000 was spent.

Pondrom said we spent \$265,169 on the owner-occupied rehab and assisted five units; that amount includes program delivery costs of \$186,000. The actual amount that went to homes was \$78,721 for those five homes. Baker asked Pondrom to explain further. Pondrom said that includes the Housing Assistance Division staff whose time is charged directly to that rehabilitation line item. Shanklin asked if they do remodeling. Pondrom said four staff members mainly do housing rehabilitation; this year we did all of the other work involved in housing, emergency home repair, home improvements, and the first time homebuyer, a lot of the admin activities for the HOME program because it has only a 10% admin; all of that was charged right to the one item of \$265,169 and that is why that looks like a very large number for just assisting five units but the actual administrative service delivery for those five units was part of that, but also part of that was admin costs for the other housing related programs. Purcell asked why the administration costs were not properly charged to administration. Pondrom said they would have been over the 20% cap.

Pondrom said in the HOME program we started the year with \$884,526 and this is a separate grant program from CDBG. Owner rehab was assisted with \$20,886. Tenant based rental assistance was \$105,172. Community Housing Development Organizations spent \$286,282. First time homebuyer spent \$326,873. Admin was \$145,312, for a total of the \$884,525. He reviewed the units produced as a result of these expenditures. Shanklin asked if \$18,000 was spent demolishing the house that had mold. Pondrom said that was part of it, but it included down payments, mowing and appraisals.

Pondrom said HUD looks at how fast the money is spent on the HOME program. The City is required to match the funds spent, and the year began with \$780,068 in excess match; during the year we provided \$14,372 in match contributions. The match for last year was \$83,089 so we ended the period with \$711,350 so we will not have to ask the general fund for any money for match since there is a lot available. In the HOME program we have two years to commit the funds and five years for the actual expenditures. Over \$664,000 was spent, we get about \$550,000 per year; at this rate we will maintain the commitment to met HUD's criteria.

Pondrom said the actual report is over 150 pages and he reviewed the contents.

Shanklin asked if there was close to \$1 million that had accumulated and how can it be spent. Pondrom said last year they reprogrammed \$160,000 but those were funds that had already been identified so it was not any new funds. Pondrom said the program income is about \$50,000 a year.

Purcell asked about reprogramming money for this year in personal services that was saved from MedTrans being operated at a lower cost. Pondrom said the priority was to get this report to HUD and they will look at that situation to see if there are any funds to be reprogrammed. Purcell restated his question and asked when Council would get to consider the issue. Pondrom said funds were identified and made available for the neighborhood strategy area, and the entire 15% that was available last year was programmed. Haywood said Lisa Stein's group did not get enough money and that was what Purcell was referring to. Purcell said there was a savings on the operation of MedTrans due to the bid. Pondrom said he would look into it and provide an answer.

PUBLIC HEARING OPENED. No one appeared to speak and the public hearing was closed.

Shanklin asked how MedTrans was doing with the new operator. Pondrom said they are doing OK, there have been a couple of complaints but there were complaints on the other program so they are doing right. Pondrom said their

insurance expired and we had to get a reinstatement so they are having a few glitches as any new operation will but on the whole they are doing fine.

MOVED by Haywood, SECOND by Hanna, to approve the report for submission to HUD and authorize the Mayor to sign the approved documents. AYE: Shanklin, Moeller, Haywood, Baxter, Bass, Hanna, Devine, Purcell. NAY: None. MOTION CARRIED.

21. Consider approving a resolution authorizing modification of the City of Lawton pay plan necessary to reclassify the Assistant Director of Planning Position. Exhibits: Resolution No. 01-180; Background Documents.

Baker said there is a procedure where directors can request reclassification of positions, and the proper procedure was followed on the Assistant Director Planning position, the job description was redone and updated, and point factored out based upon a list of criteria. He said the recommendation that came to him was to change the pay grade from M9 to M10 and he concurred and recommended approval.

Purcell asked if Council was approving going from M9 to M10 or if it was also the specific step in M10 in this motion. Baker said Council is not approving the step, just the grade, and he would look at the step, and normally we go to a step that would insure a minimum of 5% but we have done it different ways in the past, but Council is only approving the pay grade from 9 to 10.

Bass said one memo shows Baker wanted to hold it off until mid July and asked why it was done now. Baker said that was last year, he had advised directors he did not want to consider any more reclassifications last fiscal year and that he would look at those that were pending in mid July after the budget was done, and this has been pending since that time and it has taken quite a bit of time and has just now got to the point of bringing it to Council. Bass asked if the reclassification process had been completed and Baker said yes.

Hanna asked if the pay raise will be \$1,351 for this individual. Baxter said more than that and Baker agreed.

Purcell said he did not have a problem going to 10 but had a problem going to the last step because now you will have someone immediately at the highest step and they cannot go any further. He said he understood there had to be some increase in going from 9 to 10, but he hoped it would not be to the last step, and that is the City Manager's prerogative, but you will have a person right after being reclassified that is at the highest step and they are never eligible again for a merit raise and next time a request would be sent to go to 11.

MOVED by Haywood, SECOND by Purcell, to approve Resolution No. 01-180. AYE: Haywood, Hanna, Purcell, Shanklin. NAY: Moeller, Baxter, Bass, Devine. TIE VOTE, MAYOR VOTED YES, MOTION CARRIED. (Note: Hanna passed on initial roll call.)

(Title) Resolution No. 01-180

A resolution approving revisions to the City's existing pay plan to reflect a revised classification for the Assistant Planning Director position and declaring an effective date.

Shanklin asked how much the raise was. Baker said it depends on what step she is placed in and he would place her in the lowest step possible to give her an increase and would not put her at the top of the pay range.

22. Consider preparation of a separate City Emergency Operations Plan (EOP) and establishment of a City Emergency Operations Center (EOC). Exhibits: None.

Baker said since the spring 1999 storm hit Pecan Valley, there has been debate about whether the citizens of Lawton would be better served by having a separate and distinct emergency operations plan and center; right now it is combined with the county. He said this has never been brought to Council for a decision; it has gone to the EMAC which voted eight to two to recommend to establish a city plan and make arrangements to operate our own center. Baker said he did not want to put time and effort into this if Council was not in favor of it, but it needs to be finished before the spring storm season.

Shanklin asked why the vote was eight to two and if something happened during the storm at Pecan Valley that was in error that no one had been told about. Baker said he did not know if there was an error but there was a lot of debate about how the reaction was handled and the sirens were not sounded, and there was discussion about that criteria.

Shanklin said we do not need to duplicate services at a cost to the taxpayers and the funding source is shown as not applicable but this will cause a new bureaucrat to be hired to handle this for us in time.

Baxter said he had recently resigned as chairman of this committee and this was not the reason for his resignation; this vote came up at the committee more than once and the first time it failed, and some individuals changed their opinion and the vote changed the other direction. He said he supports separating this for the safety of the citizens,

to have our own EOC and EOP, and we pay our guys good money to do those things and we can handle it without that much more additional money.

Baker said we do not see that much more cost to separate this out. The plan can be written in-house and the EOC would be operated with current staff and resources. There is a current contract with the county for \$30,000 a year that goes to provide support of the emergency management office. Baker said if this is separated it does not mean you will not enter into that contract this spring and council will have an opportunity to vote on that at the appropriate time and this would not divorce us from working with the county either. Baker said a liaison would be designated to go to the county center and provide communication and coordination between the city and county.

Purcell asked if the fire chief and police chief both agree we need a separate EOP. Baxter said they are on the committee.

Hanna said yesterday at 12:16 p.m. at 14th and Dearborn the sirens went off and asked if it was supposed to be done at noon. Doug Wells, MIS Director, said it should have been at noon and the dispatcher messed up; Mr. Atkins' secretary called at noon and the dispatchers were busy and did not sound the sirens as soon as they should have in the practice exercise.

MOVED by Bass, SECOND by Devine, to approve the recommended action and direct staff to prepare a City Emergency Operations Plan and establish an Emergency Operations Center prior to April 1, 2002. AYE: Haywood, Baxter, Bass, Hanna, Devine, Purcell, Shanklin, Moeller. NAY: None. MOTION CARRIED.

23. Consider a request from Kerry Magdalino Development Firm on behalf of Zimmerman Properties to construct a low income tax credit apartment project on Block 109 and Block 120, Lawton View Addition and consider setting a public hearing date to consider a Resolution of Support for the project. Exhibits: Original Letter of Request; Amended Letter of Request; General Location Map; Memo from Housing and Community Development Dept.; Additional information on apartment project on file in Planning Department.

Bob Bigham, City Planner, said at the time of the writing of this agenda item, Block 109 belonged to the Lawton Urban Renewal Authority and Block 120 belonged to the City of Lawton; on Friday LURA accepted the deed from the City of Lawton for Block 120, the deed is being prepared and will be filed at the courthouse. Bigham said this firm is wanting several things and the submission date is February 1, which probably cannot be met, but they want to be under contract for the property. He said on December 14 LURA considered a similar request and did not want to enter into negotiations for the sale of the property. Bigham said Pondrom provided a memo saying he would not support a housing project of this kind at this location, therefore, staff is recommending that a public hearing not be set to consider a resolution of support.

Haywood said coming from the airport they wanted it to remain commercial down 11th Street and apartments are not needed there, they should be inside residential areas. He said 11th Street is being cleaned up and residents of Ward 7 wanted it to remain commercial, regardless of who gets the property. Haywood said they did not need apartments coming from the airport.

Bigham said on August 28 the council concurred with a land trade between the Zoe Need Program and LURA for Blocks 109 and 120 for 24 acres at 6th and Bishop Road, and LURA has begun the process of appraising the property and the outcome will be known at a later date, and we are talking about the same property as the land trade discussed previously.

MOVED by Haywood, SECOND by Baxter, that we not consider setting a public hearing to consider a resolution of support for this project. AYE: Baxter, Bass, Hanna, Devine, Purcell, Shanklin, Moeller, Haywood. NAY: None. MOTION CARRIED.

24. Consider a cost-sharing agreement to relocate a sewer line located at 2302 SW Lee Boulevard. Exhibits: Agreement; Map; Letter.

Bob Bigham, Planning Director, said this is at the corner of Lee and Sheridan; during the May wind storm there was considerable damage to the Burk Auto Glass building, and they decided to rebuild and enlarge their building. In the process of reviewing the plans, it was determined that there was a public sewer line without an easement in the location they proposed to put their building. An arrangement has been made and is presented in this agreement that has been executed by the Burks to where the City would provide 225 feet of pipe and three manholes, and waive the offsite improvement fees and inspection fees, and the Burks will pay for the preparation of the construction plans, obtain the necessary permits from DEQ, install all of the materials that will be provided by the City, and provide the City with a 25 foot utility easement and provide a maintenance bond. He said the agreement is in the best interest of both parties, and gets the public sewer line relocated out of the way of their proposed construction and seems to be an equitable cost sharing arrangement.

Baxter said he was contacted a couple of times by some gentlemen who are working on this and he appreciated the city trying to work with that particular contractor in coming up with a solution at least to see if this can be done.

He said there were some concerns about curbing and asked if those concerns had been taken care of. Baker said he did not know if they had been taken care of to the satisfaction of the owner but they told them that curbing would be required at that intersection of Lee Boulevard and Sheridan. Baker said a couple of years ago the Council changed the code that gave flexibility to Building Development and the City Manager where there was not existing curbing and there was a case south on Sheridan Road, but because this is located at this busy intersection we felt it was a valid requirement and they told them that.

Baxter said the building has been on that corner for many years with no curb on Sheridan Road that whole time, then mother nature tears the man's building up and all of the sudden we require him to put in a curb and that is not right. Baker said the concern was people would be turning off of Sheridan Road and stop right there by the intersection and you need a little space to clear the intersection; the owner can appeal to the Building Development Appeal Board if they do not like the decision. Baxter said if it was a concern, why has it not been a concern over the past 20 years, there has not ever been a curb there. Baker said they did not have the need to get another building permit. Devine said it is a simple bureaucracy where we make the homeowner or property owner pay for something the city should have done many years ago. Baxter said it was not right and Devine agreed.

Purcell said he did not think this \$4,147 should be paid from Council Contingency, there is an account for economic development and it fits there because it is helping a business to continue their operation.

Haywood said this is the second time the wind has torn up this building and they are now located on Highway 277, and they were the first ones to move from downtown to this location through urban renewal.

Shanklin asked why we did not know the sewer line was there and when was it dedicated. Bigham said when the application was made for the building permit it went through the review channels and it was identified; we knew we had a line there but in checking we found we did not have the proper utility easement for the sewer line. Shanklin said staff usually says it was not dedicated so it is not ours; we had a million dollar facility built on 82nd Street but the sewer line was not dedicated; the water line to the new Fort Sill Credit Union was sitting back 30 or 40 feet off of Lee Boulevard and it was not dedicated or was not in the right of way. Shanklin said he wanted to prove a point that when you come in and say it has not been dedicated, that does not mean it has not been dedicated, it means we lost it somewhere, somebody knew it was built and it was there, and it is not for that individual or a councilmember to get behind someone's desk and put it in the computer for them. Shanklin said we should not hold some people's feet to the fire just because we cannot find it.

Devine asked where the sewer line originates. Bigham said a lot of the properties from the west flow into it and it serves a multitude of properties. Devine said there is a manhole at the west end of the shopping center on Cornish Street, that is where the manhole originates; are we going to say now that we own that sewer line all the way down through there that runs underneath the Stop and Go building and all down through there, are we going to admit that we own all of that. Bigham said he was not familiar with all of those encroachments. Vincent said the map he saw showed it went a block and a half east of Lee Boulevard and he did not think it went all the way to Cornish but he was not positive. Vincent said we have no easement for that and it appears based on the 20 year old drawings that we were able to find that the sewer was built at the request of a developer with appropriate manholes and all of it was done to code and we just never got an easement for some reason, we do not have easements for the whole block and a half.

Devine said all at once we decide we want the sewer line and all the easements to go around it, and in turn you have this man between a rock and a hard place. He said the city is telling him he has to put in the curbing or the city will not give him the sewer line, and it is the same story we go through all the time. Shanklin said he thought there was a need for curbing to keep traffic going right by the light. Baxter said there is curb on Lee but not on Sheridan. Shanklin said you are not going to make them put it on Sheridan, are you. Baxter said yes, that was what they just said even though there has not been a curb there for 40 years. Shanklin said they ran into the same thing at Cobb's Carpet and he was going to have to build a gutter and curb and we ended up not doing it.

MOVED by Haywood, SECOND by Baxter, to approve the proposed cost sharing agreement for the relocation of the sewer line located at 2302 SW Lee Boulevard and authorize the Mayor and City Clerk to execute the agreement.

Purcell asked if it was agreeable to use the economic development as the funding source. Haywood added that as part of the motion. Shanklin said the economic fund should also be used to build the curb and Devine agreed. Vincent said the curbing is not part of the agenda item. Mayor Powell said the curbing could be brought back at a later time and funded from economic development. Baker said if it is pretty well the consensus of the Council that you do not want us to require that curbing, we won't require it, and we will bring an agenda item to fund it if we think it is important enough to put it in.

VOTE ON MOTION: AYE: Bass, Hanna, Devine, Purcell, Shanklin, Moeller, Haywood, Baxter. NAY: None. MOTION CARRIED.

25. Consider approving the construction plans for the relocation of a sewer line located at 2302 SW Lee

Boulevard. Exhibits: Map.

Bigham said this is a continuation of the last item and the plans are recommended for approval subject to four conditions listed in the commentary, nothing significant.

MOVED by Bass, SECOND by Moeller, to approve the construction plans for the relocation of a sewer line located at 2302 SW Lee Boulevard subject to conditions. AYE: Hanna, Devine, Purcell, Shanklin, Moeller, Haywood, Baxter, Bass. NAY: None. MOTION CARRIED.

ADDENDUM: Receive a status report on the remediation of the mold from the Patterson Community Center and take appropriate action. Exhibits: None.

Kim Shahan, Acting Parks & Recreation Director, said the council declared an emergency and waived the competitive bidding requirements for mold remediation. Temporary closure of the facility has caused numerous schedule changes for the organizations that use it monthly; it is also a county nutrition site but the program is being continued at the Galilee Baptist Church located across the street from the Center. The regular youth and family programs have been completely stopped due to the temporary closing of the facility. He said staff has researched the cost of mold remediation and explored funding possibilities. Shahan said with the cost of the remediation being higher than expected and with limited funding being able to be identified, they are requesting direction.

Devine asked what the costs were. Shahan said the estimates range from \$66,940 to \$174,000 by three different companies. Shanklin asked if they have to wear masks and have doctors standing by or if you can just clean it up with chemicals and if you have to be certified. Baxter said they would have masks.

Baxter said the funding shows \$40,000 would be taken from the soccer field at McMahan Park. Shahan said that line item had been included as part of McMahan Park improvements so it was duplicated and no funding is being taken away from the soccer facility.

Purcell asked how much more money they needed. Shahan said the estimates are \$66,000 to \$174,000, and he could not communicate exactly what the bids are but he was trying to show that there is a problem; there is a possibility of spending \$66,000 and not take care of all of the remediation; one bid was \$174,000 that says they will completely take care of all remediation; one bid was \$82,000 that says they will complete all remediation. Purcell asked if CDBG funds could be used. Pondrom said yes. Purcell asked how much was available in CDBG and Pondrom said there was \$40,000 in contingency or council could consider canceling other projects if needed.

Mayor Powell said we have only established that there is mold but not the related price due to all of the questions such as the estimates not including cost to rebuild the interior and that could be quite high and you do not know what you are dealing with. He suggested staff be directed to get something very firm as to what can be done, and in what manner so they could make a good decision. Haywood said they had \$40,000 from the soccer item and \$40,000 from CDBG so they have \$80,000 to work with.

Shanklin said an ozone machine will be put in tomorrow because the owner thinks it will kill the mold. Baxter said he did not believe it would kill the mold. Bass asked if the leaking roof had been fixed. Shahan said yes. Bass said the man said it would have a chance at killing the mold. Shanklin said we should know something in five to ten working days and asked if the mold was only in one area. Baker said they had established as well as they can the extent but the problem is some of the bids say when they start to work, if they discover a larger problem, then their estimate is not going to be a good number. Baker said it was placed on the agenda because there is not another meeting until January and council declared it an emergency in November and he wanted them to know what kind of problems they are running into as far as the cost being much greater than we ever thought it would be and Patterson Center is still closed. Baker said staff needs more time, if the machine works it will be a miracle, and if it does not, we need to get some firm figures but he wanted to provide an update since it was declared an emergency.

Shahan said after the machine is in place for several days, testing will be required and he recommended that Environmental Solutions Services be asked to do the testing as they did the initial test, and the cost will be about \$1,100. Shanklin asked if it was a local firm and Shahan said they are from Oklahoma City. Mayor Powell asked if there was a local firm and Shahan said Jeff Welch locates the service and he was not sure of that. Mayor Powell said Shahan needs to be given authority to find someone locally to do this and if not, go back to the original group that found the mold.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Baxter asked the City Manager to look into the 5000 block of Country Club Drive where high school kids are parking on the street; at one time there were no parking signs but now they are down and one is partly down and residents are not sure what the regulations are so a determination and proper enforcement are needed. Mayor Powell said he talked to Barry Beauchamp about this and the district will take care of the parking problem that is

really causing a bottleneck in traffic. Baxter said he appreciated that and would like an answer as to whether parking is allowed on one side of that road or another. Baker said he spoke with a resident who does not necessarily want no parking because that would restrict him and his family and visitors from parking on the street; the person wanted no parking except for residents and their guests and he did not think that was possible but he would check with the City Attorney. Baker said the residents are concerned and they had been talking with Beauchamp and they would continue to work on it and he would get Baxter an answer.

Haywood thanked Neighborhood Services, there was a service station at 1701 SW 11th Street by the employment office and they dug up the gas tanks and he was thrilled for that, so 11th Street will be cleaned up real soon. He said there is still a problem with refrigerators at 907 SW Railroad, and it will likely continue until something is provided at the landfill to remove the refrigerant because otherwise people will drop them off and not pay that \$80 to remove the refrigerant before they can dispose of them. Baker said another council member had given him a suggestion on that and they were pursuing it; the problem is this property owner is kind of an innocent victim and we must deal with the property owner and give him citations when the person that is renting the property may be part of the problem.

Haywood thanked Galilee Missionary Baptist Church for letting their facility be used to support the nutrition site while Patterson Center is out of use. He thanked everyone for their prayers for him and said that he planned to recover.

Shanklin said the 200 block of Bell is getting out of hand. He asked if Baker had talked with Beauchamp about the foot bridge and Baker said yes. Shanklin said he had the answers to the questions on the water study and some answers seemed evasive. He said water should not be sold cheaper to those outside of town than those in town. Shanklin said a \$1 increase will raise \$400,000 a year and we cannot have all these soccer fields unless someone has some money and the only way to get it is to generate it from water revenues. He said a meeting may be needed for that and some of them may not even be here for the next budget session and he did not want to just forget about it; it is a legitimate concern to get a reasonable price for water. Shanklin said the firm just told them the cost, which does not allow for profit or wear and tear and there were several issues they did not address.

Shanklin asked if he was correct in saying the citizens of Lawton are not obligated to furnish parking for a business anywhere in Lawton on city streets, are we obligated for this in any way, shape, form or fashion. Vincent said legally no.

Devine said Mr. Jackson is leaving around the first of the year and he sure hated to see that happen, he has done a fantastic job and it has been a pleasure to work with him, and he had never asked him for anything that he did not try his best to do. He apologized for missing the meeting yesterday morning and said he had prior commitments. Devine said Shanklin mentioned rate hikes and it came out on the front of the paper this morning about utility rate hikes and he would say again that he would not support any utility rate hikes for our residents of Lawton. He said he did not think it was fair for those people to take the brunt every time we needed to balance the budget, and wage increase were approved tonight, so he wondered where we need to cut out or slow down spending.

Devine said something was mentioned earlier about Wal Mart, and maybe he was wrong for not coming forward but he knew or had a pretty good idea two months ago that it was coming to Lawton and he felt a lot of other people knew it and would not admit it, and he was not accusing anyone, and maybe he was wrong, but it would never happen again. He said if the public wants to know what is coming to Lawton and if that is what they are expecting out of us, we need to step forward and let them know what could be coming to their back yard. Devine apologized to the people for not bringing it forward and said he did not realize they felt that way about it and it would not happen again from him.

Purcell wished everyone a happy holiday and reiterated Devine's comments about Mr. Jackson. He said something was needed to recognize Jackson's service and maybe Baker could have something done in that regard if Council agreed.

Hanna said we will miss Action Jackson. He wished everyone happy holidays and said the hookers on Lawton Avenue wanted to say the same thing to the City Manager.

Bass wished everyone happy holidays. Haywood thanked Jackson for coming here and said we would miss him.

Baker said there will a blood drive at City Hall tomorrow from 1 to 5 p.m. He publicly thanked Jackson for his service to the community and his loyalty to him and the extremely hard work he has done over the last few years; we will have a huge void in the City Manager's office. Baker said Jackson was one of the best selections he had ever made and it will be a big loss for the community and for him personally; he wished Jackson and his wife the best, and it is a deal made in heaven for his family, and he thanked him for his support and loyalty and hard work.

Mayor Powell read a letter from the Mayor of Elgin requesting negotiations with Lawton for Elgin to purchase water for future needs. He said a meeting would be called regarding the rate study and asked the City Manager to

distribute pertinent information prior to such a meeting.

Jackson thanked the Mayor and Council for the opportunity to work as the Assistant City Manager, and said it had been a pleasure and privilege. He said many people who do not have a lot of dealings with the city do not realize the hard work and effort that the council puts into all of its decisions, some very difficult to please everyone and a lot of times that is not possible but members put a great deal of effort into it and research everything thoroughly because they are concerned about the welfare of the community. Jackson said he appreciated working with the department heads who are a very hard working group of people and the employees are excellent, second to none; the citizens are a good group of people who are concerned about their community. He wished everyone the best for the future ahead.

Mayor Powell wished Jackson and his wife nothing but the best and wished them well.

BUSINESS ITEMS:

26. Pursuant to Section 307B4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss a pending Workers' Compensation claim of Rudolph A. Lopez, 2000-11438 Y, and if necessary, take appropriate action in open session. Exhibits: None.

27. Pursuant to Section 307B4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss a pending claim of Frank and Wanda Batterson, on behalf of the Estate of Daniel Batterson, and if necessary, take appropriate action in open session. Exhibits: None.

28. Pursuant to Section 307B4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss action remaining in the pending lawsuit International Association of Firefighters (IAFF), Local 1882 v. County Election Board, et. al. Oklahoma Court of Civil Appeals Case No. 94,530 and IAFF, Local 1882 v. County Election Board, et. al. District Court of Comanche County Case No. CJ-99-1388; and take appropriate action, if necessary, in open session.

MOVED by Purcell, SECOND by Hanna, to convene in executive session as shown on the agenda and as recommended by the legal staff. AYE: Devine, Purcell, Shanklin, Moeller, Haywood, Baxter, Bass, Hanna. NAY: None. MOTION CARRIED.

The Mayor and Council convened in executive session at approximately 10:00 p.m. and reconvened in open session at approximately 10:30 p.m. with roll call reflecting all members present.

Vincent reported on Item 26 that pursuant to Section 307B4, Title 25, Oklahoma Statutes, the council convened in executive session to consider the current Workers' Compensation claim of Rudolph A. Lopez, 2000-11438 Y. He requested authorization to negotiate a joint petition settlement.

MOVED by Devine, SECOND by Purcell, to grant authorization to negotiate a joint petition settlement. AYE: Shanklin, Moeller, Haywood, Baxter, Bass, Hanna, Devine, Purcell. NAY: None. MOTION CARRIED.

Vincent reported on Item 27 that pursuant to Section 307B4, Title 25, Oklahoma Statutes, the council convened in executive session to discuss a pending claim of Frank and Wanda Batterson, on behalf of the Estate of Daniel Batterson, and no action is required following that discussion.

Vincent reported on Item 28 that pursuant to Section 307B4, Title 25, Oklahoma Statutes, the council convened in executive session to consider the pending litigation International Association of Firefighters (IAFF), Local 1882 v. County Election Board, et. al. Oklahoma Court of Civil Appeals Case No. 94,530 and IAFF, Local 1882 v. County Election Board, et. al. District Court of Comanche County Case No. CJ-99-1388. He said no action is required at this time, that concluded his report and that nothing else was discussed.

Mayor Powell said Jackson's last day will be January 4. He offered to serve lunch at his store for the council, having Jackson as their guest, and said we can do that legally and it is not a meeting and no business would be conducted.

There being no further business to consider, the meeting adjourned at 10:35 p.m. upon motion, second and roll call vote.