



Mayor Powell said he accepted the motion to table, as well as setting the date. He read the agenda item title at this time for the record.

Purcell asked if Shanklin wanted to select a date and Shanklin said the Mayor can pick a date. Mayor Powell said he would look at it in the morning and be in touch with Council no later than day after tomorrow to give a date that will be set for this.

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

Mayor Powell asked that Item 8 be considered at this time; there was no objection.

8. Consider waiving Council Rules of Procedure and if waived, discuss negotiations for the sale of water to power companies and take appropriate action. Exhibits: None.

MOVED by Smith, SECOND by Shanklin, to waive the Council Rules of Procedure and discuss this issue. AYE: Moeller, Haywood, Smith, Hanna, Devine, Purcell, Shanklin, Baxter. NAY: None. MOTION CARRIED.

This item is inserted verbatim as follows:

Mayor: There's been a lot of discussion on what was said, what was done and what action taken. I'll ask the City Attorney at this time to read exactly what the action of Council was on that particular Council meeting.

Vincent: This is from the minutes of the meeting of January....

Mayor: If we could just a minute, please, let's excuse those people. Mr. Smith has advised me that on the animal, number two, item number two, that he's going to pull that because of a reason. He's asked me to do that, item number two, so the reason I announce that at this time, those of you in attendance who are here for item number two, and number two only, I'd like you to know it is going to be pulled. It will not be discussed this evening.

Smith: I'm waiting for more information to come in on that. We'll reschedule it at a further meeting, probably the next Council meeting.

Mayor: Okay, thank you. Now, if we could, please continue, Mr. Vincent.

Vincent: Yes. As I was saying, this is from the January 23, 2001, meeting, item number two "discuss interest of power generation companies in purchasing water from the City, provide direction to staff and take appropriate action. Mayor Powell asked if Mr. Baker had a recommendation. Baker said based on presentations and the value to the community, it appeared that Energetix proposal would be in the best interest of the community and he would recommend that we be authorized to enter into negotiations with that firm. Smith said he also felt Energetix had the best presentation and had a lot more to offer. Moved by Smith, Seconded by Mr. Haywood, to direct staff to start negotiations with Energetix, and the motion carried eight to zero."

Mayor: Thank you very much. How do you want to handle this this evening, Council? There are several people here that I know that would like to speak to this issue. If you don't mind, I think probably if memory serves me right Energetix went first the last time, if there's a representative here from SmithCo if you'd like to go first this evening, I know I received a lot of mail, as well as Council members probably have, I haven't talked to them about it but I'm sure they received the same thing that I have and the City Manager so if you would like to go first and make your wishes known we invite you to do that at this time. I will announce this one time as you come forward for the matter of record if you would, state your name and your address and your concern for being here please.

Kerr: Thank you, Mr. Mayor, I'm Bob Kerr, my address is 11204 Stratford Drive in Oklahoma City. I am representing Smith Cogeneration. I have with me Hugh Berryman who is our chief engineer.

Berryman: Thank you. My name's Hugh Berryman. I live at 2701 Grand Boulevard in Oklahoma City. I'm Vice President of Engineering and Development for Smith Cogeneration.

Kerr: Thank you. Mr. Mayor and members of the Council, we are here tonight to urge that the City Council continue the path that they commenced at your April 10th meeting. I should back up and say Don Smith had hoped to be here with you tonight as he was at that meeting. He is in Boston, Massachusetts, yesterday and today and unable to be with us tonight. I think the action that was taken at that meeting was appropriate in the most important context as it relates to your responsibilities to be the fiduciaries for the City of Lawton, both in an economic development context and also in a general business practice context. Simply put, when you have three purchasers for your effluent water, it makes little sense that I can see in limiting yourself to negotiation to only one of those three purchasers. I think the City Council, I think it's unfortunate that this has become a cause celeb, a

political cause celeb as it were, that the Council has been denigrated for taking action that any objective observer could only view as being in the true best interest of the City and its interest in selling to one or more interested purchasers in your effluent water and as we've described, as Don Smith described at that last meeting, and or effluent and or raw water. Obviously the effluent water we believe to be the most cost efficient source of water available in Lawton for our proposed plant. And I would just urge the Council to stay the course that you commenced on April 10 and that is to negotiate with all three of the proposed power plant developers. That just makes good common sense and beyond that we'd be happy to answer any questions that the Council deems necessary in your deliberation.

Mayor: Does anyone desire to ask Mr. Kerr or Mr. Berryman either one, yes sir, Mr. Baxter.

Baxter: I know that some of these people are in this room in relation to where that you people anticipate building your plant. Have you found a new location?

Kerr: I can report to you as of about thirty minutes ago a report we received from our commercial real estate purchasing agent that we anticipate that by the end of the week bringing under contract a new site, yes sir.

Baxter: Farther away from 60th and Gore Boulevard I would hope?

Kerr: Yes sir.

Devine: Mayor, I'd like to ask Mr. Kerr. Mr. Kerr, in this where you're negotiating, I'm not going to try to really pin you down to where it's going to be but is it basically going to be south of Lee Boulevard?

Kerr: If I am, not being a resident of Lawton but in my, my memory and my knowledge of Lawton, the answer to that question is yes. It will also be, as has been our philosophy from the very beginning because this kind of facility adds a huge tax base to the school system here in Lawton, it will be in District 8. It will be within a north-south corridor, the northern end of which was our original proposed site. Am I answering your question? I believe if my memory is serving me, it is, and if I understand through a communication I received from our real estate person that it would be south of Lee Boulevard, yes sir.

Devine: Lee Boulevard is Highway 7 coming from Duncan.

Kerr: Okay, then I can affirm that it is, yes.

Devine: That's what I wanted to make sure. Thank you.

Mayor: Okay. Just in case the question might arise tonight about anything about ODEQ, Mr. Dave Dillon is with us this evening in the audience. He does not intend to speak unless called upon to answer any questions it's my understanding unless he is called upon and then perhaps at that time I'm sure he would be happy to respond. My question, and I don't know this but I'll ask this question, a permit, is it for a location and a location only, meaning that you've applied for a permit there at that location that's been described, now if you go to another location do you have to re-apply?

Kerr: I'll let Hugh answer that. He is in charge of our permitting process.

Berryman: Yes, Mr. Mayor, a location is filed for and a location only when a permit is filed. That is true and a location, we believe a location can be moved and it can be moved within a certain radius. We have yet to propose that to the DEQ but that is our plan.

Mayor: Okay, thanks very much. Any questions by any councilmen? Yes, Mr. Haywood.

Haywood: Okay. Do you plan to build one or two plants?

Kerr: We have always proposed one plant and one plant only.

Mayor: Any other questions from councilmembers?

Kerr: I might, just for Councilman Haywood's edification, add that it is certainly our view based on the air modeling, which is an element, an important element, extremely important element of the permitting process, we believe that one plant at the 600 mega wattage capacity, which is what we have requested in the permitting process, is environmentally sound and stands an extremely good opportunity of receiving a final air permit.

Mayor: Mr. Shanklin, did you have...

Shanklin: I was going to ask, are you applying any place else, another application for another location?

Kerr: Yes sir, we are also under, have submitted an application for a facility that will be located near Pacola, Oklahoma, which is in far eastern Oklahoma, LeFlore County, and actually very close to the Arkansas line for which we happily have received what is called a draft permit last week and which means we have gone into the next step of the permitting process for that facility.

Berryman: If I may, as a sideline, we also held air permits for a project in India and we hold air permits for a project in Bangladesh.

Shanklin: Mayor, I just want to finish this. Yesterday in the Daily Oklahoman there was an article about Sallisaw having a coal fired generation plant and in that story they make reference to 16 pending applications for power plants to be built in Oklahoma. I had occasion to get some material out of Norman, Oklahoma, from an engineering firm that doesn't really show that there will be 16 applications but when is there a saturation point? You can't build 16, I just don't believe we're going to build 16.

Kerr: We do not believe that both in a market context or an electrical grid or market entry if you will, that is of course how power enters the market place that there will be 16 new power plants built in Oklahoma. That's a very subjective analysis. It's kind of like looking in the crystal ball and telling you exactly how the stock market's going to work too.

Shanklin: The first ones there, then, will be the ones that hook on to the grid line first?

Kerr: That is true and we certainly believe under our market analysis that both our facility in Lawton and at Pacola will have a market. Does that answer your question, sir?

Shanklin: Well, I just know we're not going to build 16.

Kerr: And I think you are correct that there is a time line and a project development dynamic in reality which we feel very comfortable that we are ahead of that curve, both in Lawton and at Pacola that will make our plants viable in both places.

Mayor: Okay. Any other questions of the gentleman at the podium? Mr. Kerr, Mr. Berryman, we do appreciate you being with us.

Haywood: I have one more.

Mayor: Okay, I'm sorry.

Haywood: How large is your plant in Pacola, Oklahoma?

Kerr: Sir?

Haywood: How large is the plant going to be?

Kerr: How large?

Haywood: Yes.

Berryman: The plant in Pacola's size is a 1,200 mega watts plant; two plants side by side the same size as this single plant proposed in Lawton.

Kerr: And I might add one other thing that goes to the general context of what Councilman Shanklin was asking. As I've shared I think with several of the members of the Council, we believe that the facility that we will construct at Pacola will help the marketability of electricity generated by our plant in Lawton. An important dynamic in that, at least a market dynamic, but they are not fraternal by any stretch of the imagination but they are symbiotic in a market context.

Berryman: And that plant was sized according to what we believe the carrying capacity of the wire was, just as this plant in Lawton is sized according to what we believe the carrying capacity of the wire here is.

Shanklin: But it's not going to carry two plants then? You're telling me that wire would not carry two plants of the same size?

Berryman: I did not design a larger plant because I did not believe that the wire could carry more than the mega watts I designed.

Mayor: Thank you very much, gentlemen, appreciate your being with us this evening.

Kerr: Thank you for having us.

Smith: I'd like to make one statement real quick. It was stated by Mr. Kerr that, I'm the initiator on this item, it was stated that I brought it forward for political reasons. I want to clear the air on that right now. There were a few principles, not principles, but people involved at Energetix that supported my opponent in the Council race. If I was going to have a political view one way or the other, it would have tended to be against them. This is not political, to me this is economic. We made a decision, we should stand by it.

Mayor: Okay, thank you. I see a representative from Calpine here this evening. Andre, would you like to speak to this issue?

Walker: Mr. Mayor, members of City Council, it's a pleasure to see you all again. Calpine's statement for this action before the Council today is again, as we've stated all along, simply to keep a ...

Mayor: Would you please state your name, please, for the matter of the record, please.

Walker: Thank you very much. Andre Walker, Calpine Corporation, address 700 Milam, Houston, Texas 77002, Suite 800. Again, Calpine's position is to keep everything so to speak on an even playing field. City Council's decision in January was to negotiate with Energetix, as Mr. Vincent just read. Calpine hasn't opposed that decision, hasn't approached Council in any way to express dissatisfaction with that decision. The only thing that we're coming forth with today is to open negotiations up with the other two parties who presented at that January 18th meeting and not to exclude those two parties or to enter into exclusive negotiations with any one party. And the opinion of Calpine is just to keep the flexibility and the advantage of the City of Lawton open and not to put so to speak all the eggs in one basket in the event that, you know, the market place changes, our individual development plans change, you know, anything can happen and we live in a dynamic world so our quest and our request of you all is to again open up the negotiations for the other two parties, not to exclude anyone and in light, the purpose being in the best interest of Lawton.

There are many factors important to power plant development, as you all are becoming very familiar with. Water being a very crucial element, we all need water to run our plants. Air permits as we've discussed are very important, we need air permits for our plant. We need equipment to operate the plant, which it wasn't mentioned in the previous meeting is under a long, extensive lead time for delivery and if that's not purchased by this date that, it's tough to support the project schedules that we've heard discussed, as well as transmission studies. You've got to get transmission out of the area, as well as gas supply. There are many crucial elements to the power plant development. Water is simply one and keeping that open flexibility doesn't limit anybody in any way. As I mentioned in a letter I sent to you all this past Friday, I believe we were all asked in January if we were going to require exclusive negotiating rights. I believe we all answered no. So I would like to understand if anything has changed along those regards. Calpine is not at this time asking for exclusive rights, we are simply asking for the right to negotiate for water.

Mayor: Okay. Any questions of Mr. Walker while he's at the podium?

Shanklin: Yeah, I've got three or four.

Mayor: Yes sir, Mr. Shanklin.

Shanklin: The first one, Mr. Walker, is if you was to come on line second, who's going to pay for expanding or increasing the grid line?

Walker: That would have to be, the way the PSO and any transmission company would work, as you request to interconnect you are responsible for paying for any upgrades caused by the fact that you interconnect. If another party got in first, they would be required to pay for any upgrades the system would need and if somebody came on after and there were additional upgrades required, they would have to pay for those as well.

Shanklin: Could that be over \$100 million?

Walker: I can't answer that question sir.

Shanklin: It could be more than that, couldn't it? I think it is some place, some place right now I think somebody had to pay \$300 million to hook on.

Walker: In my opinion that number sounds fairly high. We haven't experienced that and we've run into transmission upgrades from Texas, Louisiana, California, to New York, across the country, and that number does seem a little bit high, but if a new high voltage circuit was required to be run for a great distance, it is possible, but

from Lawton, that's not very high.

Shanklin: Are you or is your company prepared to put up a performance bond?

Walker: We're prepared to consider it. I can't say at this time that we are prepared to make that decision but that's something that we can consider, not normally in the course of business but if that's something the City's looking at, we can consider that.

Mayor: Any other questions? Mr. Walker, thank you very much.

Haywood: I have something.

Mayor: Well, get your hands up then if you want to talk.

Haywood: I'm like Mr. Shanklin, look to your left.

Mayor: I looked left and I looked right. Hands, thank you sir.

Haywood: Okay, my fault.

Mayor: Thank you sir.

Haywood: Mr. Walker, your company, are they building any plants in the State of Oklahoma?

Walker: We have an operating plant at Pryor, Oklahoma, it's a 110 mega watt facility. We're also in construction today on a facility in Coweta, Oklahoma, a 1,000 mega watt facility, yes.

Haywood: Okay. Let me ask you this. If you did get the contract, would you build one plant or two plants here?

Walker: Our intention right now is to propose to build one facility in the City of Lawton.

Mayor: Anything else, Mr. Haywood?

Haywood: That's all, sir.

Shanklin: Well, Mayor, I'd just like to, do you see a saturation point somewhere?

Walker: You know, that's tough to say, and when we presented in January that's kind of what I was speaking about when we were saying there were many things we must evaluate. There are quite a few proposed projects in the State of Oklahoma today. If all those projects were to go forward, it would certainly inhibit anyone, Calpine, SmithCo, Energetix, whomever, from entering into the State of Oklahoma. Our personal opinion is all those projects will not go forward and that's completely subjective and I cannot sit here and tell you which will and which will not, however, until that point is reached we're going to continue developing in Oklahoma.

Mayor: Ms. Moeller.

Moeller: I almost forgot the question. Just to make sure that I'm with you on the question Mr. Shanklin said, who ever gets to negotiate with PSO on the lines first probably gets the best rate.

Walker: Uh huh.

Moeller: If another company wants to come on then you pay for upgrades but you can get on?

Walker: Yes.

Moeller: And so on down the line, is that correct? If another one comes on, it's the same process?

Walker: Right, and PSO will run a system dynamic model and determine if there are upgrades needed and they will present the cost of doing those upgrades and it's up to the company if they want to, if it makes economic sense if they chose to do that, that is a problem that can be settled. A new transmission line can be built, now that does present regulatory issues and a few other issues but those can also be solved.

Moeller: A new line can be built also?

Walker: Yes.

Moeller: At what point in your construction phase or whatever in all of this development you do, do you do this negotiating? Is that up there with the air quality or does that come first and this come after?

Walker: There's not a specific sequence but at this time in early development we all do a study of the gas infrastructure in the area, we do a study of the transmission, typically we'll file an air permit, start speaking about water, we try to find out the critical elements and we try to get those aligned so we can go for funding, so we can go for approvals, so we can go forth with construction. So before we go into construction certainly we'll have to have an answer to that, we'll have to know what (tape exchanged) and you know all this falls back on whether or not the project makes sense to be done. Part of Councilman Shanklin's question of saturation limits, if the State of Oklahoma can't support another plant then economically that should show up. It's something we try to identify early that if it's a critical part of the official process it needs to come forward.

Mayor: Okay, I think Mr. Shanklin had his hand up.

Shanklin: Well, how long did it take you to get your permit for the Wagoner plant? It is Wagoner, isn't it?

Walker: No, the Coweta facility?

Mayor: Coweta.

Walker: We have an operating facility in Pryor and that plant's been operating since I think the 50's so it's been there a long period of time. The plant in Coweta is under construction, started construction I believe early on this year. That permit I believe, and I'm not 100% certain but I believe that took between nine months to a year.

Shanklin: It took three years?

Walker: Nine months to one year from application to, and we have been issued that permit, that permit is not being reviewed by the DEQ, that permit has been issued.

Mayor: Mr. Walker, thank you very much for your attendance again this evening. We appreciate you very much. I think now we're down to the last presenter as far as those companies are concerned. Morgan, would you care to represent your company at this time, please? Thank you.

Morgan: Good evening Council, Mayor, City Manager. My name is Debra Morgan, I reside at 5112 NW 26th in Oklahoma City, zip code 73127. I'm appearing on behalf of Energetix as you're aware. Energetix is a young, Oklahoma-based company focused on economic development within Oklahoma, adding value to our vast natural gas resources by developing power projects in the State. As you are also aware, Energetix was negotiating with the City based on a unanimous vote that you heard the City Attorney read prior to the initiating of the issue today. We negotiated in good faith for the limited amount of treated effluent that's currently available. We relied on the Council's decision and moved forward with investing and committing more than \$1.5 million in development since that January date.

We were extremely disappointed in the Council's reversal of its decision in the last meeting and we had to make a business decision based on the economics and resource allocation within our company, and we did indicate that to the Council through a letter subsequent to that vote. This decision was based on the fact that it wasn't prudent at the time to continue investing resources in the project if there was uncertainty regarding the availability of water. As we stated in many appearances before you, time is of the essence on these projects. These projects are scheduled to begin construction in the fourth quarter of this year in order to be eligible for favorable federal tax treatment.

The Council unfortunately has been given a lot of misinformation, some of which was corrected at the last Council meeting but since that time more information has circulated, particularly with regard to the air quality permitting issue. As Councilman Purcell correctly indicated in the last meeting I understand Council members were told the DEQ would only issue one permit. He indicated with his discussions with DEQ, made it very clear that that was not the case, that the technical review, based on modeling done for air quality and not on any other issues. Currently we have three projects in development other than the two here in Lawton. One is our Redbud facility in Luther, Oklahoma. It's the single largest one-time investment in Oklahoma's history. It has a proposed permit from the DEQ. Our Thunderbird project east of Norman, Oklahoma, also has a proposed permit. And our third project, Weber's Falls near Muskogee, Oklahoma, will receive a draft permit in approximately two to three weeks. I point this out so that you can see that we are well-versed in the air quality issues associated in developing the projects in Oklahoma, and the air quality issues faced not only by Lawton but other communities in the State.

We have at this point decided to come back. We heard that this issue was on the agenda for today. We would like closure to this matter one way or the other. We were disappointed with the Council's vote during their last meeting. We have prepared contracts based on contracts entered into with the City of Oklahoma City with a significantly higher rate that had been discussed with the negotiating committee since January. We are prepared to

provide those signed agreements to the City Attorney today. We would like to let it be known that our east facility in Lawton is in the Lawton school district, and that discharge of waste from the facility is not a part of the agreement we're providing to the City Council. What we would like to do is have a decision on the matter one way or the other, once and for all, and as I mentioned, I will provide copies for your review and attention to the matter.

As I understand from reports in the newspaper and the various articles, the press that have been covering the issue since the last meeting, this issue arose based on contact by Representative Ron Kirby to request Council members consider a competitor who was unhappy with the Council's January decision. We believe that the...

Devine: I'd like to, and I don't mean to disrupt you but I, this has been led astray. Mr. Kirby did not, did not under no circumstances did he ask us to consider anybody else, he just asked us if, asked me if I would listen, and it wasn't to consider any other company. I want that very clear that he did not try to pressure me in any way of listening to anybody else, any one company, he just thought that we ought to listen to everybody. And I wanted that clear before it got any further.

Mayor: Okay, thank you.

Morgan: And I just was making it clear...

Shanklin: I think we ought to take a little show of hands because I was not influenced by Mr. Kirby, his call, I was not. It was on the card, but there's other things. Go ahead, I'll address that here in a minute because...

Morgan: Let me make sure and clarify the statement wasn't to say that any Council member was influenced by his contact, but that it was reported in the paper that he did contact and request that the agenda item be reconsidered and that's the only information I have with regard to it so all I can reference is what was reported and quoted in the paper.

Mayor: Okay, go ahead.

Morgan: So, I don't want there to be any, I don't want you to take it as if I consider that any of the Council members were swayed. We were concerned by the change in vote from the unanimous vote we received in January to a vote that basically abolished that previous action. We'd like to hear from other people with regard to these issues. We stand ready to answer any and all questions you may have. From the beginning we have been forthright, honest in our approach, provided as much detail and information that's been requested from us and we will continue to do so.

Mayor: Okay. Any questions of ...

Moeller: There's several statements that you've made that do concern me, and do not take anything that's said in the paper as gospel because it is not...

Morgan: That's why I referenced the paper.

Moeller: Well, don't. Let's not get on that issue right now. Mr. Kirby did not ask for anything to be agendaed, he did not put any pressure, he didn't say anything except hey, so and so would like to talk to you, will you talk. That's it, period, end of sentence, no more, you're saying there's misconceptions that other companies spread. I've heard also misconceptions from this company. I'd...

Morgan: I would like to refute any of those misconceptions.

Moeller: I would like all of the mud slinging to stop. Let's get to the issues, let's get to the facts. I did call all three companies. I asked if you had something on the ground I could go see. The other two companies gave me one, your company said no, we don't have anything. I was under the impression you had some plants on the ground.

Morgan: At no time during any of the minutes I believe you'll ever see that, we've been completely forthright with the projects that are currently under development and when they will become operational.

Moeller: I believe the letter back in November said something to the fact that's fully developed. Now, if that was a misunderstanding, that is fine...

Morgan: That means they're ready for construction.

Moeller: Okay, but developed could mean they're ready for construction, it could mean they're in construction, it could mean they're completed. It could mean lots of things. We are all basically newcomers to the power industry, to the language you use, to the actual function and what goes into what you're doing. This is new for us. We're not inexperienced but we are in that field. That surprised me, but Okay, I read the letter, I thought it was developed.

On the same token, we did not reverse a decision, we agreed to negotiate, we continue to negotiate, we never said we're not going to negotiate. We never said an exclusive, in fact Mr. Purcell asked all three companies that night of the 18th, do you, I don't know the exact wording...

Morgan: Sole source contract was the question he asked.

Moeller: I heard exclusive, I heard the word exclusive, and the answer was no. You know, you use your lawyer terms and I'll use my layman terms.

Morgan: That was the term that Councilman Purcell specifically used, I'm sorry.

Moeller: Well, let's let him say what he said. We didn't change our minds. We didn't. And we didn't go back on what we said, we agreed to negotiate and we were negotiating, and really I think your attorney had egg on his face when he said oh, it's just fine, we welcome competition, and then a couple of days later we get a letter from your president that says we're not going to play. It contradicted what he said and I really felt sorry for him at that point. There is more than one way to do this and resolve it if ya'll are willing. And for the public out there, and yeah, we've taken a beating over this, but from the City's view point, that's what we have to look out for. I understand where you're coming from and going into business is a major, major undertaking and to do four plants, I admire you're entrepreneurship, to do four in two years is quite lofty and I wish you well, I hope you make it, I really do.

My question, what happens if we negotiate exclusively with you for the effluent water, you will be able to do all you intend to do and hope to do and wonderful, we have a plant on the east side and a small plant on the west side, that's your plan, correct?

Morgan: Uh huh, yeah.

Moeller: Okay, what happens if for any reason, your fault, our fault, nobody's fault, you can't do it and you back out or you're gone, then we have no plant, we have no door, we have nothing because we've shut the door on the other companies in that...

Morgan: Councilman Moeller, there's only enough water to supply...

Moeller: Incorrect.

Morgan: One facility. There is approximately 13 million gallons a day...

Moeller: Incorrect. Let me finish. There is only enough effluent water for what you want.

Morgan: That's correct.

Moeller: There is raw water also for sale.

Morgan: Well, if you want to discuss the negotiations of raw water with other parties, we don't have any control over that. What we requested is an opportunity to enter into an agreement to move forward with the City of Lawton, the same as we've done in the City of Oklahoma City and the City of Norman to get an option to purchase the water so that for a certain period of time we have an opportunity to invest in the community, move forward with development of the project, and look forward to completion of those projects. That's all we've requested from the City.

Moeller: Understood. We never used the word exclusive, never did, we never did change our decision, we wanted to negotiate.

Morgan: I would have to disagree because the outcome of the original vote...

Moeller: You're an attorney, correct?

Morgan: That's correct.

Moeller: Does the written word supercede the verbal? Yes it does.

Morgan: There is no contract. The discussions after January...

Moeller: I'm not talking about contracts, I'm talking about our vote.

Morgan: And the reality was that one negotiating committee was developed. That committee only met with us. There were no other negotiations from that meeting in January with Calpine. There were no negotiations with

Smith Cogeneration.

Moeller: No, that's not correct. You're dancing around the subject. We agreed to negotiate period, that's all.

Morgan: Right, but you're intimating that you didn't reverse your vote in the last month but you did. Your actions clearly were a vote to negotiate with us for the sale of water because we had two facilities as opposed to one, there was a much larger impact on the tax base, and what happened after that bore it out. There was a negotiating committee that met solely with us and we worked forward with the City on a contract.

Moeller: Will you let me finish? Okay, may I finish?

Smith: Barbara, if I may interject here for just a minute since that's, I made that motion that night.

Moeller: And there is nothing in the motion or anything else that says ...

Smith: But my understanding of the motion, when I made that motion was to enter into the negotiations with Energetix because in my opinion they offered the most economically for Lawton.

Moeller: I understood that, that's not my point. The point is the word negotiation was used, the term exclusive was not used. We have more than one water. You walked out on us, we didn't walk out on you, we didn't reverse our decision, we're still open, still want to move forward if you want to. If we can open it up to the other two for raw water, but you immediately assume it was for the same water you're talking about.

Morgan: That was clearly the intent from that meeting. I don't know how else to...

Moeller: No, it said open to negotiations, period. It didn't say anything about what kind of water. If they want to negotiate for raw water and we agree to negotiate with them...

Morgan: Currently that is the City's prerogative but it was not indicated. All parties have only been discussing treated effluent.

Moeller: The question is if we do that, what is your reaction to that? We continue with you with effluent, we go with them with rural water, raw water, not rural water but raw water.

Morgan: We've brought executed agreements with significantly higher rates based on the Oklahoma City agreement we've got...

Mayor: If I might for just a second please, it appears to me that we're hung up on an issue...

Moeller: You're not answering my question. She's not answering my question.

Mayor: Okay.

Morgan: I am answering your question.

Mayor: Just a minute, lady. I want a point of clarification. We're off some way or another, second by Haywood to direct staff to start negotiations with Energetix and it mentions nobody else.

Moeller: It also doesn't say exclusive.

Mayor: No, it does not, but we did listen to presentations from three companies that evening.

Moeller: I'm glad you brought that up.

Mayor: Well why?

Moeller: Because I called them and asked them how much time they had, notice they had, the other two companies said they got a phone call like three and four days before Tuesday night to come and answer questions.

Morgan: That's correct. We received a facsimile of 12 questions from the City on a Thursday or Friday evening. We prepared a presentation that incorporated those questions and presented it to the Council. You have inferred that we were somehow told beforehand and because our presentation was good that it was somehow, must be some misdeed and I take offense to that.

Moeller: No, I'm not.

Morgan: I worked hard on that presentation and I thought it was a good presentation.

Moeller: I didn't say it wasn't and I didn't infer anything.

Mayor: Anyway, the point remains as I brought out here, and this is verbatim that I asked the City Clerk to bring to me yesterday. It said negotiations with Energetix so that's just for a point of clarification. If we could, do you have another question, Barbara?

Moeller: Yes, I do.

Mayor: Okay.

Moeller: The problem the City has if we negotiate only with Energetix for effluent water and we do not do anything with the other two and for any reason whatsoever, nobody's fault, you don't come through, we're left dry, high and dry, we have no one because it's too late for them. If we...

Morgan: It may not be too late for some parties. Some parties aren't working on the same time line. What we're asking for is an option for a limited period of time, like has been done in other municipalities, so that we can move forward.

Moeller: Can I finish? I didn't say anything about that, Okay. If we enter into a contract with them for raw water and you decide to stay, wonderful, we've got three plants or four plants. If you decide not to come, we still have two plants but if it's the tax credit, it's going to expire in 2003 and you win, they lose, you walk out, we lose. The City loses as a whole and that's my only point. If we can go forward and you want to negotiate for effluent water, I'm for it as long as we can go forward and negotiate with them for raw water. It's not the same water.

Morgan: Well, the water under the contract that we've been going back and forth with the City negotiating team clearly identifies that it is treated effluent that is dumped from that facility so I don't know how that contract could be construed to deal with water coming from somewhere else, this raw water that you're speaking of.

Moeller: It has, raw water has nothing to do with you.

Morgan: Right. So I don't understand the issue then, if it's not an issue then we're prepared to present a contract, we'd like the Council to act on it, one way or the other, and if it's not a problem then it would be I think a great opportunity for the City to move forward and lock in an option for a 13 million gallon sale of treated effluent.

Moeller: If we do this, your contract aside, I guess my question is if we go forward with the other two companies for raw water, are you going to walk out again?

Morgan: That's none of our business.

Mayor: Mr. Vincent please.

Vincent: One of the points of contention that I had with Mr. Burgess in some of our discussions is we don't have 13 million gallons to sell and that's one of the reasons that we submitted substitute contracts which we have not heard back from your company on.

Mayor: Mr. Burgess I think has, did you want to speak? (inaudible comment from audience)

Moeller: If I heard the question correct then no, you're not going to object, for lack of a better word, if we go forward with these two companies for raw water.

Morgan: On some different source of water, that's correct.

Moeller: Mr. Vincent, I did have one question. Are there any legal issues on this that we need to be apprised of?

Vincent: Legal issues of what nature?

Moeller: I don't know. I was under the understanding there might be some. I forgot to ask that question at the last meeting, that there might be. I don't know.

Vincent: Well, our proposed contract is not an exclusive contract with Energetix, the draft that the City has proposed and submitted to them about ten days ago.

Morgan: Submitted the day of the last Council meeting.

Vincent: Well, there was one before that and then we substituted another one after that but they're not exclusive contracts and they do have provisions where we could sell effluent water to another company and ask Energetix to either exercise their option or not so we did provide protection in our form of the contract.

Morgan: And the contract we're prepared to submit today is based on the Oklahoma City agreement with a reservation fee if there is a different purchaser of effluent. I mean the Council's going to have to look at it and make a decision based on what's in that agreement. It is an agreement that was provided to the City in October, the Oklahoma City agreement which is a public record obviously, and then was also the basis of Norman's discussions. I should add that it doesn't address discharge. I know that's something that has come up. All infrastructure or costs related to any facilities associated with the purchase is solely at the cost of the company and that the price associated with it doesn't cost the City anything to prepare for. I know that some industrials, when they come to town like Republic, the City may agree to build the pipeline for them and provide, you know, right to their door step their potable water or whatever the services but here all the infrastructure and costs fall on the company, not the City, so there's no cost to the City.

Mayor: Okay, thank you. Mr. Devine?

Devine: Mayor, I kind of wanted a question to Mr. Vincent. If, how come we didn't get a copy of the contract? How come we didn't get a chance as a Council, why didn't we get a chance to look at this contract?

Vincent: Are you talking about the draft that we sent back to them?

Devine: Yes.

Vincent: That was the committee's decision to give it back out. Mr. Baxter's the chair of the committee and he said send it.

Devine: And I don't mean no disrespect and I don't want this started but I don't understand, I know that we appointed one person on that committee off the Council, but I didn't think that Council member would have the authority to make a decision for seven other Council members.

Mayor: He has not, Mr. Devine.

Devine: Then why was the contract sent out before we had a chance to look at it?

Vincent: It was clearly marked draft.

Baxter: Proposal.

Vincent: It was clearly marked a draft contract and the cover letter said the Council has not reviewed this and it would be subject to their review and approval.

Mayor: They make the decision.

Devine: So in other words, even, and I have no problem, I want this brought forward right now, I have no problem with any one of the companies that want to come here. My sole purpose for me being here is to try to do the best thing possible for the City of Lawton and Comanche County. I do not have a particular one that I want to go for and I want to have the effluent water that we have. That doesn't even enter into my decision of trying to make the decisions that we're making so I don't have nothing personal in it but what I don't understand is why, if we take and we solely sell them the water, or they commit to it, what happens, just like Barbara, Mrs. Moeller said a minute ago, what happens when they submit their contracts to us and this Council, five of us decide that we don't like that contract, where do we go from there if we shut the door, just like she said, to the other two companies, either Energetix, Calpine or the rest of them, if we go to one company and we go exclusive with that company, we have no back door to back up and try to do any kind of negotiations. That's what I don't understand.

Morgan: But let me add, you can, I mean you can enter into agreements that are subservient to this kind of right of first option to a certain amount of water. There are all kinds of ways...

Devine: I'm going to interrupt again because I'm directing this to the Council.

Mayor: Let me ask you this, Glenn, what if you come down, you negotiate with all of them, open it up, RFP's just like we done the other night. Now then you make a decision based on what has been proposed.

Devine: Yes sir.

Mayor: Okay, for some reason they didn't perform, you're in the same situation.

Devine: You are, but you're not, because what you can do is when you do it, keep solely and exclusively to them that puts the other completely out of the ballgame. Now wait a minute, G. Wayne, wait a minute.

Smith: Mrs. Moeller just said that she was talking about the other night was not the effluent, she said they were talking the other night about the raw water with the other two so how could that put them out?

Moeller: Mr. Mayor, can I answer that?

Mayor: Yes.

Moeller: Mr. Smith, because at one time I think everyone assuming, and again we got into some deep trouble assuming we were all talking about just effluent.

Smith: That was my assumption.

Moeller: Yes, that was an assumption. My concern is if we put all our eggs in the same basket and the bottom falls out, we're left, we're in bad trouble because we have nothing, we have nobody. If we have, we have two sources of water, we have effluent and we have raw, so what's wrong with negotiating with one company with effluent, because that's what they want, and negotiating with the other two with raw because we're willing to do so.

Mayor: Mr. Vincent has a point of clarification.

Vincent: In our proposed contract that we submitted to Energetix, let me read you Clause 5.2, now this is the City's proposal and I don't know what Energetix' feeling is about this. "Pursuant to this agreement buyer's obtaining and seller is granting a first right to purchase up to a maximum of, and there's a blank there, of treated effluent from the Lawton facility. The parties recognize that under the terms of this agreement buyer shall purchase and pay for a minimum of blank gallons of treated effluent from the Lawton facility, whether delivered or used or not. In addition, buyer shall pay a reservation fee of blank per thousand gallons per day of the remaining balance between what is actually delivered but not less than the required minimum gallons by seller. If an excess remaining quantity stated above and x gallons per day of treated effluent payable by buyer in 12 monthly installments. The usage and reservation fee will be (inaudible) At the request of the seller, buyer may release its treated effluent capacity reserved under this agreement upon which the reservation set out in this agreement shall terminate to the extent of such treated release." And we have another clause in the contract that says if we get another purchaser that wants to come in and buy effluent, at equal to or greater than during the option period, the buyer will either exercise the option and begin making the payment or we are released from the contract and we can deal with the second seller, or purchaser.

Moeller: That's good. The key here is, through a lot of research I've been able to find out is more important is the Indian tax land credit, if I have that correct. They've got a two year window, if they don't do it in that two years, they don't get the credit and it's a huge financial savings, cost savings to them, that's where the window's going to close. They can come later but they won't get, there's no incentive for them to come that we don't have to pay for. But if we open it to raw, they negotiate for raw, if excess effluent shows up, fine, but if it doesn't, we still have the raw water, they still have the raw water if they want it.

Mayor: Mr. Baxter, please.

Baxter: I don't think that the Indian lands act necessarily relates to all three companies. I don't believe that Calpine, if pushing, could be there that fast. I got the impression from Mr. Walker that their completion date was 2004, which is way after that act expires so I don't think that applies to all three companies.

Mayor: Okay, Debra, would you continue on, please.

Morgan: Well, I was just going to add, and Councilman Baxter is correct, different companies are operating under different business plans. Calpine has determined that a later operational date works for them, and that goes to your question of well, can we negotiate with another party for say raw water, or if we don't get into construction by the end of the year such that we can't meet this 2003 operational date, we'll know rather quickly and so it doesn't prevent a Calpine from continuing development of their project on the pace that they deem fit within their business structure. Our business structure just happens to be different.

Shanklin: Mayor?

Mayor: Yes.

Shanklin: I have a question. You said a contract, you expect us to look at a contract tonight and give you a decision?

Morgan: No, not tonight, no, I realize that, no, I want to provide an agreement that is a duplicate of our agreement with Oklahoma City that Oklahoma City also enters into a similar arrangement with Duke for the sale of water. I want to provide it tonight. We just ask that the Council, we don't know what the Council wants to do, I mean this item came back up on the agenda after a reversal that we saw last meeting so we don't know any other way to get closure at this point so we'd like to provide it to the Council, let them decide what's in their best interest, and we can move forward. The biggest problem with a delay in saying, you know, let's keep everybody out here for 60, 90 days, as we stated in our letter, we suspended development and we were starting at that point very detailed engineering work on our cogeneration facility in the industrial park, and so we can't afford to spend a half a million dollars a month, \$250,000 a month, for the next six months and then come to find out the City Council has either changed their minds or doesn't want to sell us treated effluent, wants to sell us raw water when since January we've been taking samples at the treatment plant two times a week in order to get data so that we can have the appropriate modeling for what our air quality's going to look like. So, I mean, we have been moving on that, on that track, and so all we're asking is that you decide what it is you want to do, what is the best thing for your community, we'll provide a contract that is, has a significantly higher rate than what was paid in Oklahoma City, and it is the agreement that Oklahoma City reviewed and contracted for, and then we'll let you make your decision.

Shanklin: I've got several, I'm not through here. You say you're going to start this fall. How are you going to start when I don't see even listed on any of these papers off the web net, website, that you have an application in?

Morgan: For the air quality permit?

Shanklin: Yes ma'am.

Morgan: Well, as I mentioned, we've been through the air quality permitting process in three projects, we have a permit and complete modeling done and completed, it was pulled from DEQ Wednesday after the Council's last meeting because we consider that information to be proprietary if we're not going to be moving forward with the design of our facility. That modeling took about 60 days with completed, it's ready to file, what's been filed I guess the only other company that's filed an air permit filed in March 2001, so last month, a permit for their site which as I understand today, they're going to move which means they have to remodel.

Shanklin: Okay, let me ask you this.

Morgan: Well, I didn't really answer your question because it really takes four...

Shanklin: You've gone too far.

Morgan: Four to nine

Shanklin: You've lost me.

Morgan: Four to nine months to get your permit, depending on how the processes work out.

Shanklin: But you're going to start this fall, you guarantee you're going to start the fall, and you want an exclusive from now until this fall?

Morgan: We want the option that we received with the City was for two one-year periods and we have to renew the option or we lose our ability to have a right to the water.

Shanklin: Do you want to, are you willing to put up a performance bond?

Morgan: I think at this point we are very concerned about the one and a half million dollars we've spent since January based on the previous decision.

Shanklin: I'm sure the other people have.

Morgan: Well, I might disagree with that, but we at this point...

Shanklin: I'm sure you would.

Morgan: We...

Shanklin: Okay, wait a minute, let me, let me, you can out talk me and I have no problem with that. Council, this is probably the most monumental, gravest decision we've ever made up here in economic development, and I feel like I've been invited to one of those places in Las Vegas and I've never been out there to play five card draw and when I get out there, I'm just going to get two cards. We haven't gotten a full deck yet. We find out that the lines, the

grid lines, one can get on possibly, how is the other one going to get on, there's more cost there. How do we rank in your three, are we going to be fourth? I mean, how many plants can you have before we saturate it. That's what bothers me, and if you can start and even with Energetix and Calpine, how many, how many are we going to build? I don't think we're going to build 16, I'd bet my life on it.

Morgan: And I think you're right, I think the representative from Calpine was correct in stating there are numerous applications on file. It is almost certain that not 100% of those will go forward. There are business issues and costs that have to be evaluated when choosing a site. You mentioned transmission, we've reserved transmission capacity, we spent \$800,000 to reserve that transmission capacity. These are all business decisions that we make that we wouldn't be spending half a million dollars a month if we didn't have those things laid out and laid in front of us to make those decisions. At this point we can move the amount of power we want out of the system, we're in the queue to do that, studies are underway, that is actually the most critical issue.

Shanklin: Well, I just want to guarantee that something's going to be built, I don't care who does it.

Morgan: And I don't think in life there are any guarantees, I mean, we all come here to do our best...

Shanklin: Well, there's guarantees here, they're building them.

Morgan: Those are just permits. Permits can be issued...

Shanklin: Well, you're still building them. You've got one at Luther and you have one at Thunderbird and one over at Kiowa and there's one out here north...

Morgan: Right, they're all in the process.

Shanklin: But they're ready to start, aren't they?

Morgan: They're all waiting for the final permit from DEQ. They're either in proposed or draft stages.

Shanklin: Have these people spent any money to get to this, this far, other than you?

Morgan: Pardon?

Shanklin: Have any of these other companies, I don't know them, there's Energetix, there's Calpine and there's Kiowa Power Partners and KM Power Companies, they have spent money to get to this point, haven't they?

Morgan: Right, you're talking about different facilities across the state, not the ones just in Lawton? That's right, they all cost hundreds of millions of dollars.

Shanklin: I just want to guarantee that you're going to build it, build a plant if you can get the air quality cal-puff test.

Morgan: Well, we've done the modeling and we're confident and I guess you heard some comments last week, or two weeks ago, regarding DEQ. We've been through the process before, we know the equipment, we know what kind of modeling we need, that's why we took water samples for the past couple months because your water evaporates and affects the type of air quality that you have, so it's a very complicated issue and you asked for a guarantee and no company can stand here today and guarantee you anything. All we can do is say we're willing to spend a heck of a lot of money to try to make it work, and a heck of a lot of energy to try to make it work.

Shanklin: I read in Mr. Mize's letter some time, a week or so back there, he mentioned a performance bond and that is not in your mind set anywhere?

Morgan: Well that's not in the proposal we have today. We suggested...

Shanklin: Council, that's up to you. I think, whoever we go with has got to put up a performance bond because of the time factor, to me anyway, and the plants are going to be built and we're going to be here arguing about it when other people are on line and we're just not going to get there.

Mayor: Mr. Smith, please.

Smith: I'd like to make a motion. We go forward with Energetix in the sale of the treated effluent and go forward with the other two entities on raw water negotiations.

Shanklin: Well, how much raw water are you talking about? See, that's another part of that card I didn't get, now there's a contract up there that I don't know what I'm talking about, how much.

(inaudible comment)

Mayor: He hasn't been overlooked yet.

Shanklin: Hey, you're way ahead, believe me.

Mayor: No, G. Wayne had his hand up.

Shanklin: You're ahead by 120%, he can have a shot at it.

Mayor: Mr. Purcell.

Purcell: I'd like to make some comments and then I'm going to make a proposal. First of all, there's been a lot of erroneous information that's spread over this city for the last two to three weeks, some innuendo and some outright lies. I'd like to make several points tonight. First, I want to personally apologize to Energetix for the misunderstanding that was caused by my vote on 18 January. The motion we approved, and it's already been read, to direct the staff, I thought my vote was to negotiate and talk only. At that point in time, I did not intend with my vote to enter into a contract, however, I understand that Energetix, based on what was said and that had a different interpretation and they went forward with the idea that we were going to enter into a contract. Misunderstanding on my part, maybe I'm the only one who felt that way on the Council but I want them to know that and because of that I apologize to them for that misunderstanding.

Second, and I think it's already been alluded to tonight but I want to say it too, I want to put to rest the fabrication that was spread around this city, and I've gotten many phone calls, at least 25, in the last two days my cell phone's run all the way down from when I get it in the morning to when I get home at night and have no power left so anyone who didn't get to call me, that's why. And I've told everyone that's called me the same thing, Ron Kirby called me one day and in a less than two minute conversation, he asked me if I would speak to a representative from SmithCo. I said sure, I'll speak to anyone, just as anyone in this audience knows who calls me, I speak to them. He then told me the gentleman's name was Bob Kerr, which didn't mean a darn thing to me. Sorry, Mr. Kerr, but it didn't mean a darn thing to me. I never heard from Mr. Kerr. About a week later he called and I talked to him. I found out between the phone call of Ron Kirby and when I talked to him, from a completely different source, that who he, he used to be the Lieutenant Governor, but up to that point, that was the end of my conversation with Ron Kirby, and the innuendo and the information that went around this town that he convinced me to do something with SmithCo is an absolute lie and I want it on the record tonight that it was a lie.

My third point, before the last meeting, which was on the 10th, I was contacted by some supporters of Energetix and asked if I would support a plan on the 10th of April that Mr. Baxter was going to propose that we send out RFP's to interested parties so we could get a decision on what this Council was going to do on a date certain. I agreed, we cannot keep delaying this thing over and over and over again. These people have to get on with it, they're all spending money, we need to make a decision. I agreed with that. The motion was made, I supported it, and then obviously I did the wrong thing, I've told other people this and I'm not saying anything I haven't told the people from Energetix, I didn't appreciate it, but we've done it.

Now, after having said all of that, we need to get on to do what's best for the City of Lawton and the citizens. We can't keep going on like this. They need a decision. We owe it to them to make a decision. They're going to give us a contract tonight. They're going to give it to the City Attorney. My proposal is that we look at that, that be given to us as soon as possible, we need a special meeting, we're going to have a meeting for what we discussed earlier tonight, some time between now and next Monday night I assume we'll have a special meeting, and at that meeting, we either accept or reject their contract that they proposed.

Shanklin: No negotiating?

Purcell: We've got the contract, if we want to negotiate, negotiate in between, between now and then, but coming the next meeting, we either accept or reject their contract. Then they will know either we're not going to accept what they need to get on, they can then move on and we've been fair to them, as fair as we can be at this point in time. If we accept the contract, we haven't done anything cause we can still do what Mrs. Moeller is saying, we have the other people we still need to talk to, I still think we need to talk to them about raw water and everyone may come away happy with this thing, but to sit here and keep doing this week in and week out is getting no one anywhere and anyone who's in business knows that costs money, so my proposal is we get on with it, we accept, we take the contracts and we all look at them quickly, we have a meeting, if there's any negotiations that we don't like we talk to them between now and the set meeting date and we come to a conclusion at that time.

Moeller: Mr. Mayor?

Mayor: Yes.

Moeller: My understanding is the contract that was being offered tonight is a copy of a contract that was negotiated with Oklahoma City. Is that correct? It's a sample they're going to give us, not one for us.

Mayor: Debra?

Morgan's comments from the audience were not audible.

Moeller: But it is not one for us, correct?

Mayor: Yes it is, yes ma'am. It's been executed agreement and my understanding I have heard has been signed, it'll be in your hands. We'll come right back to that in just a second. Mr. Burgess.

Burgess: Bill Burgess, 21 NW 44th, here in Lawton, Oklahoma 73505. First of all, Councilperson Moeller, I appreciate your sympathy. It's not very often anybody feels sorry for me about anything and I really appreciate that. The second thing that I just want to emphasize is competition. When we came before you at the last meeting, we emphasized competition, and we also emphasized speed. We need to get moving on this project and Councilman Purcell, your idea's a good idea. We submitted to you a contract. It's a very good contract in fairness in relation to your perspective and our perspective. You've got the opportunity to analyze between now and next Monday or Tuesday what's appropriate, what it does for you, and in terms of competition I just think it's incredibly important that you understand that from a tax base, our two projects will put approximately \$8 million a year into Comanche County's tax base. The other projects only put approximately \$2 million a year, two to three. There's a lot more to be gained from Energetix' project. The other thing that I think you ought to keep in mind as Councilman Shanklin talked about, the speed, who's going to moving fast and aggressively to get their project done and that is something we've emphasized over and over again. If you remember at the last meeting, I stood up at the end and I said make it ten days, make it five days, we've got to move, we've got to get something done before the end of the year because we need to get our construction completed during 2003 to take advantage of the Indian depreciation rights that we've been talking about.

I did not realize, and I don't think anybody realized that Councilman Moeller was talking about raw water versus effluent, first time quite candidly any of us ever heard that, and so if she wants to deal in raw water to somebody else, more power to her. What we want is the effluent water, we're going to take about twice as much as anybody else, which will mean twice as much income to the City of Lawton. We're going to give twice as many jobs as anybody else. And the thing that hasn't been talked about this evening, which is critical, the cogeneration plant in the industrial site located out by Goodyear, Republic, Bar-S, Silver Line, that cogeneration plant will save them an enormous amount of money in energy costs, and all of those companies out there are 100% for us getting after that project as fast as humanly possible and we're the only people that do that, nobody else wants to do it, and so from a competitive standpoint, Councilman Moeller, we knocked their socks off, quite candidly. What ya'll need to do is to move, and move fast. Thank you.

Mayor: Thank you very much. At this time I would like to ask (applause from audience) I received a phone call last week from Mr. Baker that Mr. Joe Fortunato with Republic Papermill needed to talk with me and wanted a phone call. I didn't waste a phone call, I drove out to his office and met with him. State your name, and he had some (tape changed)

Fortunato: Four papermill operations throughout the country, and I've been in the paper industry for about twenty years. The mill is located on Lee Avenue, 8801, and I too became a resident of Lawton about a month ago, moved from the City of Chicago, and at first I was a little scared, a big city guy coming down here to Lawton, and I fell in love with the town, the people of the town, and I see a lot of benefits that this town has. The industrial park and the opportunities for this community to grow is unfound in anywhere else that I've been. Yesterday, I gave the Warren Act Notice to one of our paper mills and closed down a paper mill in Commerce City, Colorado, Denver, because it was not economical to run it, both because of labor costs, untrained labor, high utility rates, and overall cost of manufacturing. That was 85 jobs I put out of work like that. Lawton has potential, people, and I tell you what, I agree with every one of you, this is dragging on longer. I've been in the business world for the paper industry for 23 years, decisions have to be made.

We at Republic Paperboard support Energetix. Last month, my electric bill at the mill was \$600,000 and I will show it to anyone. My gas utility bill last month was over \$125,000. Paper mills are very extensive on energy usage. This is the one paper mill that I have worked in that does not have its own cogeneration site. We have a package boiler producing 120 pounds an hour at 165 pounds of steam, and I have built power houses, and I am very comfortable with the proposal of Energetix, and in fact if the City would not propose Energetix, I have approached Energetix to put in a site on my property because I believe in what they have to offer.

The community needs to be aggressive. You need to attract other industries and I'm an outsider, I don't know the community, but I'll tell you what, there's been some great people here and they've helped me out and they've showed me some great ways. Please don't let this slide by and Energetix does have a good proposal and I support

it.

Mayor: Any questions of Mr. Fortunato while he's at the podium? Thank you very much. I do appreciate, we do appreciate your coming out and welcome. (applause from audience) And welcome to our community, let us help you when we can. Thank you. Mr. Hanna, please. Mr. Kerr. (inaudible) Sure, you sure may sir. Oh, I'm sorry, just a second please, Mr. Baxter, I overstepped him a while ago, just a second, let Mr. Baxter go then you.

Baxter: I wanted to ask Ms. Morgan a question. You had stated earlier something to the effect of 13 million gallons. I hope that your proposal does not have that number listed in there.

Morgan: (initial comment from audience was inaudible) which is what we've been discussing with the City, eight million gallons a day for the west, for the east facility; five million for the west industrial park facility, in conjunction with the use of a 165 million gallon holding pond that's on the site, as well as, and we have the data for the flow from the past five years so we are aware of the annual average flow, and then in conjunction with that, each site also has its own holding pond or storage facility based on an analysis of flow data versus availability of the 165 million pond and holding facilities on the site.

Baxter: Jerry, is that possible?

Ihler: Currently our average day for this year so far has been about 15 million gallons a day, but that's because we've had so much rain. What we have always said is that we can provide day in and day out about 12 million gallons a day. We do have I believe three and a half million gallons a day tied up with another contract with PSO, so I guess that leaves us about nine million gallons a day, nine and a half that we would have available. With the pond as a storage, there would be available, I think the size of the pond is about 160 million gallons, whether or not it meets their quality and standard that they're looking for, I couldn't address at this point.

Mayor: Okay. All right, Mr. Kerr, please.

Kerr: Thank you, Mr. Mayor. Just have a couple of additional comments if I may. Number one, Councilman Purcell, I particularly appreciate your and other members of the Council addressing the innuendo, which quite frankly from my perspective having read a editorial in the Lawton Constitution which raised my name three times, and I'm proud of my name, I think I've never done anything to tarnish that. Representative Kirby is a good and old friend, and the only thing that I ever asked Representative Kirby to do was make a call of introduction for me, and I think it's grossly unfair that Representative Kirby has been treated in the fashion that he's been treated, as I think it is unfair to every member of this Council as I said earlier. Number two, a question that I think is significant to this whole process and the dialogue that is extremely important in the decision making process, Councilwoman Moeller correctly points out that any one of the three of the proposed developments, for any number of reasons, be they market, be they access to the market through the power grid, be they financing of which the former Indian lands act is an important financing structural issue, and Energetix has indicated that they want to get under construction by next fall and I will tell you that Smith Cogeneration wants to be under construction by next fall because you're talking about approximately a two year time line from when you turn dirt to when you fully complete your project which then and only then qualifies that facility for the increased depreciation opportunity.

And I would just suggest to you that a question that is pregnant and of crucial importance to your decision making process is where the respective proposed projects are in the air permitting process. As I have told each of you individually, and as Mr. Smith indicated two weeks ago I believe it's been on the 10th of April, we have been in a full air permit application since June of last year. To date, on either, on neither of the proposed Energetix projects have they submitted an application. They submitted one for down south and then it's my understanding that they've withdrawn that application, given what they said here this evening. They alluded to a time line that said three to six months to complete the air permitting process and I'm here to tell you that is a tri-athletic, world record class time and you have someone from DEQ who I think will affirm that this is as we have represented a process that takes somewhere between ten to fifteen months, that is experientially based on our part because we've done it, we've built plants, and so you know, the competitive dynamic that Mr. Burgess alludes to is, I'll tell you what, let me tell you what, let me promise you the moon but you better check and see if I've got a rocket ship to get you there. And that's the truth, and three to six months to qualify for an air permit is in Smith Cogeneration experience, very ambitious. Thank you very much.

Mayor: Okay. Mr. Keplinger, are you in the audience, please? Mr. Keplinger? Larry Keplinger? George Bridges? Mr. Bridges, Dr. Bridges, would you like? Yes, Mr. Baxter, while he's on his way.

Baxter: Is the DEQ guy still here?

Mayor: Mr. Dillon, on the back row, yes.

Baxter: Can you come speak, please? I'd like to ask you a question.

Mayor: Come on, please. Dr. Bridges, we'll be through in just a second, please.

(Morgan indicated from the audience that she said four to twelve months instead of three to six months. This could not be transcribed verbatim as it is inaudible on the tape.)

Dillon: I'll just mention my name is Dave Dillon. I work for the customer services division of the Oklahoma Department of Environmental Quality and in our division we're not the ones that actually issue the permits nor are we the ones that do the science on the modeling but we are the people that hold the public review periods and we also, I also, part of my job is to meet with industry from all over the country or the world that meets with the State of Oklahoma to try and get environmental permits so I'm involved in the negotiations, if you will, on how quick we can issue permits.

Baxter: Can you allude to the fact of maybe how long that is, whether it's three months or 24?

Dillon: I had provided earlier to Mr. Jackson, who I think may have provided to the Council basically these are a copy of our rules, appendix c, and in there you get, I'm going to get to your answer real quickly, but in there we have minimum times of public review, and in the case of all these power permits, they have to have what's called an air quality construction permit, and most of these are of a significant nature of emissions that they have to be what's considered a PSD, or prevention for a significant deterioration permit. That's the most onerous requirement that we have for that type of permit. Those are considered Tier Three's. In that, there's opportunities for informational meetings, public meetings on the draft permit and public hearings. In order to incorporate all of that, there's minimum times of at least two months of just sitting there and going out for public reviews, just time in the newspaper. And then we also incorporate a minimum of 90 days for what we consider administrative and technical review, and just in my experience, and I didn't go back and calculate of the 16 permits, I think roughly half of those have been issued since they've been applied for within the last two or three years, but for the most part, the fastest ones ever on record of those sites to get done, something around five months, absolute fastest, and then normally what I'm basically authorized to say when I'm dealing with companies is that in the best of all worlds, we'll do it in six months but that's if everything goes smooth. Normally, and frankly with the power plants we've had trouble with changes and modifications that come in from time to time for various reasons, information that comes to them later, as well as negotiations that go back and forth, answer questions on the modeling and scientific information, so what basically happens is when a permit comes in the door, a permit writer will put it on a, he'll have it assigned to him and he has a stack of these things, and right now, to be honest with you, we've got, we've got a little problem in that we've got a lot of applications and we don't have enough permit writers so that we can prioritize everything.

So the bottom line, what I'm trying to tell you is is that we're authorized these days to say in the best of all worlds we'll get them out in six months and then it depends on the quality of the application.

Baxter: It is feasible then if Energetix, if we get back with them by the first of May that they could get their permit by the end of the year?

Dillon: Yeah, it was my understanding that they had an application that they turned in and then withdrew, is that correct? So in the best of all worlds, I have no knowledge about that application but in the best of all worlds, if it were to sail through, our people could probably get it out in a November or December time frame, and that's if it goes right through the process and doesn't have any problems.

Baxter: Thank you.

Mayor: Okay, thank you very much and thank you for being with us this evening, too.

Dillon: Certainly Mr. Mayor.

Mayor: Thank you very much. (There was conversation between Dillon and Berryman in the audience that is not audible on tape. Dillon's response that is audible is shown here:

Dillon: Mr. Berryman, I don't remember when they applied for that but it's been in process some time. That one has been delayed in the step procedures it goes through two opportunities for public meetings and then an opportunity for public hearing, and in the public hearing phase an individual did request a hearing, that is like a, like a legal court setting and it goes before actually an administrative law judge. I hold ones on the public meetings, I'm not a lawyer, but on the administrative hearings, those are actually held by an administrative law judge, and that one I think is still in that phase, it's still what's considered a, in the final stage it's called a proposed permit, it has not been issued yet as a final but Mr. Berryman, I don't remember how long it's been but that one has, it's taken I'm sure significantly longer than six months because of the public comment time. (inaudible question from the audience) Yeah, there's no way around that, they all have to publish notice in the paper. Most chose, because of the time frames...

Smith: Mr. Mayor, I believe, is Council not the ones supposed to be talking and asking the questions? Let's conclude this.

Mayor: Yes. Thanks a lot Mr. Dillon. Let Mr. Bridges talk please right now, he signed a paper, Dr. Bridges, if you would please.

Bridges: Thank you Mayor and Council, I've known most of you the biggest part of my life and I appreciate the Solomon-like decisions that you have to make on occasion. I wanted to talk for just a moment tonight about something maybe you haven't considered, maybe a little different slant on this. The long-term implications of what we're doing, I think, may not be, as far as the power companies, we may have a longer time line problem, let me say that.

As most of you know I've been on the Vo Tech School Board going on 27 years now. We decided a number of years ago to build, to develop and build an economic development wing for the purpose of attracting new and existing industries and continuing to train those industries. Most of you know we've taken a pretty pro-active attitude toward economic development here in Southwest Oklahoma, particularly in Lawton. And really this is unique in the Vo Tech system, even to our nationally recognized Oklahoma system. Other schools, when we meet with them, say what are you doing, how are you doing it, how are you involved as much as you are in economic development. We believe we have an enviable record at the Vo Tech School. Many would say Republic, Goodyear, Assurant and others that they might not have come to Lawton if it hadn't been for the added benefit of the Vo Tech School being able to train initially, and continue to train them. Many of you know that we are exporting the Goodyear maintenance technology to all the other United States Goodyear plants, as well as most of the plants throughout not only the United States but throughout the world. People from France and Belgium have been in there just very recently.

It took many years to build this good rapport with companies and with site locators, with our own State Department of Commerce. You know for a long time, they wouldn't call us at all, they'd say we'll call you if we need you. Now they call us with an economic development prospect. My concerns about this particular situation, and believe me I don't have a dog in this fight on the power companies, I can't even pronounce one of them's name very well, but let's think about what we're doing. All we have to present to a prospect when they come to the Vo Tech School or to Lawton in general, and they spend anywhere from two hours to two days at our school going through and seeing how we can assist them, the main thing they want to ask is, and do ask, will we do what we'll say we do. That's really the bottom line, is your word good. In this business, rumors spread and we get feedback from around and we're getting feedback on this particular issue. People out of town and our own concerned citizens are asking what's going on, what's happening, what's our council doing. Rumors in this business can kill you if you don't do what you say you're going to do, it's like a cancer. We landed Assurant, who's out here at 65th and Gore, they started, they've got about 100 people employed and they're heading toward 350 good paying jobs with benefits, and we got them because a national site locator came to Lawton, brought another prospect which we eventually lost to Wichita Falls, but because they remembered us, they brought Assurant back in, and Assurant finally liked us and we made a deal, the City and the other economic development entities made a deal and that's the reason Assurant's here, because the national site locator remembered us and brought them back.

As most of you know, site locators are the key to economic development, national site locators hold our economic development sometimes in their hands. Now whether this is real or perceived that we did or did not back up on what we said we were going to do, this can have long term implications, more than just power companies. I think we have to look at the long term view. You know when a national site locator comes in they may start out with 400 cities, and they come in trying to eliminate your city because when they finally get down to that last bunch then they know who they're going to deal with, and one of the things that they eliminate is people who don't do what they say they're going to do. So my concern is this, as I close, let's not damage years of hard work and trust building with our own Oklahoma Department of Commerce, with national site locators, with company executives. We need to remember that we're all on the same team, the Lawton team. It should be all of our desire to work together in trust and harmony for the economic good of our city. Thanks so much. (applause)

Mayor: Thank you, Dr. Bridges. Mr. Purcell.

Purcell: Yes, Mayor and Council, I'd like to make a motion. The motion is as follows: I move that we acknowledge receipt tonight of Energetix' two contracts for effluent water and that the Council meet in special session no later than the 30th of April and make a decision to either accept or reject those contracts.

Baxter: I'll second that.

Mayor: And if we could, let's change that date to Tuesday, April 1st.

Purcell: Well, I just said no later than.

Haywood: It would be May the 1st.

Mayor: May the 1st, I'm sorry, May the 1st.

Purcell: There's a bunch of stuff going on that day too. Is there any way to move it back to Friday? I just said not later than, I was trying to get it so we can give them an answer one week from today, that's why I said the 30th. Tuesday I think is a bad day, there's a bunch of stuff going on. What about Friday or Thursday whichever?

Mayor: Friday's the 27th, Thursday there's a banquet.

Purcell: Okay, what about Friday, I know Friday's a bad day, but...

Haywood: I can't do it on Friday, I have OEA.

Shanklin: This will be more important than that or are you up for election?

Purcell: Is there any way we can do it in the morning? Monday morning, the 30th? We need to get on with it. The motion I made is so that we give them an answer one week from today. I guess we could do it on the first but I think that's a bad day.

Mayor: What about 9:00 Monday morning? Yes, on the 30th? Does that fit everybody?

Baxter: I'll second that.

Mayor: All right. You want to include that in your motion?

Purcell: I'll amend my motion that we move to acknowledge receipt of the Energetix two contracts for the sale of effluent water and Council meet in special session at 9:30?

Mayor: 9 a.m.

Purcell: 9 a.m. on April 30 and at that point we make a decision to accept or reject those contracts.

Baxter: I'll second that again.

Mayor: Motion on the floor and also a second. Does anyone before we take a vote on this thing want to speak to this issue, if not we're going to take a vote.

Shanklin: I've got one thing to tell you. Two weeks ago tomorrow I went to the school board to find out the Independent School District Number Eight's district, and to leave a question with Mr. Barry Beauchamp as to what kind of new dollars a \$700 million plant would generate for the Independent School District Number Eight. Last Wednesday he told me it would be \$1.5 million. That's what a \$700 million plant will generate. I don't know about the \$8.9 million that they're bandying about but that's what it will mean to the school board is \$1.5 million, new dollars. You know, there's equalization and some of that they'll take away from us but \$1.5 isn't bad.

Mayor: Okay, thanks Bob. I've let everybody speak that wants to. Andre raised his hand. Yes sir, yes sir you can be next, he had his had up first it's been brought to my attention, yes.

Walker: I'll be very brief.

Mayor: If we could, let's.

Walker: I would just like to highlight, I've heard that in the contract mentioned a two year, two one-year periods for exclusivity or for option or whatever that was. If you're talking about being in construction by the end of this year, I'm curious as to why that provision would be in there. And to address Councilman Baxter's point of the Indian tax credits, Calpine's time frame is beyond, you must be in operation by the end of the year 2003 which means for all practical purposes you have to be in construction by the end of this year to meet a two year construction period and that's a time frame that we're all under so if we're going to be in construction by the end of this year I'm curious as to why we'd need that lengthy period of an option, and furthermore, you've got to meet construction financing, product sold, the gas projects or gas contracts in place, and many many things so speed is very important, I understand your commitments and your decision to process. I also want you to understand there are many other factors that need to be in place before you can be in construction by this year and to keep that option valid.

Mayor: Andre, I thank you very much. Did you want to speak to this issue, sir?

Fisher: I'm Russell Fisher, 7518 NW Stonegate, Wyatt Acres, Lawton, Oklahoma. I want to speak on three points

about all of this that's gone on. Number one, I have to brag about the lady on this commission who seemed to have had the guts to bring all this back up again and get it out in the open. I think we probably need her a big applause for what she's done, although I don't ask you to applaud right now. Secondly, we recently had in college basketball the final four, which was competition and I think you people on this council have to be sure that you give the citizens of this town the competition. You apparently have three organizations here who want to participate in this venue, all three should be considered, how ever you do it, whether by way of Mr. Purcell's motion or what I don't know but don't make the citizens of Lawton go through any more of this stuff of what's been going on down at City Hall. What's the politics? What's going on out at the old Fort Sill boys? You've had an awful lot of applause here tonight whenever Energetix is mentioned. You've had no applause when the other companies are mentioned. That should tell you the room is stacked tonight in favor of Energetix and some of the speakers you've had have proven that fact. Now, let's be honest with the people of Lawton and pick the best organization for our good. Thank you.

Mayor: We do have a motion on the floor as stated by Mr. Purcell. We do have a second to that motion. Yes ma'am. Sure, come forward please.

McCracken: Mr. Mayor and Council, thank you. I thought the last time that we had this discussion that...

Mayor: Name and address please ma'am, for a matter of the record.

McCracken: Yes, and I'm still concerned...

Mayor: Your name, please.

McCracken: I'm sorry. Margaret McCracken, 802 NE 60th, Lawton, Oklahoma, 73507. And I know that Smith and Company indicated they were going to move their facility south from the proposed site that they had looked at but I am still concerned that all of the Council members have seen this area where they had first proposed to put this plant and it is strictly just in the dead center of a community and I do have pictures of their Tuttle plant and it is tremendously large and I would like to have each council member to go out and maybe look at the site that they had first proposed in case they do not get the other.

Mayor: Okay, thank you, Mrs. McCracken. Thank you very much. Now then, before we take the vote, notes coming from both directions here. Is there anything we want staff to do prior to the next Council meeting we'll have, which is going to be on the 30th? Mr. Purcell.

Purcell: When I made that motion, there very well may be, and I don't know if they're open to it, there may be some fine tune adjustments on their part or on our part that have to be made once we acknowledge receipt of those contracts. I would hope that any of those discussions would be done and we would be looking at any of those, if there are any, I hope they're not but if there are, that we decide on Monday at 9:00 in the morning.

Mayor: Okay, what about the RFP's?

Purcell: Well, I assume that Energetix is not going to submit an RFP. I don't know if the other two will.

Mayor: No discussion on that. Mr. Devine?

Devine: Well, that's just what I was going to bring up. Again, it doesn't matter to which one of these companies that would get it if we can get one, but I think what we're missing here and I think this Council has not really realized, how do we know which one is going to offer us the most for our community without listening to their proposals. When we take, and take this contract and we look at it, we accept it, we don't even know if it was the best contract to start with because we have not listened to the other two companies and their proposals of what they can do for this community. I know that they stood out there a few weeks ago and give a brief proposal but it was not what would really benefit this community and I think by, if we accept this contract, we never give the other two an opportunity to offer us anything any better than what Energetix is.

Baxter: Yes we are, we're still going to send the RFP out and they still have the opportunity to fill that out and send that back.

Haywood: I know we're going to vote on this, you know, and I said last time that I'm the one who talked the less here but on January the 18th we made a decision, and I've said this before. I abstained last time. We made a decision. When we come to Calpine or Smith Cogeneration or Energetix, we made a decision. We knew that Smith Cogeneration was not here, it was another one that was here, but we made a decision on January the 18th and like Dr. Bridges said, our reputation is on the line now, you know, and if anybody is going to come here, the first thing they're going to say, those people can't make up their minds. And I'm going to tell you this, I'm for, I'm for Energetix. There's no doubt about it, I'm just going to tell you point blank. They're going to build two plants here, one on the east side and one on the west side. Economically, that's them, that's me, I can't speak for anyone else. I am for Energetix and I'm going to tell you that point out, point blank. Thank you. (applause)

Mayor: Please call the roll." (end verbatim transcription)

Clerk called the roll as follows: AYE: Haywood, Smith, Hanna, Devine, Purcell, Shanklin, Moeller, Baxter. NAY: None. MOTION CARRIED.

The Mayor and Council recessed at this time, 8:10 p.m. and reconvened at 8:20 p.m. with roll call reflecting all members present.

#### UNFINISHED BUSINESS ITEMS:

1. Hold a public hearing and adopt resolutions declaring the structures at: 2305 SW 11th Street, 1403 NW Dearborn Avenue, 1405 NW Dearborn Avenue, and 1912 NW Irwin Avenue, to be dilapidated and dangerous, thus causing a blighting influence on the community and detrimental to the public's health and safety; authorize Neighborhood Services to solicit bids to demolish structures, if appropriate. Exhibits: Resolution Nos. 01-\_\_\_, 01-\_\_\_, 01-\_\_\_ and 01-\_\_\_.

Angie Alltizer, Neighborhood Services Director, said the structure at 2305 SW 11th Street has come for condemnation due to cessation of normal construction and that Mr. Gaskins is present to speak.

MOVED by Haywood, SECOND by Devine, to table consideration of the resolution declaring 2305 SW 11th Street dilapidated until the Council meets on May the 27th, during this period the owner would be allowed to apply for a building permit that meets all code requirements; if the owner does not apply then the structure will be brought back for Council consideration as a dilapidated building; if the application is made and a permit is issued then the structure does not need to be returned for our consideration. AYE: Hanna, Devine, Purcell, Shanklin, Moeller, Haywood, Baxter, Smith. NAY: None. MOTION CARRIED.

#### 1403 AND 1405 NW DEARBORN AVENUE:

Alltizer said this property recently changed ownership; the resolution passed at the last meeting was when the property was under ownership of the New Rock Church. It is now under the ownership of SM Stokes and he was not able to attend tonight but had informed Alltizer he was in the process of negotiating with the Ronald McDonald House for being able to demolish the structures and rebuild on that site, and has been getting bids for demolition for both structures. Mayor Powell asked that Council consider both 1403 and 1405 NW Dearborn at the same time.

Shanklin asked if staff proposal was for demolition. Alltizer said that was what was proposed and Stokes was negotiating with Ronald McDonald House but had not received word on whether they would be able to acquire the properties. Alltizer said the City Clerk's Office had notified her that this property comes up for a tax sale in June.

Purcell said if this is passed, the owner would have the normal time to get his permit to demolish it on his own, but if that does not happen, the City would demolish it and it would not have to come back to Council. Alltizer said that is correct. Smith said Stokes agreed last time they needed demolishing.

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

MOVED by Shanklin, SECOND by Baxter, to approve Resolution Nos. 01-56 and 01-57. AYE: Devine, Purcell, Shanklin, Moeller, Haywood, Baxter, Smith, Hanna. NAY: None. MOTION CARRIED.

(Title only) Resolution No. 01-56

A resolution determining a certain structure to be dilapidated and detrimental to the health, benefit, and welfare of the community, and ordering that the buildings be demolished and removed.

Location: 1403 NW Dearborn Avenue, Mountain View Addition, Block 23, Mid 40' of Lots 1-5, Comanche County, Lawton, Oklahoma

Title Holders: Allen Stokes; Mortgage Holders: None.

(Title only) Resolution No. 01-57

A resolution determining a certain structure to be dilapidated and detrimental to the health, benefit, and welfare of the community, and ordering that the buildings be demolished and removed.

Location: 1405 NW Dearborn Avenue, Mountain View Addition, Block 23, W 50' of Lots 1-5, Comanche County, Lawton, Oklahoma

Title Holders: Allen Stokes; Mortgage Holders: None.

#### 1912 NW IRWIN AVENUE:

Alltizer said she received a letter from Rick Pickens, Executive Director of Habitat for Humanity, saying their organization was in the process of acquiring the property. The owner's plan is to demolish the structure with grant

funds, rebuild on that site and for the City to cooperate with them until the grant funds were obtained. It was to be a fairly short turn around time but an exact time period was not stated. Shanklin asked an approximate time frame. Mayor Powell suggested Council consider this since we are running out of money for demolition. Shanklin agreed and said he did not notice any funds in CDBG.

MOVED by Purcell, SECOND by Smith, to table this to the second meeting in June. AYE: Purcell, Shanklin, Moeller, Haywood, Baxter, Smith, Hanna, Devine. NAY: None. MOTION CARRIED.

Shanklin asked that 1402 Dearborn be inspected, as well as houses north of Cache Road on the west side of Sheridan, and about a half mile of apartments on Williams.

2. Consider adopting an ordinance amending Chapter 2, Lawton City Code, 1995, relating to administration; creating Article 15, Animal Welfare Committee; providing for severability; providing for codification; and providing an effective date of May 11, 2001. Exhibits: Ordinance No. 01-\_\_\_\_.

This item was not considered, as had been stated earlier in the meeting.

3. Consider authorizing a city corporate matching support payment for employees who desire to be members of the YMCA. Exhibits: YMCA Proposal.

Smith said City employees developed a health package which included the City offering this benefit.

Randy Grant, YMCA spokesman, 1726 NW Liberty, spoke in favor of the City providing assistance for its employees in the form of paying \$4 toward their membership in the YMCA, which would result in the YMCA discounting membership for those persons by \$8. Cost to the City would be between \$4,000 and \$9,000 per year. Grant said he knew the City's budget would be tight and that this could result in a savings in health costs and sick leave, and improve morale.

Purcell asked what would happen if only five employees participated. Grant said it would not be cost effective. Purcell said he thought it should be addressed during budget. Shanklin agreed.

MOVED by Smith, SECOND by Baxter, to approve this and authorize staff to make an \$8 per month employee participation, and to take it for the remainder of this year out of Council Contingency funds.

SUBSTITUTE MOTION by Devine to table this until budget time for Mr. Baker to make sure we've got the money to pay for it.

Baker said he was working on a tight budget which may include staff reduction and additional money for health insurance, so this would not seem an appropriate time for an additional benefit for employees. He said he did not know if 100 employees would participate; it would only include general employees because fire and police are under contract and are excluded. Baker said it was wise to defer this.

Smith said if we are increasing the input into the insurance program, this could reduce those health insurance claims.

SECOND by Purcell, to substitute motion to table. AYE: Shanklin, Moeller, Haywood, Hanna, Devine, Purcell. NAY: Baxter, Smith. SUBSTITUTE MOTION CARRIED.

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#### BUSINESS ITEMS:

4. Hold a public hearing and consider an ordinance amending Section 18-580 and 18-591 of the Lawton City Code to allow professional studios in C-1 (Local Commercial District) and C-2 (Planned Neighborhood Shopping Center District). Exhibits: Ordinance No. 01-14.

Bob Bigham, City Planner, reviewed background information and said the Planning Commission has held a public hearing and recommended approval of the proposal. This will have an impact on the next agenda item; the Planning Commission considered whether this would be appropriate for C-5 and recommended approval for C-1 or C-2 zones. Purcell asked if staff was looking at what was identified to be in the various planning category zones, noting a recent problem with a snow cone stand. Baker said yes, that will be done.

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

MOVED by Shanklin, SECOND by Smith, to approve Ordinance No. 01-14, waive reading of the ordinance, read the title only, and declare an emergency.

Shanklin said it needs to be an emergency so they can start work. Mayor Powell said it was not advertised as an emergency. Shanklin said Council could add that and that it was part of his motion.

(Title read aloud) Ordinance No. 01-14

An ordinance related to zoning amending Section 18-5-8-580, as amended by Ordinance Nos. 97-10 and 2000-30, and Section 18-5-9-591, as amended by Ordinance Nos. 95-42, Chapter 18, Lawton City Code, 1995, allowing professional studio or academy for the teaching of the arts as a permitted use in C-1 (Local Commercial District) and C-2 (Planned Neighborhood Shopping Center District); and providing for severability, and declaring an emergency.

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

5. Hold a public hearing and consider a resolution amending the 2020 Land Use Plan from Residential-Multi Family to Commercial and Office and an ordinance changing the zoning from R-4 (High Density Apartment District) to C-5 (General Commercial District) zoning classification located at 2112 and 2114 SW E Avenue. Exhibits: Resolution No. 01-58; Ordinance No. 01-15; Location Map; Applications; Site Plan; CPC Minutes; 2020 Land Use and Zoning Maps.

Bigham presented a viewgraph map of the area; application was for C-5 zoning. Planning Commission held a public hearing and recommended disapproval of C-5 zoning but recommended approval of C-1 zoning. Council previously voted to install an 8" water line in this area using 2000 CIP funds. Proper notice of this public hearing was given and no contacts have been received in that regard.

PUBLIC HEARING OPENED.

Sherri Conwell, 3404 NW Baltimore, said she owns the land and requested approval. She said she would like the water line completed so she could open the dance studio. Ihler said the water line should be finished around September and Conwell said that would be great. Shanklin asked how long Conwell had been working on this project and Conwell said since September.

PUBLIC HEARING CLOSED.

Discussion was held on whether the ordinance should contain an emergency clause. Shanklin noted it was not the applicant's fault that it was not advertised as an emergency.

MOVED by Shanklin, SECOND by Smith, to approve Resolution No. 01-58 and Ordinance No. 01-15, waive reading of the ordinance, read the title only.

(Title only) Resolution No. 01-58

A resolution approving an amendment to the 2020 Land Use Plan for the City of Lawton from Residential-Multi Family to Commercial and Office located at 2112 and 2114 SW E Avenue.

(Title read aloud) Ordinance No. 01-15

An ordinance changing the zoning classification from the existing classification of R-4 (High Density Apartment District) to C-1 (Local Commercial District) zoning classification on the tract of land which is hereinafter more particularly described in Section One (1) hereof; authorizing the changes to be made upon the Official Zoning Map in accordance with this ordinance.

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

6. Hold a public hearing and consider a resolution amending the 2020 Land Use Plan from Residential-Multi Family to Commercial and Office and an ordinance changing the zoning from R-4 (High Density Apartment District) to C-1 (Local Commercial District) zoning classification located at 1116 SW B Avenue. Exhibits: Resolution No. 01-59; Ordinance No. 01-16; Location Map; Applications; Site Plan; CPC Minutes; 2020 Land Use and Zoning Maps.

Bigham presented a viewgraph of the area and stated the Planning Commission has held a public hearing and recommends approval. Applicant is Ruby Patterson and proposed use is a beauty shop.

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

MOVED by Shanklin, SECOND by Smith, to approve Resolution No. 01-59 and Ordinance No. 01-16, waive reading of the ordinance, read the title only.

(Title only) Resolution No 01-59

A resolution approving an amendment to the 2020 Land Use Plan for the City of Lawton from Residential-Multi Family to Commercial and Office located at 1116 SW B Avenue.

(Title read aloud) Ordinance No. 01-16

An ordinance changing the zoning classification from the existing classification of R-4 (High Density Apartment District) to C-1 (Local Commercial District) zoning classification on the tract of land which is hereinafter more particularly described in Section One (1) hereof; authorizing the changes to be made upon the Official Zoning Map in accordance with this ordinance.

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

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9. Consider adopting a resolution authorizing the temporary closure of the east bound lane of Gore Boulevard and the closure of SW 4th and SW 5th Streets from Gore Boulevard to the north side of SW A Avenue for the Arts For All Festival on May 10-13, 2001. Exhibits: Letter of Request; Memorandum; Resolution No. 01-60.

MOVED by Smith, SECOND by Baxter, to approve Resolution No. 01-60. AYE: Smith, Hanna, Devine, Purcell, Shanklin, Moeller, Haywood, Baxter. NAY: None. MOTION CARRIED.

(Title only) Resolution No. 01-60

A resolution authorizing 1) the temporary closing of a portion of 4th and 5th Streets from Gore Boulevard to the north side of SW A Avenue; and 2) the closing of the south lane of Gore Boulevard during the Arts For All Festival.

10. Consider authorizing the Mayor to send a letter to area legislators requesting funding support for the renovation of the Old Central Junior High School. Exhibits: None.

Mayor Powell said he attended a State Centennial meeting last week and there is \$45 million in a rainy day fund, and he understood it was set up for matching funds. He said McMahon Foundation has made the statement if he could get \$3 million on that level that they would match it.

MOVED by Shanklin, SECOND by Smith, to approve the Mayor writing the letter. AYE: Hanna, Devine, Purcell, Shanklin, Moeller, Haywood, Baxter, Smith. NAY: None. MOTION CARRIED.

11. Consider authorizing staff to enter into negotiations with the Department of Corrections to reimburse them for a DOC employee to supervise an inmate crew to work year round maintaining alleys. Exhibits: None.

Shanklin said he wanted to strike this item but would like Ihler to explain the money received for alleys and how they plan to attack this; around \$200,000 was received and it was for all alleys in all wards.

Ihler said \$215,000 was received and there are 525 alleys being dealt with. The representative did not look at all the alleys and decided they would say 10% needed regular maintenance, 75% needed removal of material and rock brought back in because of potential drainage problems. Street personnel are looking at all alleys, identifying needs in each, then recommending a priority list to Council in late May to address all of the storm damage, which was about \$825,000. Doing the work in-house is an advantage as we would receive payment for materials and labor, as well as equipment use. Shanklin said he wanted to table this but keep it in mind.

Purcell asked if alleys are only those areas that are either paved or chat, or if there are utility easements that are rather wide but possibly still called alleys. Ihler said it would be an easement for access to utilities, and it depends on how they are platted but those are usually utility easements.

MOVED by Shanklin, SECOND by Haywood, to table this indefinitely. AYE: Devine, Purcell, Shanklin, Moeller, Haywood, Baxter, Smith, Hanna. NAY: None. MOTION CARRIED.

12. Consider ratifying the continuance granted by the Mayor pursuant to his previously granted administrative authority and set a date for hearing on the Mayor's Petition regarding the Municipal Judge in accordance with Section 9-2-206 B, Lawton City Code, 1995. Exhibits: April 16, 2001 letter from Ken Turner.

Vincent said a letter was received from Judge Kinslow's attorney requesting hearing dates. Staff recommendation for dates was May 21 and 22.

Baxter said he was sure this would be approved but he would not be able to vote for it. He said attorneys are famous for delay tactics and every month this is delayed costs the City budget \$5,000.

MOVED by Smith, SECOND by Haywood, to ratify the continuance granted by the Mayor and change the dates to May 21 and 22. AYE: Purcell, Shanklin, Moeller, Haywood, Smith, Devine. NAY: Baxter. ABSTAIN: Hanna. MOTION CARRIED.

13. Consider adopting an ordinance relating to the municipal court, amending Section 9-105, Chapter 9, Lawton

City Code, 1995, setting forth the Court Marshal/Bailiff as principal officer of the court; establishing powers and duties and certification requirements, and declare an emergency. Exhibits: Ordinance No. 01-17; Letter of recommendation from Municipal Judge.

Vincent said the bailiff does certain work for the judge, calls people to come in on warrants, carries weapons and is CLEET certified; there are no guidelines for him to operate under and this establishes those guidelines and procedures, and ratifies the actions he has been taking.

Moeller asked how long they had been operating without this. Vincent said since 1993 or 1994 when the bailiff was also a retired police officer but had different duties from these. Purcell said it is just changing a name and putting what is already being done in writing.

MOVED by Purcell, SECOND by Smith, to approve Ordinance No. 01-17, waive reading of the ordinance, read the title only.

(Title read aloud) Ordinance No. 01-17

An ordinance relating to the Municipal Court, amending Section 9-105, Chapter 9, Lawton City Code, 1995, setting forth the Court Marshal/Bailiff as principal officer of the court; establishing powers and duties and certification requirements; and declaring an emergency.

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

#### ADDENDUM BUSINESS ITEMS:

1. Consider authorizing the Mayor to send a letter to Atlantic Southeast Airlines requesting that they reconsider their decision to discontinue air service to Lawton-Fort Sill. Exhibits: None.

Mayor Powell said he received a call that ASA was leaving Lawton-Fort Sill, and then received another call asking him to put a group of people together, which he has done, and discussions were held. He said contact was made with representatives of federal legislators requesting assistance, and the first plan of action was to request direct jet flight service to Atlanta. Mayor Powell said Fort Sill has had input and they transport about 10,000 soldiers per year to Oklahoma City because of the way the flights leave here. He said there are 120,000 potential enplanements but only 60,000 of them chose to fly out of here, meaning the others go to Dallas or Oklahoma City. Mayor Powell said the first course of action was for non-stop jet service to Atlanta, and two years ago they were planning to pull out of Corpus Christi but they worked something out and did not leave. He said another plan of action was to consider two other airlines, one going to Denver, and people are working on that also.

Mayor Powell said he was asked to send a letter asking that this be considered, and that others would be doing that also, as well as a contingent flying to meet with them.

MOVED by Smith, SECOND by Haywood, to approve the letter.

Haywood said this will also be a loss of income to the airport, as well as the ASA employees. Mayor Powell said there are 15 employees involved.

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

2. Consider approving Change Order No. 2 for the McMahon Memorial Auditorium Lobby Renovation #2000-34 with Reynosa Construction, Inc. Exhibits: McMahon Foundation Letter dated April 20, 2001.

Ihler explained this change order deals with a window and brick facing on the building; McMahon Foundation will pay associated costs. Purcell expressed concern about the five day construction time addition. Baker said that was discussed with the contractor and with McMahon Foundation, and Mr. Wood initially objected to the time extension also, but agreed after further talks with the contractor.

MOVED by Smith, SECOND by Haywood, to approve the change order. AYE: Haywood, Baxter, Smith, Hanna, Devine, Purcell, Shanklin, Moeller. NAY: None. MOTION CARRIED.

#### CONSENT AGENDA:

14. Consider the following damage claim recommended for denial: Steve and Sherrie Morris. Exhibits: Legal Opinion/Recommendation. THIS WAS CONSIDERED SEPARATELY AS SHOWN BELOW.

15. Consider the following damage claims recommended for approval and consider passage of resolutions

authorizing the City Attorney to file friendly suits for claims which are over \$400.00: James L. and Jessie M. Grayson, Holiday Bowl, Mrs. Harold Johnson, Donald Vanwinkle and Southwestern Bell Telephone Company. Exhibits: Legal Opinions/Recommendations. (Resolution Nos. 01-61, 01-62, 01-63 , 01-64 and 01-65 on file in City Clerk's Office)

(Title only)

Resolution No. 01-61

A resolution authorizing and directing the City Attorney to assist James L. and Jessie M. Grayson 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 Eight Hundred Dollars and 00/100 (\$800.00).

(Title only)

Resolution No. 01-62

A resolution authorizing and directing the City Attorney to assist Holiday Bowl, Inc. 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 Three Thousand Fifty-Eight Dollars and 70/100 (\$3,058.70).

(Title only)

Resolution No. 01-63

A resolution authorizing and directing the City Attorney to assist Dorothy Johnson 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 reduced amount of Two Thousand Seven Hundred Thirty-One Dollars and 26/100 (\$2,731.26).

(Title only)

Resolution No. 01-64

A resolution authorizing and directing the City Attorney to assist Donald Vanwinkle 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 reduced amount of One Thousand Three Hundred Sixty-Three Dollars and 18/100 (\$1,363.18).

(Title only)

Resolution No. 01-65

A resolution authorizing and directing the City Attorney to assist Southwestern Bell Telephone Company 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 Two Thousand Two Hundred Thirty-Eight Dollars and 13/100 (\$2,238.13).

16. Consider authorizing negotiations for an assignment and amendment to an existing lease with Southwest Marketing & Advertising Agency, Inc. Exhibits: None. Action: Approval.

17. Consider adopting a resolution ratifying the action of the City Manager and the City Attorney in not pursuing further appeals and making payment of the judgment in the Workers' Compensation case of Stacey E. James in the Workers' Compensation Court, Case No. 1999-18830Q. Exhibits: Resolution No. 01-66.

(Title only)

Resolution No. 01-66

A resolution ratifying the actions of the City Manager and City Attorney in making payment of the judgment in the Workers' Compensation case of Stacey E. James for the amount of Twenty-Three Thousand Five Hundred Ninety-Nine Dollars and 91/100s (\$23,599.91) per order of the Workers' Compensation Court, and filing a foreign judgment in the District Court of Comanche County for purposes of placing said judgment on the tax rolls.

18. Consider adopting a resolution ratifying the action of the City Manager and the City Attorney in not appealing and making payment of the judgment in the Workers' Compensation case of Frank J. Zollars in the Workers' Compensation Court, Case No. 2000-18811A. Exhibits: Resolution No. 01-67.

(Title only)

Resolution No. 01-67

A resolution ratifying the actions of the City Manager and City Attorney in making payment of the judgment in the Workers' Compensation case of Frank J. Zollars for the amount of Ten Thousand Seven Hundred Eighty-Three Dollars and 50/100s (\$10,783.50) per order of the Workers' Compensation Court, and filing a foreign judgment in the District Court of Comanche County for purposes of placing said judgment on the tax rolls.

19. Consider approving plans and specifications for the Medicine Park Water Treatment Plant Expansion Project and authorizing staff to advertise for bids. Exhibits: None. (Plans are on file in Public Works) Action: Approval.

20. Consider approving Change Order No. 3, assessing liquidated damages, accepting the Robinson's Landing Lift Station and Restroom Facility Construction Project #2000-5 as constructed by M. L. Young Construction Corporation and placing the Maintenance Bond into effect. Exhibits: Location Map. THIS ITEM WAS CONSIDERED SEPARATELY AS SHOWN BELOW.

21. Consider accepting Landfill Cells 2-3 Project #2000-8 as constructed by Ideal Construction, Inc. and placing the Maintenance Bond into effect. Exhibits: Location Map. Action: Approval.

22. Consider accepting the NW 64th and Taylor Storm Drainage Project #2000-31 as constructed by T & G Construction, Inc. and placing the Maintenance Bond into effect. Exhibits: Location Map. Action: Approval.
23. Consider approving a contract with GBA Architects for professional architectural services for the McMahon Auditorium Re-Roofing Project #2001-9. Exhibits: Location Map. Action: Approve a contract with GBA Architects for professional architectural services for the McMahon Auditorium Re-Roofing Project #2001-9; fee is 6% of the construction contract cost.
24. Consider awarding a construction contract to Kent Waller Construction Co. for the Water Division Building Expansion Project #2001-5. Exhibits: Location Map. Action: Award a construction contract to Kent Waller Construction Co. for the Water Division Building Expansion Project #2001-5 in the amount of \$28,062.00.
25. Consider awarding a construction contract to Kent Waller Construction Co. for the NW Lindy Avenue Street Reconstruction Project #2000-33. Exhibits: Location Map; Bid Tab. Action: Award a construction contract to Kent Waller Construction Co. for the NW Lindy Avenue Street Reconstruction Project #2000-33 in the amount of \$353,973.00.
26. Consider entering into a contract with Mr. and Mrs. Donald C. DuRant for fire protection outside the Lawton city limits, and authorize the Mayor and City Clerk to execute the contract. Exhibits: None. (Contract on file in City Clerk's office) Action: Approval.
27. Consider authorizing deposit of FEMA funds granted for street repairs in the City's Capital Improvement Fund. Exhibits: List of Projects. Action: Approval.
28. Consider the following contract extensions: A) Water Meters, Parts and Service with Invensys Metering System; B) Custodial Services Group III with Service One Janitorial of Lawton; C) Custodial Services Group II with Pride Janitorial. Exhibits: None. Action: Approval.
29. Consider awarding contract for Turbidity Analyzer System to Great Lakes International. Exhibits: Department Recommendation; Abstract of Bids. Action: Approval.
30. Consider awarding contract for PVC Sewer Pipe to Water Products of Oklahoma, and to Oklahoma Contractor's Supply. Exhibits: Department Recommendation; Abstract of Bids. Action: Approval.
31. Consider awarding contract for Wood Hog Grinder to Morbark, Inc. Exhibits: Department Recommendation; Abstract of Bids. Action: Approval.
32. Consider awarding contract for 2001 Uniform Violation Complaints to Fields Printing Company. Exhibits: Department Recommendation; Abstract of Bids. Action: Approval.
33. Consider denying request for extension of Custodial Services Contract with H & H Janitorial. Exhibits: Contract Change Order; Department Memoranda. Action: Approval.
34. Consider approval of appointments to boards and commissions. Exhibits: Memorandum.

Lawton Metropolitan Area Air Quality Committee (LMAAQC)

Lawton Metropolitan Area Planning Commission (LMAPC) - Frank Parrish  
City Planning Commission (CPC) - Pat Henry  
Lawton Public Schools - Barry Beauchamp  
Fort Sill - Major General Toney Stricklin  
Goodyear - Don McDonald and Tim Wilson  
Bar-S - Don Bohnsak & Bart Scroggins  
City of Lawton Public Works - Jerry Ihler  
City of Lawton Parks & Recreation - Gary Salva  
City of Lawton Police - Bill Adamson  
City of Lawton Fire - Don Barrington  
City of Lawton City Manager - Bill Baker  
Lawton Chamber of Commerce - Marilyn Fever  
Wichita Mountains Wildlife Manager - Sam Waldstin  
Columbia Southwestern Hospital - Tom Rine  
Comanche Memorial Hospital - Randy Siegler  
Asphalt/Concrete Ready-Mix Company (T & G) - Larry Grayson  
Public Service Company - Bob Milner  
Reliant Energy - Linda Golden

Wackenhut State Penitentiary - Dayton Poppell  
Comanche County Commissioner - Gail Turner  
KSWO - Larry Patton  
Radio - KCCU - Mark Norman  
Radio - KBZQ - Rick Fritch  
Radio - KFXI - Bill Shoemate  
Radio - KJMZ - Joy Chapman  
Radio - KKEN - Bobby & Tammy Elliot  
Radio - KLAW & KZCD - Kim Dodds  
Radio - KMGZ - Chuck Morgan  
Radio - KVRN - Jennifer Combs  
The Lawton Constitution - Kim McConnell & David Hale  
Association of South Central Oklahoma Governments - Blaine Smith  
Kiowa Comanche Apache (KCA) - Billy Horse  
Lawton Area Transit - Manager  
Great Plains Technology Center - Jim Nisbett

Executive Committee:

Mayor - Cecil E. Powell  
CPC - Pat Henry  
LMAPC - Frank Parrish  
Fort Sill - Major General Toney Stricklin  
LPS - Barry Beauchamp  
Goodyear - Don McDonald  
City Manager - Bill Baker  
Media - TV - Larry Patton  
Media - Newspaper - David Hale & Kim McConnell  
Media - Radio - All Available  
Health - Randy Siegler  
Health - Tom Rine

35. Consider approval of payroll for the period of April 16 through 29, 2001. Exhibits: None.

Shanklin asked that Items 14 and 20 be considered separately.

MOVED by Smith, SECOND by Baxter, to approve the consent agenda items as recommended with the exception of Items 14 and 20. AYE: Baxter, Smith, Hanna, Devine, Purcell, Shanklin, Moeller, Haywood. NAY: None. MOTION CARRIED.

ITEM 14 - MORRIS DAMAGE CLAIM:

Shanklin said this happened while we were working and sewage backed up into the home, but since we were not made aware of it before, we turned it down according to a statute. He said these people are citizens, not the enemy, and they did not want it to happen and neither did we, but they have a loss and he felt the City should pay it. Shanklin asked if staff felt the \$1,800 was a fair amount for damages.

Randy Henning, Assistant City Attorney, said he did not review it in light of the amount, but only the legal liability issue.

MOVED by Shanklin, SECOND by Haywood, that staff look at the claim that has been presented and bring it back at the next Council meeting.

Purcell said he did not find where the City was working in the area, and it is a normal sewer back up. Shanklin said he misread it and apologized, and said Morris still had damage and such claims had been paid before. Shanklin said it did not seem we could say we did not know there was a problem when a \$64 million sewer upgrade was required and that it only would cover 10% of the lines.

Purcell said some claims are approved and some are not, under the same circumstances, so we should have a policy that says from now on we will pay on sewer back ups. Shanklin said if the obstruction is in the main. Purcell agreed and said it should be consistent. Shanklin said the people are residents, they were damaged, the City's line caused it, and payment should be made. Purcell said he did not disagree and that we should be consistent.

Steve Morris, 7026 SW Winchester, said this took place the night of the 27th, it started about 6:30 and they called but were put on a list so they called a plumber after the City could not send anyone right away but the plumber was unable to get the manhole open. He said the manhole is in his back yard and he is the last person on that manhole that was obstructed. Morris said it was 11 p.m. before they finally got it cleared, and he broke the seal on one

commode so the water would come out of only one spot because it was coming out of two bathrooms at one time. He said he got it to come out of one spot and used a shop vac from 6:30 to 11 p.m. when crews got it cleared, dumping a 60 gallon shop vac about every ten minutes out the front door. Morris said he felt he did an excellent job trying to minimize the damage. He said he had replaced baseboards and other items they did not put in for on the claim that he thought were fair and he would hope that would be considered.

MOVED by Shanklin, SECOND by Haywood, to pay \$1,892.79 to Mr. Steve Morris for 7026 SW Winchester back up on January 27, 2001.

Mayor Powell asked if he wanted staff to see if that number was correct. Shanklin said yes, but he did not know that was necessary after Morris' explanation of dumping water for five hours when we did not get out there. Baker suggested Council approve a resolution and warrant of attorney.

SUBSTITUTE MOTION by Purcell, SECOND by Shanklin, to ask staff to tell us what we ought to be paying and then pay whatever the amount is, if there is depreciation. AYE: Smith Hanna, Devine, Purcell, Shanklin, Moeller, Haywood, Baxter. NAY: None. SUBSTITUTE MOTION CARRIED.

20. Consider approving Change Order No. 3, assessing liquidated damages, accepting the Robinson's Landing Lift Station and Restroom Facility Construction Project #2000-5 as constructed by M. L. Young Construction Corporation and placing the Maintenance Bond into effect. Exhibits: Location Map.

Shanklin said the contractor refuses to sign this and asked if funds will be withheld because it shows they were 39 days over the contract time. Ihler said the company refused to sign, and he discussed with the City Attorney this morning that notice was received that one of the subcontractors has not been paid, therefore, all of the money regarding this particular contract will be retained until a contractor's release is received, as he understood the City Attorney.

Vincent said the contract requires the contractor to file a certificate saying he has paid all subcontractors, and that has not been received, and word was received that one subcontractor was not paid. He suggested authorizing staff to withhold the \$11,700 in liquidated damages and not pay the balance until the subcontractor is paid and the certificate submitted.

MOVED by Shanklin, SECOND by Smith, to authorize staff to withhold the \$11,700 in liquidated damages and not pay the balance until the subcontractor is paid and the certificate submitted. AYE: Hanna, Devine, Purcell, Shanklin, Moeller, Haywood, Baxter, Smith. NAY: None. MOTION CARRIED.

Purcell said for clarification, the motion was to withhold the liquidated damages portion, and to not release the remaining payment until the certificate is provided. Mayor Powell said yes.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER.

COL Steuber said Fort Sill will be working with the Centennial and will start preparing to assist with the Boulevard of Lights, which are looking at a variety of funding options, one being raising the utility bills by \$1 for support of the project. He said Fort Sill is hosting the Senior Fire Support Conference with tomorrow being the General Officer Primary portion where they will have the Chief of Staff of the Army, Command General of TRADOC, and General Franks also on Thursday, as well as the banquet on Thursday night.

Purcell asked that the City Attorney address the Boulevard of Lights \$1 on utility bills. Vincent said the utility bill cannot be used as a general fund raiser for activities like that.

Shanklin said Mr. Bridges, to him, tried to point the finger at the Council as not keeping their word and he did not respond to that but wanted to say for the record that he did not particularly like it. He said the newspaper said in one editorial that they wanted the Council to come clean so he was going to do that; he represents Ward Five and has a fiduciary responsibility to see that the citizens of Ward Five get the biggest bang for their buck and he would continue to do that. Shanklin said he had no ax to grind as to who gets it and he could care less as long as they build it in Independent 8 and they get that \$1.5 million if the plant gets built, and he had reservations that it would ever happen because there are too many of them out there now, and yet they had taken a bloody nose over it and he was disappointed in it.

Shanklin said he bragged on the Bailiff the other night and wanted to add what a fine job that Donna Mata and her crew do and that collections are up around 4% over last year.

Moeller said she wanted to ditto what Shanklin said, and to comment on an editorial that Mr. Hale had run twice as far as finding money for a study for Fort Sill. She suggested the Mayor and the General could discuss the needs and turn that over to those who are advocating for them. Mayor Powell said meetings had been held and that he and Dr. Boatsman had been asked to co-chair meetings, and certainly Fort Sill was in the forefront to be

represented by General Stricklin and Retired General Baxter. Moeller said she did not feel money was needed for a study but they just needed to talk. Mayor Powell asked where the money came from. Moeller said it was written in the editorial. Mayor Powell said he did not get any money and money was never an issue brought up at the meeting. Moeller said it was just the editorial and she thought they were proceeding in the right direction.

Devine said he wanted to add to Shanklin's comments and said Council should really consider, even though they are going to look at this contract with Energetix, they did not want to close their minds to the other two companies. He said it did not matter to him who ended up with a contract but wanted to be sure the City got as much as they could, and if they agree on this contract, they would never know what the other two companies had to offer.

Smith said he disagreed with Mr. Devine, respectfully. He said the controversy this has generated has livened the town up quite a bit and he did not think anyone would have a door closed on them because it was repeated several times that the raw water is available.

Hanna reported on play off games scheduled at Ron Stephens Stadium. He said he had not said much about the editorial and the power companies but he only wanted the one that would provide the most for the residents. Hanna said he wished people would get the right information before writing the editorials because he thought the Council was getting slammed for things they had not done. He said he was sorry that Ron Kirby's name was brought up and the only decision that had been made was to not slam the door on any company that could do anything to help the City of Lawton.

Baker said he has the contracts Energetix delivered tonight and would have them delivered to Council tomorrow morning. He asked that any input be provided to him or the City Attorney as there is not a lot of time to look over it before bringing it to Council on April 30. Smith asked that Bass receive a copy.

Baker said he hoped to have the preliminary budget to Council by May 1. He said the budget is balanced without the need for additional revenues but Council may not like some of the cuts being recommended. Purcell asked that Council receive a tentative list of budget meeting dates at the April 30 meeting.

Haywood said a youth rally will be held on Saturday at Southside Park at 13th and Tennessee; 1,500 kids are expected. A track meet is also planned for Saturday at Lawton High.

Vincent said the Oklahoma Municipal League rural water task force meets tomorrow to draft a proposal to counter the rural water association's proposal on Senate Bill 656 which is to go for a vote soon.

Mayor Powell said the National Day of Prayer will be May 4 in front of City Hall at Noon; in case of rain, it will be moved to First Baptist Church.

Mayor Powell said Council members always talk about cleaning up the City, but Earth Day and Trash Off Day were last Saturday and he saw only one Council member participate. He said it was a complete success and a lot of citizens and a lot of soldiers participated, and a lot of items were turned in for recycling. He said they fed over 300 hot dogs and appreciated his family's support in that regard. Mayor Powell said Haywood did participate and he appreciated all of those who participated.

Purcell said his rotary club cleaned up their mile between Rogers Lane and Cache Road on Flower Mound Road, but unfortunately by the next day there were beer bottles and soft drink bottles thrown right back out. He suggested those doing the littering be taken before the judge and an appropriate sentence would be for them to perform hours of community service work picking the litter up off the roadways. Purcell said some may be kids but there are adults doing this also.

#### BUSINESS ITEMS:

36. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the possibility of appealing the determination of the Workers' Compensation case of Cara Dell Yellowfish (Landers) in the Workers' Compensation Court, Case No. 97-1737 K, and take necessary action in open session. Exhibits: None.

37. Pursuant to Section 307B.3, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the easements requested by Southwestern Bell Telephone Company, and if necessary, take appropriate action in open session. Exhibits: None.

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

The Mayor and Council convened in executive session at approximately 9:30 p.m. and reconvened in regular, open session at approximately 9:40 p.m. with roll call reflecting all members present.

Vincent reported on Item 36 that pursuant to Section 307B4, Title 25, Oklahoma Statutes, the City Council entered into executive session to discuss the workers' compensation of Cara Dell Yellowfish Landers, Case 97-1737K and no action is required at this time.

Vincent reported on Item 37 that pursuant to Section 307B3, Title 25, Oklahoma Statutes, the City Council entered into executive session to discuss easement requests by Southwestern Bell Telephone and a possible contract. He requested a motion authorizing the City Attorney's staff to finalize contract negotiations and bring the final document back to Council.

MOVED by Devine, SECOND by Smith, to authorize the City Attorney's staff to finalize contract negotiations and bring the final document back to Council. AYE: Shanklin, Moeller, Haywood, Baxter, Smith, Hanna, Devine, Purcell. NAY: None. MOTION CARRIED.

There being no further business to consider, the meeting adjourned at 9:42 p.m. upon motion, second and roll call vote.