

Meeting of 2008-12-16 Regular Meeting

MINUTES

LAWTON CITY COUNCIL REGULAR MEETING  
DECEMBER 16, 2008 6:00 P.M.  
WAYNE GILLEY CITY HALL COUNCIL CHAMBER

Mayor John P. Purcell, Jr.                      Also Present:  
Presiding                      Larry Mitchell, City Manager  
    John Vincent, City Attorney  
    Traci Hushbeck, City Clerk

Mayor Purcell called the meeting to order at 6:14 p.m. Notice of meeting and agenda were posted on the City Hall notice board as required by law. Invocation was given by Councilmember Bill Shoemate, followed by the Pledge of Allegiance.

ROLL CALL

PRESENT:                      Bill Shoemate, Ward One  
Jay Burk, Ward Four  
Robert Shanklin, Ward Five  
Jeff Patton, Ward Six  
    Stanley Haywood, Ward Seven  
    Randy Warren, Ward Eight

ABSENT:                      James Hanna, Ward Two  
Janice Drewry, Ward Three

Mayor Purcell recognized Ward 8 Councilmember Elect Doug Wells who was in attendance.

AUDIENCE PARTICIPATION: None.

CONSENT AGENDA: The following items are considered to be routine by the City Council and will be enacted with one motion. Should discussion be desired on an item, that item will be removed from the Consent Agenda prior to action and considered separately.

Vincent stated Pamela Rogers, the claimant on item #2 will be in attendance and request that item be considered separately.

Burk requested items #8, #10 and #20 be considered separately.

MOVED by Warren, SECOND by Haywood, to approve the Consent Agenda with the exception of items #2, #8, #10 and #20. AYE: Haywood, Warren, Shoemate, Burk, Shanklin, Patton. NAY: None. MOTION CARRIED.

1. Consider the following damage claims recommended for approval and consider passage of the resolution authorizing the City Attorney to file a friendly suit for the claims which are over \$400.00: James and Francisca Stephens in the amount of \$745.45 (**Res. 08-154**), Wanda Dees in the amount of \$55.00, Steve and Tracey Rich in the amount of \$5,850.00 (**Res. 08-155**) and Chris and Hyang Suk Bloomfield in the amount of \$452.87 (**Res. 08-156**). Exhibits: Legal Opinions/Recommendations, Resolution No. \_\_\_, Resolution No. \_\_\_, Resolution No. \_\_\_.

2. Consider the following damage claim recommended for denial: Pamela Rogers in the amount of \$1,937.55. Exhibits: Legal Opinion/Recommendation.

Vincent stated this item involves Ms. Rogers driving a car on Cache Road between 52<sup>nd</sup> and 53<sup>rd</sup> Street. There was debris in the street and normally this would be a payable claim, but when Ms. Rogers advised that other cars had driven over the debris and she felt she could make it over and hit her oil pan causing an oil leak. Ms. Rogers knew that the object was in the road and that is the reason that staff is recommending this claim be denied.

Ms. Rogers son stated that they were unable to change lanes and were forced to go over the cement. He stated they are not asking for the entire payment.

Haywood questioned the type of vehicle Ms. Rogers was driving.

Mr. Rogers stated it was a 2007 Chevy Cobalt and it is very low to the ground.

Haywood stated if that would have been a truck or larger vehicle it would not have been a problem. He stated a City vehicle dropped this on the road.

Vincent stated staff is not sure who dropped this debris on the road. When they got out there about five days after Ms. Rogers reported it they could not find the debris. They did find where the oil pan had ruptured and leaked oil. They do know this happened but they do not know where the debris came from. Ms. Rogers thought she could clear the object because others were.

Mr. Rogers stated they were stuck in that lane and could not go around the debris or stop.

Haywood stated the vehicle behind them could have hit them if they would have stopped.

Mayor Purcell questioned if Ms. Rogers had insurance.

Mr. Rogers stated yes.

Haywood stated Ms. Rogers only has liability insurance.

Burk questioned why they waited a week to call the police.

Mr. Rogers stated his mother did not know what proper channels to follow and it took a little time.

Haywood stated he talked with Ms. Rogers several times and he has a problem with the denial of the claim.

MOVED by Haywood, SECOND by Shanklin, to adopt **Resolution 08-157** approving the damage claim of Pamela Rogers in the amount of \$1,937.55. AYE: Warren, Shoemate, Burk, Shanklin, Patton, Haywood. NAY: None. MOTION CARRIED.

3. Consider adopting a resolution ratifying the actions of the City Attorney in filing and making payment of the judgment in the Workers' Compensation case of Ronnie Walker in the Workers' Compensation Court, Case No. 2006-14772 R. Exhibits: Resolution No. 2008-\_\_\_\_.

4. Consider approving an Amendment to the Professional Services Agreement with Mackey Law Firm, and authorize the Mayor and City Clerk to execute the Amendment. Exhibits: Agreement and Amendment are on file at the City Clerk s office.

5. Consider accepting the Retainer Agreement for Professional Services with Cynthia Herriage and authorize the Mayor and City Clerk to execute the agreement. Exhibits: Professional Services Agreement on filed in the City Clerk s office.

6. Consider approving the Contract for Sale of surplus property located on the 1700 block SW 13<sup>th</sup> Street to Herbert Derricott, in the amount of Two Thousand Four Hundred and No/100 Dollars (\$2,400.00), and authorize the Mayor and City Clerk to execute the Contract for Sale and a Quit Claim Deed. Exhibits: The Contracts for Sale and Quit Claim Deeds are on file in the City Clerk s office.

7. Consider accepting a quit claim deed from Cecil D. Graham, authorizing the Mayor and City Clerk to execute the deed and authorizing the Mayor to sign a thank you letter for the donated property. Exhibits: Donation Letter. Quit claim deed and thank you letter are on file in the City Clerk s office.

8. Consider authorizing annual financial assistance in the amount of \$10,000 (Ten Thousand and no/100 Dollars) from the Hotel/Motel Tax Fund, as set out in the Agreement for Limited Services entered into between the Lawton Enhancement Trust Authority and the City of Lawton and take appropriate action as deemed necessary. Exhibits: Agreement between LETA and the City of Lawton can be reviewed in the City Clerks Office.

Burk stated he serves on the LETA board and the \$10,000 was part of the agreement. He stated LETA received a grant to use as a beautification project near the airport. They would like to see this project fully funded so that they will be able to get the size of plants needed and put in the sprinkler system. The work will be in house so it will cost less. He would like to see them use some funds from the hotel/motel tax to totally fund this project. The

City Council approved \$25,000 for tree trimming in Elmer Thomas Park but have only spent \$9,000.

Shanklin stated they don't know that yet.

Vincent stated in this support agreement with LETA they funded \$10,000 which is to provide ongoing funding for normal projects and there is also a provision in that agreement that states that LETA can come back and ask Council for additional funding for special projects over and above the \$10,000. He stated they will need to come back with an agenda item to fund a portion of the 11<sup>th</sup> Street project.

Burk stated the number they are looking at is \$25,000 plus the \$10,000 approved tonight.

Mayor Purcell stated the City Manager will bring an agenda item back the next meeting.

MOVED by Burk, SECOND by Haywood, to authorize annual financial assistance in the amount of \$10,000 from the Hotel/Motel Tax Fund, as set out in the Agreement for Limited Services entered into between the Lawton Enhancement Trust Authority and the City of Lawton. AYE: Shoemate, Burk, Shanklin, Patton, Haywood, Warren. NAY: None. MOTION CARRIED.

9. Consider approving the application of Lawton Beautiful Inc. and the Lawton Enhancement Trust Authority to provide an enhancement project for the median located at 4005 W. Gore Blvd. and provide limited city assistance. Exhibits: Draft design of the project.

10. Consider rescinding Resolution 08-143 adopted by the Lawton City Council on October 28, 2008 and adopting Resolution 08-\_\_\_ requesting the Secretary of Transportation and the Oklahoma Department of Transportation to consider future rail transit options in the Oklahoma City Metropolitan Area and the State of Oklahoma and authorizing the Mayor and City Clerk to execute said document. Exhibits: Resolution 08-\_\_ and 10-13-2008 Correspondence from ODOT.

Burk stated he stated he knows the City Council originally wanted to rescind this resolution after talking with ODOT officials. He has had a request from representatives from OnTrack, who oppose rescinding the resolution. They have asked permission to come to a City Council meeting and give the same type of presentation. He questioned if the City Council has time to give them the same consideration and then they can make a decision.

Shanklin questioned who were OnTrack.

Burk stated it is a group of citizens from the Oklahoma City area that are looking at this transportation issue. What he has been told from these people is totally different than what was told by ODOT to the City Council.

Mayor Purcell stated that those from OnTrack coming to speak is not the issue. He stated we have a resolution that they are using to send to the Governor and we are on record now. He thinks there are some delay tactics going on. If the City Council wants to keep the resolution that is fine, but they might be better off to rescind it, pass the new resolution tonight. They can always go back and pass another one at a later date. Part of what is going on has nothing to do with rail service to Lawton. It has to do with preserving Union Station which means we are sticking our nose in Oklahoma City's business which they don't appreciate.

Burk stated he does not mind rescinding the resolution tonight as long as they let them come and speak and then they can re-address the issue.

Mayor Purcell questioned if Councilmember Burk is going to contact them to appear at either the January 13<sup>th</sup> or 27<sup>th</sup> meeting.

Burk stated he would contact OnTrack.

MOVED by Burk, SECOND by Patton, to rescind Resolution 08-143 adopted by the Lawton City Council on October 28, 2008 and adopting **Resolution 08-159** requesting the Secretary of Transportation and ODOT to consider future rail transit options in the Oklahoma City Metropolitan Area and the State of Oklahoma. AYE: Burk, Shanklin, Patton, Haywood, Warren, Shoemate. NAY: None. MOTION CARRIED.

11. Consider ratifying the December 9, 2008 majority vote of the City's Department Directors to appoint Anthony Griffith to the City's Pension Trust Commission to fill the position of former employee Deborah Jones. Exhibits: Memo and Excerpt of Pension Trust Document.

12. Consider approving an amendment to the contract entered into with Comport Network/EI Technologies for implementation services of an integrated Geographical Information System (GIS). Exhibits: Amendment to the Contract and Contract Balances. Original contract is on file in City Clerk's Office.

13. Consider accepting donation of monies for Lawton Police Departments Award Ceremony/Banquet from the Ft. Sill-Apache Casino. Exhibits: None.

14. Consider accepting donation of funds donated by Wal-Mart West, 6301 NW Quannah Road for Lawton Police Department. Exhibits: None.

15. Consider approving the standard lease agreement for use of the Elmer Thomas Park/Lake Helen Stage area on July 4, 2009 with First Assembly of God-Lawton. Exhibits: Standard Lease Agreement with First Assembly of God-Lawton and Letter of request from First Assembly of God-Lawton.

16. Consider approving the construction plat for Boyles Landing, Section 4, subject to conditions. Exhibits: Plat Map.

17. Consider accepting a permanent utility easement and approving the vacation of Heinz Addition, Part 8. Exhibits: Location Map. Permanent Utility Easement, Vacation of the Plat of Heinz Addition, Part 8 are on file in the City Clerk s Office.

18. Consider acknowledging receipt of a Tier I permit from the Oklahoma Department of Environmental Quality for the construction of 340 linear feet of 8-inch PVC sanitary sewer line and all appurtenances to serve Walgreens #12833 located at 1107 SW Lee Boulevard in the SE/4 of Section 36, T2N, R12W, I.M., Comanche County, Oklahoma.

19. Consider awarding a construction contract to M. Hanna Construction Co., Inc. for the Landfill Cells 4-5 Project #2008-4. Exhibits: None.

20. Consider a resolution approving the creation of a recycling fund for the Public Works Department to be funded by monies received from the sale of metals and other recycle materials generated from the Landfill for the purpose of assisting with funding recycle equipment and recycle operations. Exhibits: Resolution 2008-\_\_.

Burk questioned if this was the beginning of a city operated recycling project.

Jerry Ihler, Public Works Director, stated the intent was to utilize the money for the equipment used to separate recyclables. They would love to start a composting operation but they just don t have the machinery. They don t generate a lot of money at the landfill from this type of recycling. Eventually if they grow into a larger area where they receive more and more and are able to incorporate more revenue, they would like to look at. Right now they just don t generate enough money to get into a full recycle shop.

Burk questioned if staff is looking into a recycling program.

Mitchell stated eventually they do want to move in that direction. The difficulty is getting enough people interested to have a base to start the program. One idea is that if you have two pick ups per week, you use one for trash and the other for recyclables. That means you have to have a certain number of people who are willing to separate their tin cans and glass. This could be a start in developing a revenue source and starting a base program, maybe with office paper and newspaper.

Shanklin stated they need to look at Norman. They don t have a landfill. He stated they need to look at grass clippings and limbs that is now going into the landfill. That is a waste of taxpayers money.

Ihler stated they would eventually like to utilize grass clippings and they already chip up the limbs. He stated they would like to get to the point where they create compost that the citizens can use. He stated the City of Denton sells their compost to Walmart.

Burk stated he would like to see us lead as a city to get a recycling program done.

Patton stated that maybe when the next CIP comes around the City Council could consider this issue.

Warren stated there is nothing cheap about recycling and the problem is finding the dollars to get it done.

MOVED by Burk, SECOND by Shanklin, to adopt **Res. 08-160** approving the creation of a recycling fund for the Public Works Department to be funded by monies received from the sale of metals and other recycle materials generated from the Landfill for the purpose of assisting with funding recycle equipment and recycle operations. AYE: Burk, Shanklin, Haywood, Warren, Shoemate. NAY: None. ABSENT: Patton. MOTION CARRIED.

21. Consider awarding (RFPCL09-021) Tree Pruning at Elmer Thomas Park to Giuseppe s Landscaping & Lawn Care of Lawton, OK in the amount of \$9,000.00. Exhibits: Abstract of bids, department recommendation, proposal price sheet.

22. Consider approval of payroll for the period of December 1 - 14, 2008.

OLD BUSINESS ITEMS:

23. Consider approving Council Policy 1-10 creating and establishing and economic development assistance policy for the City of Lawton. Exhibits: Memo from Leslie Batchelor and Proposed Council Policy 1-10.

Mitchell stated this item appeared at the last council meeting and several revisions have been made. He stated he has not received any comments.

David Madigan, Chairman for Lawton Fort Sill Chamber of Commerce, stated their concerns regarding this policy have been addressed. He thanked the City Council and staff for their vision and drive in establishing this uniform policy that will provide economic development assistance to attract employers that will create high quality jobs and expand the retail presence within this city. He stated this is just a base policy that will evolve over time. It is their recommendation that the City Council solicit feedback and get a united endorsement from entities, developers and individuals in this community that have a lot of experience working with people coming to this community.

Shanklin questioned if Mr. Madigan felt they should pass this tonight.

Mr. Madigan stated that is the decision of the City Council. They do feel it is a good policy, even though they feel it is not perfect. He stated their biggest area of concern is when it comes to the retail development aspect and incentives in providing subsidies for these types of developments. He would like to bring to their attention the priorities that are laid out in this document and make sure they are all on the same page. He voiced this concern to Mr. Mitchell.

Shanklin stated he felt they needed to include more people from around the city including the Chamber, LEDA, CCIDA, Cameron and Great Plains Technology Center.

Patton questioned if Councilmember Shanklin is talking about the formation of the policy or the implementation of the policy.

Shanklin stated they are delegating all of their authority down the highway. He suggested they table this item.

Vincent stated in this document it states that no contract can be signed without coming before the City Council for final approval.

Shanklin stated they should not be delegating the authority of the City Council to people that are not elected to any office.

Burk stated he would like to see them get a group together to go over this before approved by the Council. He stated it would be prudent to look at someone from Cameron, Great Plains Technology Center, a builder and a couple of council people to sit down and look at this policy page by page. He doesn t feel there is huge rush to get this policy approved tonight.

Mayor Purcell questioned when the City Council would like to bring this back to the City Council. He requested the City Council submit names to him within the next seven days of those they want on this committee.

Burk suggested they bring this item back the last meeting in February.

Patton stated this is such an important document they need to make sure they are not tying everyone s hands and make sure they get a good workable policy.

Vincent stated this is not a guideline for doing business with the City of Lawton, this is what the City of Lawton can spend taxpayer dollars on.

Mayor Purcell stated this is just like any other Council Policy and they suspend policies all the time so if something comes up they can always change it.

Burk stated this document is so important because if someone does come to Lawton and they want help they look at this document. If this document ties anyone s hands from opening a business here, he will not support it.

Warren stated the point is that this policy has nothing to do with what someone can or can't do. This lays out how the City of Lawton can legally help someone.

Patton questioned if they are talking about economic development?

Warren stated this will save people a lot of time who are looking at coming in and getting TIF money. This will give them the information up front about what the City of Lawton can or can't do.

Burk stated there is so much more to this document and they really need to think about this.

Shanklin stated there were no problems when Bar-S, Goodyear, Republic Paper or Silverline Plastics came in.

Vincent stated there is a problem with Republic Paper. Just recently, the IRS is looking at the contract for water sales.

Shanklin questioned whose fault it was.

Vincent stated it is our fault.

Mayor Purcell stated the City Council voted 7-1 to give Republic a special low rate.

Mitchell stated this policy was sent to the Chamber of Commerce and was handed out to the Lawton Economic Development Authority (LEDA) and the Lawton Urban Renewal Authority (LURA). He stated there has been a lot of input in making revisions to this policy. He stated they all need to recognize that this is talking about development that wants financial incentives and assistance from the City of Lawton. Nothing will prevent someone from going to Comanche County Industrial Development Authority (CCIDA) to get a loan. This is what the City Council is willing to do and the legal limitations on what we can or cannot do.

Shanklin stated he is concerned about the funding and how many bonds they will sell.

Mitchell stated this will be a case by case basis. He stated in the recent issue with a developer in west Lawton there was a lot of confusion on whether they could legally apply certain programs to that development or not and staff spent a lot of time determining state statute. This will give entities out of Texas, California, etc. some clue as to what the City of Lawton can or cannot do.

Burk questioned if any other city had this type of policy.

Vincent stated Oklahoma City has four policies and he also looked at Tuscaloosa, Alabama.

Burk stated this is a great idea but he feels they just don't have to rush through this. He stated he would be happy to serve in this committee.

Mayor Purcell stated that he would like to have the names of those who the City Council would like to serve on this committee.

Warren suggested that other documents be put together that states what the Chamber is willing to do and what CCIDA can do and put these all together to provide to those who are interested in development. This is just a piece of what the community can do as a whole.

MOVED by Burk, SECOND by Shanklin, to table to the February 24<sup>th</sup> City Council meeting. AYE: Burk, Shanklin, Patton, Haywood, Warren, Shoemate. NAY: None. MOTION CARRIED.

#### NEW BUSINESS ITEMS:

24. Hold a public hearing and consider an ordinance amending Section 18-5-9-591 of the Lawton City Code adding church as a permitted use in the C-2 Planned Neighborhood Shopping Center District. Exhibits: Ordinance No. 08-\_\_\_\_\_.

Richard Rogalski, Planning Director, stated recently a building permit application was submitted for a church to be built on property zoned C-2 Planned Neighborhood Shopping Center District. Churches are not allowed in P-O Professional Office District, C-2 Planned Neighborhood Shopping Center District, C-3 Planned Community Shopping Center District, and F Floodplain District. Staff is recommending the City Code be amended to allow churches in C-2 which would also allow churches in C-3. If the amendment is approved, churches would be allowed in all residential, commercial, and industrial districts. Churches would still not be allowed in the Professional Office or Floodplain Districts.

Haywood questioned if this church was on 67<sup>th</sup> Street.

Rogalski stated the proposal was for 67<sup>th</sup> Street and Quanah Parker.

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

MOVED by Warren, SECOND by Burk, to adopt **Ordinance 08-73** waive the reading of the ordinance, read the title only, and declaring an emergency. AYE: Burk, Shanklin, Patton, Haywood, Warren, Shoemate. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 08-73

An ordinance pertaining to zoning amending Section 18-5-9-591, Division 18-5-9, Article 18-5, Chapter 18, Lawton City Code, 2005, adding church as a permitted use in C-2 Planned Neighborhood Shopping Center District, providing for severability, and declaring an emergency.

25. Consider granting a request from George and Linda Clark for a variance to Section 19A-2-4-232 B.1 of the Lawton City Code to permit construction of a 30 x 90 metal accessory building in the floodway at 2104 NE 25<sup>th</sup> Street. Exhibits: Permit Application from Spur Metal Buildings, Letter of Denial to Spur Metal Buildings, Permit Application from George Clark, Owner, Letter of Denial to Mr. Clark, Letter Requesting Variance from George Clark, Owner, Floodplain Map, Site Plan and Order.

Larry Wolcott, Floodplain Administrator, stated this request is from the property owners George and Linda Clark for a 30 x 90 metal accessory building they had constructed at 2104 NE 25<sup>th</sup> Street. On May 23, 2008, a building permit application was submitted to the License and Permit Center, but a permit could not be issued since the building was proposed within the 100-year floodway. A letter of denial was sent to the applicant, Spur Metal Buildings, on May 27, 2008. He stated on October 23, 2008, an electrical inspection was requested and conducted at the referenced address and it was discovered that the applicant had constructed the building without a permit, in violation of city code. Rick Taliaferro of Spur Metal Buildings was issued a citation on October 28, 2008 to which he pleaded no contest on November 19, 2008.

Wolcott stated the building was constructed within the FEMA regulatory floodway, which is the central portion of the floodplain that is reserved to discharge high velocity flows. This includes the channel, creek, overbank areas and all the areas that are reserved to discharge the base flood.

The owner, George Clark, submitted a building permit application for the structure on October 31, 2008 and was also given written denial on the same day from the License and Permit Center.

On November 26, 2008, the City Clerk's Office received a variance request from George Clark.

The Lawton City Code, City Council may grant a variance if the variance issued within any designated regulatory floodway shall not increase flood levels during the base flood discharge. Variances shall not be issued within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result. The plans and calculations submitted by Landmark Engineering show an increase in flood levels due to construction of the building.

The Lawton City Code establishes the criteria for the City Council to consider granting an appeal. All of the six questions on the Finding of Fact-Variance and Order must receive an affirmative vote by the Council for the variance to be granted. Therefore, each question shall be individually voted on by the Council. If any one of the questions received an unfavorable vote, the request for a variance must be denied. If all of the questions are answered in the affirmative, the appeal may be granted, and the License and Permit Center shall issue the special flood hazard permit provided all other requirements of the City Code are met.

Burk stated the Clarks were under the understanding that Spur Metal Buildings had obtained a permit. He does not understand why the owner is not included in the permit application. He stated most people would believe their contractors if they were told they had a permit. He feels they need to adjust what staff is doing to make sure we have contacted the property owner. This would have solved this problem.

Patton stated if the contractor never applied for the permit, that would not have helped the property owner.

Mayor Purcell questioned how staff would have known to contact the Clarks?

Warren stated they should require the owner of the property to apply for the permit and also require the contractor to be licensed by the City.

Burk stated they could make that part of the application process to be filled out by the homeowner. What happened to the Clarks is just not right.

Mayor Purcell requested an explanation between floodway, flood fringe and flood plain.

Wolcott stated they can issue permits everywhere other than the floodway. This particular building is in the floodway.

Shanklin questioned the height of the floor.

Wolcott stated the floor of the structure is 1 foot above the base flood elevation. The elevation is not the issue, it is the lateral location which is completely in the floodway.

Mayor Purcell stated the issue is putting a structure in the floodway.

Shanklin suggested they table this item until the Council has an opportunity to go out and look at the structure. Everyone will wonder why they are discussing this issue.

Vincent stated several years ago the City Council decided to become a member of the ISO Insurance Commission so that we could offer flood insurance for our 800+ residents that are affected by flooding. We agreed to abide by the rules of that organization and those rules are set out in our city code in Chapter 19. The City Council has the ability to grant variances in various conditions, staff cannot grant variances. This is also subject to an audit by the Floodplain Managers Association and if they discover that we are issuing variances without going through the process, we can lose the ability for our citizens to buy flood insurance.

Mayor Purcell stated every year we are awarded a reduction in rates for flood insurance because we go through this process and keep people from building in the floodway. A variance would help the Clark s, but this could cause the rates to go up for all of the other residents who have flood insurance. If they leave this building in the floodway, the other residents could end up paying more for their flood insurance. He feels the Clark s should be suing the contractor for the cost of tearing down the building and putting up another one.

Burk questioned if the flood maps will be changing.

Wolcott stated new maps will come out in 6-8 months. The preliminary map that he has seen still has this building one-half to one-third in the floodway.

Warren stated he hopes that at some point they will take some initiative to stop this from happening again. The contractor needs to be held responsible whether it is a floodway issue or zoning issue and they need to make is some way to make if financially responsible for the contractor to do what they have to do.

Shanklin questioned the amount of the fine.

Wolcott stated the contractor was fined \$150.

Mitchell stated three or four years ago Carter-Burgess developed a stormwater master plan that was a requirement of state law and we are implementing various aspects of that plan. This will go hand in hand with what they are talking about tonight. They could be fined by DEQ for not following the stormwater management plan.

Mayor Purcell stated there are six questions that must be voted on separately and a majority of the vote must be in the affirmative to grant this appeal and waiver.

A) Will the request, if granted, result in no increase in flood levels during the base flood discharge?

Wolcott stated from the information he has received, the answer to this question is no. There is an increase in flood levels in two cross sections in the hydraulic model.

AYE: Burk, Shanklin, Haywood. NAY Shoemate, Patton, Warren. MOTION FAILED.

Mayor Purcell stated if one question fails, they cannot grant a variance.

Shanklin questioned what options the Clarks have.

Vincent suggested that the Clarks go after the builder to fix the problem.

Mayor Purcell stated the City Manager will not take any action until the issue is resolved. At least the Council is not voting to violate state and federal law by approving a building in the floodway which will cause and impact to other citizens.

Shoemate clarified that the building will stay up until the court issues an answer.

Mayor Purcell stated yes, or until state or federal forces the issue. The new maps may show that the property is out of the floodway.



Shanklin questioned if the City had any liability.

Vincent stated the only liability the City has is in following the agreement and requirements for the State Floodplain Management Act and the Stormwater Management Act. We have an obligation to follow those laws.

26. Consider recommending to the Lawton City Council a resolution amending Appendix A, Schedule of Fees and Charges, Lawton City Code, 2005, to remove the \$2.00 fuel surcharge currently placed on the City of Lawton service bill and take appropriate action as necessary. Exhibits: Resolution 2008-\_\_\_\_.

Mitchell stated that he and the Finance Director have reviewed the financial condition and as promised, staff agreed to track expenses for gasoline and fuel and if they continued to decline, they would suggest the removal of the \$2 surcharge that was placed on the utility bill.

Rick Endicott, Finance Director, stated they are collecting \$55,000 a month on the fuel surcharge. Right now we are paying \$1.31 for unleaded and \$1.92 for diesel. They do believe that even if prices go up a little, they can function the rest of the year without the surcharge.

MOVED by Burk, SECOND by Shoemate, to adopt **Resolution 08-161** amending Appendix A, Schedule of Fees and Charges, to remove the \$2.00 fuel surcharge currently placed on the City of Lawton service bill. AYE: Burk, Shanklin, Patton, Haywood, Warren, Shoemate. NAY: None. MOTION CARRIED.

Endicott stated this will begin with the cycle #1 utility bill that goes out January 2009.

27. Consider denying a subordination agreement on the City's mortgage with Yvette M. Chenault, a single person (Borrower), to subordinate the City's mortgage on her property at 4614 SW Beta or take other appropriate action. Exhibits: Exhibit A: Letter of Request; Exhibit B: Mortgage (City of Lawton); Exhibit C: Promissory Note (City of Lawton); Exhibit D: Good Faith Estimate for new loan; Exhibit E: Proof of Income; Exhibit F: Credit Report; Exhibit G: Administrative Policy 7-2 "Subordination of Loan Position". (Exhibits A thru G and Appendices are on file in the City Clerks Office).

Tom Aplin, Assistant Director of Housing and Community Development, stated Ms. Chenault is a participant in the First Time Homebuyers Program from 1998. The City of Lawton currently has second position on a deferred mortgage of about \$29,000. Over the past ten years that has been reduced to approximately \$9,900. Ms. Chenault is essentially 2/3 of the way through her affordability period and in 2013 when that affordability period is completed, the amortization will be complete and she will owe the City no money. The issue at hand is that it is the City's administrative policy that requires that in cases where there is a subordination and subsequent to the restructuring of the loans, the percentage of the loans, if they exceed 75% then we are required to recommend denial which is what staff has done in this case.

Haywood stated the City Council has approved this in the past for others. He understands the position of staff and their recommendation to deny.

Mayor Purcell questioned how many times we have done this and lost money.

Aplin stated probably under five.

Haywood stated that Ms. Chenault is going to make improvements to the home and she will reduce this by five years which will help her in the long run.

Mayor Purcell questioned if the additional room was going to cost \$40,000 and was all of the money going in to make the improvements on the home.

Yvette Chenault stated she has satisfied ten years of her fifteen year obligation. She has done some extensive remodeling to the home and now she needs an additional bedroom. She wants to add a master bedroom and a master bathroom. The estimates she has gotten have been from \$32,000 - \$35,000.

Shanklin questioned how many square feet she will be adding.

Ms. Chenault stated about 425 square feet.

Patton questioned where Ms. Chenault was employed.

Ms. Chenault stated she is currently a full time nursing student. She does not have a problem with making her mortgage payment. She graduates in May.

Warren stated he is voting no on this issue simply because they say they won't do this and he does not feel it is his position to decide other's finances.

MOVED by Haywood, SECOND by Shanklin, to approve the request for a subordination agreement on the City's mortgage with Yvette M. Chenault. AYE: Shanklin, Patton, Haywood, Burk. NAY: Warren, Shoemate. MOTION CARRIED.

28. Consider approving an agreement with Arvest Bank to implement a Visa Purchasing Card system. Exhibits: Arvest Bank Purchasing Card Agreement and Addendum.

Endicott stated this item is a request that the City of Lawton enter into an agreement with Arvest Bank to issue Visa purchasing cards. He stated he hears from employees that it is difficult to travel and do certain things without a credit card. Up until now there has not been a really good program for the City of Lawton. Arvest has been working with staff over the past few months and have agreed to modify and fit the special needs of a municipality. There will be no fees and no interest attached. He stated Shelly Fields from Arvest is in attendance to answer any questions. He stated this program will be very flexible. We will have the ability to issue cards as needed and on demand. We intend on starting out with about 15-20 cards and since it is a web-based program, staff can monitor purchases very closely.

Patton questioned who would monitor the accounts.

Endicott stated it would be monitored within the finance department, probably in the accounting division. The City Manager would have to authorize the issuance of the cards.

Mayor Purcell questioned if these cards are restricted to certain stores or to purchase certain items.

Endicott stated they can restrict the cards by code. If they issue a card only for office supplies, you cannot go to Wal-Mart and buy just anything.

Mayor Purcell stated he has seen instances where there has been abuse.

Shelly Fields, Arvest Bank, stated the nice thing about these purchasing cards is that you issue a purchasing order for supplies and match them up as they come back. She stated it will also itemize the purchases so that you can see exactly what was purchased.

Endicott stated they can also track it much better on line.

Shoemate questioned if the cards will have a limit.

Endicott stated yes. He stated staff will be very conservative regarding how they issue the cards and how they monitor their use.

MOVED by Patton, SECOND by Burk, to approve an agreement with Arvest Bank to implement a Visa Purchasing Card system. AYE: Patton, Haywood, Warren, Shoemate, Burk, Shanklin. NAY: None. MOTION CARRIED.

29. Direct staff as to the prioritization of the three current Transportation Enhancement (TE) grant applications submitted to the Oklahoma Department of Transportation. Exhibits: Comment Letter from ODOT, Applications, Prioritization of Lawton Bicycle and Pedestrian Projects and Map of 2<sup>nd</sup> Street Enhancement Street Phases.

Rogalski stated on September 23, 2008, City Council approved that submission of three applications to the Oklahoma Department of Transportation for the Transportation Enhancement (TE) Program. The Special Projects Branch has evaluated our pre-submittal applications for eligibility and content and provided comments. Final application submissions must be received by January 1, 2009. All applications will be evaluated by the ODOT Transportation Enhancement Advisory Committee. The Committee will review and make recommendations to the Transportation Commission. Project selection will be determined in the spring of 2009. The three applications submitted to ODOT where:

Implementation of prioritized projects in the Lawton Metropolitan Bicycle and Pedestrian Plan.

A streetscape enhancement project for 2<sup>nd</sup> Street from Ferris Avenue to south of Dearborn Avenue.

A streetscape enhancement project for 2<sup>nd</sup> Street from south of Gore Boulevard to SW C Avenue.

The Lawton Metropolitan Bicycle and Pedestrian Plan, which was approved by the City Council on June 10, 2008, contained a list of prioritized projects. One of the grant applications is for implementation of the Plan in an amount of \$500,000. If approved, Federal funds will reimburse a maximum of \$400,000 of the eligible project costs, and the Comanche Nation will provide the 20% local match.

The other two applications are for the remaining phases of the 2<sup>nd</sup> Street Pedestrian Enhancement Project: Ferris Avenue to south of Dearborn Avenue and south of Gore Boulevard to SW C Avenue. The Lawton Urban Renewal Authority (LURA) hired Tetra Tech to prepare plans for streetscape enhancement project for 2<sup>nd</sup> Street from Ferris Avenue to C Avenue. Two of the phases have been approved for enhancement grants. Those two phases will construct the project from Gore Boulevard to Columbia Avenue, inclusive of intersections, and have been approved to advertise for bidding. Each of the proposed grant applications is for \$800,000. If the applications are approved Federal Funds will reimburse a maximum of 80% (\$600,000) of the eligible project costs for each phase. Along with the enhancement improvements each phase will also include an additional \$700,000 in non-grant eligible improvements. Funding for the local match and non-grant eligible costs will come from Tax Increment Financing (TIF) proceeds, 2007 Capital Improvements Program, roadway maintenance account, and/or developer contributions. ODOT is requesting that the City prioritize the three applications submitted.

Mayor Purcell questioned which project the City would receive the most money.

Rogalski stated on the bicycle plan, the matching funds are already donated from the Comanche Nation. We are asking for a larger amount on the 2<sup>nd</sup> Street projects, and the matching funds would have to be appropriated by the City.

Mitchell clarified that this is subject to ODOT approval.

MOVED by Shoemate, SECOND by Patton, to prioritize as follows: 1) Implementation of prioritized projects in the Lawton Metropolitan Bicycle and Pedestrian Plan, 2) A streetscape enhancement project for 2<sup>nd</sup> Street from Ferris Avenue to south of Dearborn Avenue and 3) A streetscape enhancement project for 2<sup>nd</sup> Street from south of Gore Boulevard to SW C Avenue.

AYE: Haywood, Warren, Shoemate, Burk, Patton. NAY: Shanklin. MOTION CARRIED.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Shanklin requested that the Lawton Police Department look at the number of wrecks on 3<sup>rd</sup> Street between Gore and Ferris.

Burk stated he has received some complaints regarding fines for leaving trash cans out on the street too long. He questioned if warnings are given.

Mitchell stated yes.

Burk stated he had heard that the City has received a substantial amount of money from these fines.

Vincent stated he gets a monthly report of citations issued and he will forward that to Councilmember Burk.

Shoemate stated that Crimestoppers publishes a report of activities in the city and he would like the Council to receive that report.

Mayor Purcell stated that Councilmember Drewry received a call from Barbara Brennan who fell in front of the Red Scissors and she wanted to express her gratitude to the Lawton Fire Department who stayed with her until the ambulance arrived.

Mayor Purcell commended the Lawton Fire Department for doing such a great job with the fire at Trinity Baptist Church.

Warren stated there was great communication between police, fire, emergency management and public works.

Mayor Purcell presented a plaque to retiring City Attorney John Vincent.

The Mayor and Council convened in executive session at 8:18 p.m. and reconvened in regular, open session at 8:29 p.m. Roll call reflected all members present.

BUSINESS ITEMS: EXECUTIVE SESSION ITEMS

30. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss a pending damage claim of Pete Rodriguez, DC-2008-103, and if necessary, take appropriate action in open session. Exhibits: None.

Vincent read the title of item 30.

MOVED by Patton, SECOND by Warren, to deny the October 22, 2008 tort claim of Pete Rodriguez. AYE: Patton,

Haywood, Warren, Shoemate, Burk, Shanklin. NAY: None. MOTION CARRIED.

ADDENDUM: EXECUTIVE SESSION ITEM:

1. Pursuant to Section 307B. 4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss: (1) a pending Unfair Labor Practice charge filed before the Oklahoma Employees Relations Board, AFSCME Local 3894 vs. City of Lawton, Case No. 010-PPC, regarding the general employee retirement plan, and (2) to discuss a related lawsuit in the District Court of Comanche County, State of Oklahoma, City vs. AFSCME Local 3894, Court Case No. CJ-2008-1108, and if necessary, take appropriate action in open session. Exhibits: None.

Vincent read the title of the addendum. No action is required.

There being no further business to consider, the meeting adjourned at 8:31 p.m. upon motion, second and roll call vote.

/s/John P. Purcell, Jr.

JOHN P. PURCELL, JR., MAYOR

ATTEST:

/s/ Traci Hushbeck

TRACI HUSHBECK, CITY CLERK