

Meeting of 2010-11-9 Regular Meeting

MINUTES  
LAWTON CITY COUNCIL REGULAR MEETING  
NOVEMBER 9, 2010 6:00 P.M.  
WAYNE GILLEY CITY HALL COUNCIL CHAMBER

Mayor Fred L. Fitch                      Also Present:  
Presiding                      Larry Mitchell, City Manager  
   Frank V. Jensen, City Attorney  
   Traci Hushbeck, City Clerk  
COL Ray Lacey, Fort Sill Liaison

Mayor Fitch called the meeting to order at 6:00 p.m. Notice of meeting and agenda were posted on the City Hall notice board as required by law. Invocation was given by Dr. Walter Wilson, Friendship Baptist Church, followed by the Pledge of Allegiance.

ROLL CALL

PRESENT:                      Bill Shoemate, Ward One  
Michael Tennis, Ward Two  
Jay Burk, Ward Four  
Janice Drewry, Ward Three  
Robert Shanklin, Ward Five  
Richard Zarle, Ward Six  
Stanley Haywood, Ward Seven  
   Doug Wells, Ward Eight

ABSENT:                      None.

PRESENTATION OF WATER CONSERVATION POSTER CONTEST WINNERS

Trish Hale, Chief Chemist and Industrial Pre-Treatment Coordinator for the City of Lawton, stated there were 109 entries from kindergarten to 12<sup>th</sup> grade. Ms. Hale announced the poster contest winners.

PRESENTATION OF CERTIFICATES OF APPRECIATION FROM MAYOR S COMMISSION ON THE STATUS OF WOMEN

Mayor Fitch presented certificates of appreciation to outgoing officers and members.

AUDIENCE PARTICIPATION:

Sharon Cheatwood, Arts and Humanities Division, updated the Council on the Children s Art Studio program. Since 2003, nearly 800 children have participated in this program. She introduced the instructors for the program.

Beth Martin, 1101 NW Goodyear Boulevard, stated her water bill over a two month period for August and September was \$757.92. She stated there is a water line on her neighbor s property that is 160 feet off her property line that has a pump that is connected to her water meter. She ended up having \$84.30 in penalties as well as a \$50 reconnect fee. She stated revenue services division was not able to adjust her bill.

Mayor Fitch stated that someone has tapped into Ms. Martin s water line between her meter and her home and is diverting water to another location.

Ms. Martin stated the line goes into a cow pasture. Her average bill is \$66.06. She stated she has spoken with the revenue services division and she has also called her city councilman.

Tennis questioned if Ms. Martin has spoken to her neighbor.

Ms. Martin stated the property is for sale and they only have cattle on the land.

Burk stated they need to find out where the water went and the neighbors need to pay for that water.

Mayor Fitch suggested Ms. Martin speak with Rick Endicott, Finance Director, and he believes it is the desire of the City Council to make an adjustment to this account.

Rick Endicott, Finance Director, stated the reason they did not adjust the account was because the water was actually used to fill a pond. He stated the customer's water line was used and we have no authority to make that adjustment based on the usage. It was not a leak, someone stole her water. He stated staff could assist with a payment plan, but they could not adjust it because of the usage. He stated they will adjust the account if the council wishes.

Shanklin stated he does not see how they cannot make an adjustment.

Shoemate suggested they go after the neighbor for stealing water.

Jensen stated they could look at possible criminal charges or the neighbor should pay for that water.

Burk stated the person who owned the house before Ms. Martin probably had some sort of an arrangement with the person who owned the pond. That line just didn't appear. They need to find out who the property owner is.

Shanklin questioned who prompted Ms. Martin to come to the council meeting.

Ms. Martin stated she spoke with her councilmember, Mr. Zarle.

Zarle stated he suggested to Ms. Martin that she speak with staff in revenue services.

Ms. Martin stated she just wants to make sure this doesn't happen again.

Jensen stated they will find out who the title owner is and contact them.

Mayor Fitch stated the council can make a recommendation and legal staff can follow up with the owner of the adjacent property.

Shoemate suggested they reimburse her anything over \$66 dollars a month and include the last fees and deposit she had to pay.

Endicott stated they usually look at the average usage over a 12 month period and they adjust the account based on that average.

Haywood questioned if city crews take the meter when they shut someone off.

Endicott stated it depends on the situation. If they are stealing water, crews will remove the meter. If they are closing the account or moving the do not remove the meter.

Dr. Walter Wilson, Friendship Baptist Church, stated they have finished their project in Lawton View and he thanked the City Council for their support.

CONSIDER APPROVAL OF MINUTES OF LAWTON CITY COUNCIL REGULAR MEETING OF OCTOBER 26, 2010.

MOVED by Drewry, SECOND by Tennis, to approve the minutes of the Lawton City Council regular meeting of October 26, 2010. AYE: Tennis, Drewry, Burk, Shanklin, Zarle, Haywood, Wells, Shoemate. NAY: None. MOTION CARRIED.

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.

Wells requested item #5 be considered separately.

MOVED by Drewry, SECOND by Burk, to approve the consent agenda with the exception of item #5. AYE: Drewry, Burk, Shanklin, Zarle, Haywood, Wells, Shoemate, Tennis. NAY: None. MOTION CARRIED.

1. Consider the following damage claims recommended for approval: Deborah Terven in the amount of \$700.00 (**Res. 10-106**), Jennifer Schroeder in the amount of \$1,960.00 (**Res. 10-107**) and Carl and Orenda Elridge in the amount of \$2,026.72 (**Res. 10-108**). Exhibits: Legal Opinions/Recommendations, Resolution No. \_\_\_\_, Resolution No. \_\_ and Resolution No. \_\_.

2. Consider adopting a resolution approving the settlement by a joint petition and making payment in the pending workers' compensation claim of Dustin Kosechequetah. Exhibits: **Resolution No. 10-109.**

3. Consider amending Council Policy No. 8-1, Engineering and Architectural Selection Process, dated March 12, 2002. Exhibits: Amended Council Policy No. 8-1.

4. Consider adopting a Resolution authorizing the installation of traffic control measures on: Indian Trail Road between NW Mission Boulevard and NW Cache Road; northbound and southbound NW 17<sup>th</sup> Street at the intersection of NW Elm Avenue. Exhibits: **Resolution 10- 110**, Traffic Commission Minutes and Traffic Issue Request.

5. Consider approving the construction plans to encase the sewer line located in Rolling Hills, Part 4A, Lot 2, subject to conditions. Exhibits: Location Map.

Jensen stated there is a public hearing on this item under new business. This item has to do with what is going to happen before we actually close and vacate a portion of this easement in regards to this sewer main that is built basically underneath this house. There are a couple of options as far as how they can solve this problem before we do any closure action.

Wells questioned why they were even considering approving the construction plans with a house that is over the sewer line.

Richard Rogalski, Planning Director, stated the sewer line was put in the prior phase of construction about three years. The builder pulled a permit for the adjacent lot and somehow he built on the wrong lot. This lot does have a 12 foot utility easement and there is a sewer line that runs down the south property line. By the time this was discovered the building was already erected. At this time the builder applied for closing the easement and the public hearing notice was sent out. In the meantime staff met with the builder to determine the best solution. Staff felt the best solution was to either reconstruct the sewer line within a steel casing which would allow the city to maintain that sewer as if it was under an arterial street, or the other option was to reroute the sewer line to the south and around the lot. Staff felt that both of these options were solutions. The builder chose to go with the casing route. The casing would extend twenty feet beyond the house on either side so that as the city came in to maintain it they would dig down at the end of the casing and still be away from the building and able to maintain the sewer. At this point staff would not recommend closing the easement until the sewer issue has been solved. They do believe that this satisfies the city's need to maintain that sewer. He stated this will be a pretty strong section of sewer. He stated they want this done before they would ask that the easement be closed.

Haywood stated he did talk with the builder, Jay London, and he said the banker sent someone to see if it was the right property and it wasn't. He stated this is in ward 7, Rolling Hills. He questioned where we go from here. He does not want a sewer line under a house. He questioned the encasing.

Rogalski stated this is a steel casing which will be placed under ground and they will slide the sewer line into the casing. They will then blow in sand and backfill the casing so that it is very stable inside the casing. They will backfill that area with a low strength concrete. You will have a very stable section of sewer line. The construction process would put that house at some risk and that is why they want the builder to build this himself and make the correction so that if there is some damage to the house the responsibility will be on the builder.

Haywood questioned what would happen 20 years from now.

Rogalski stated if the city has to replace that line they will dig up each end of that casing and pull off the sleeve and would, very carefully, pull out the sewer line.

Wells questioned if we would be responsible if we let him build over a sewer line.

Rogalski stated he feels that the sewer will hold up 20 years from now. He stated this is a solution that staff felt was amenable.

Wells stated he does not know of anyone who would want a house built over a sewer line.

Burk stated everyone is getting the wrong impression. The house is not over the sewer line, it is within the easement next to the house. The idea is that if the line was to collapse it would cause foundation problems with the house and eventually we would have to come in there and dig it out.

Wells stated he was told that the house was over that line.

Haywood questioned who would be responsible if that foundation collapsed during a rehab.

Burk stated with this sleeve you do not have to go in and tear the piece out. The sleeve will be there forever.

Rogalski stated the sewer line is about five feet from the house and five feet deep.

Burk stated when they rehabbed the line you would not have to dig that out.

Wells questioned how much it would be to reroute the sewer line.

Rogalski stated he was told that this option would cost approximately \$10,000. He stated to reroute the line would cost approximately \$25,000.

Haywood stated he would like to hear from Jerry Ihler, Public Works Director.

Ihler stated they would have to construct three new manholes if they were going to reroute it around the neighborhood. It would be about 200 feet of line versus 85 100 feet. He stated there is no guarantee that something will not happen but they can give a high probability that they can go in and remove the existing pipe and replace it without disturbing the soil around the house.

Wells stated he feels the builder needs to bear the responsibility for this mistake.

Ihler stated the builder is bearing the responsibility because he is paying for the construction of providing the least liability for the future. He is bearing the cost 100%. He stated staff feels comfortable that there is a high probability of little risk in the future. They do not want to make this a practice.

Burk stated that we do not want to be against our builders and he is proud that staff came up with two solutions to this problem. He stated this is good for the builder and good for the City.

Shoemate stated some of the builders need to be more accountable. He stated more of these come up every year.

Wells stated they are saying buyer beware to whoever buys that house because some time in the future you could have problems because this council is considering approving something like this.

Mayor Fitch questioned if this was something that would go on the deed so that each owner would be aware of this issue.

Jensen stated it would be a part of the sewer maps.

Mitchell stated the survey should show lot lines and set back lines.

Tenis questioned if the City could be relieved of any type of liability.

Jensen stated they were initially looking at a settlement agreement but that really doesn't work in this case. He stated a release goes to personal liability and he does feel that runs with the land. He does not think that fifteen or twenty years down the road a third or fourth buyer can be bound by that release of liability signed by the developer or the first buyer.

MOVED by Wells, SECOND by Haywood, to deny construction plans.

SUBSTITUTE MOTION by Burk, SECOND by Drewry, to approve the construction plans to encase the sewer line located in Rolling Hills, Part 4A, Lot 2, subject to conditions AYE: Shanklin, Shoemate, Drewry, Burk, Fitch. NAY: Zarle, Haywood, Wells, Tennis. MOTION CARRIED.

6. Consider extending the contract (CL09-011) Personal Soft Body Armor from Special Ops Uniforms, Inc from Oklahoma City, OK. Exhibits: Department Recommendation, Price Sheet, Contract Extension Form.

7. Consider extending the contract (CL09-010) Tactical Body Armor (Level III A) Vest from Special Ops Uniforms, Inc., Oklahoma City, OK. Exhibits: Department Recommendation, Price Sheet, Contract Extension Form.

8. Consider extending the contract (CL09-014) Redi-Mix Concrete from Southwest Ready Mix of Lawton, OK. Exhibits: Department Recommendation, Price Sheet, Contract Extension Form.

9. Consider extending the contract (CL09-017) Heavy Equipment Service & Parts from C.L Boyd of Oklahoma

10. Consider approval of payroll for the period of October 18 - 31, 2010.

NEW BUSINESS ITEMS:

11. Consider accepting the annual audit report of the City of Lawton for the year ending June 30, 2009. Exhibits: None

Endicott stated this audit is for June 30, 2009. He stated they cannot continue to produce audits this late in the year. State statute says 180 days beyond the fiscal year. He stated he would argue that is impossible for this organization to meet unless we had more staff and devoted 100% of our time to the audit. He stated when they met to review the findings, one of the issues had to do with a post employment benefit issue that had to do with the actuary being done. There were some new rules that came out and they did not get the actuary done on time. They got it touch with an actuarial individual in Dallas and he had to study our entire health plan and do an actuarial study. Had it not been for that, they would have seen the audit in July. He stated it is his responsibility to get this audit done and he supports his staff 100%.

Ladonna Sinning, Arledge & Associates, stated this is a clean opinion as stated in the audit report. She stated a single audit is required if you spend more than \$500,000 in federal money in a year and Lawton will always get one. She stated there were a few weaknesses, but there were no compliance findings, but there were internal control findings which means we were not out of compliance with any laws or regulations. She stated there are some things to work on and staff is working on those issues. The first finding is a material weakness which is the fact that our audited financial statements coming out so late in the year because it is beyond the time you can react. She stated they recommend more people, more training or outside consultants or a combination of the three. She stated there are three other weaknesses. The second is related to the FEMA grant and internal control over compliance. The issue is that some numbers were entered into a spreadsheet wrong. There were also problems with controls over disbursement and controls over the encumbrance system. She stated there is also a new accounting standard that requires that the City put on the books the liability for providing health insurance to people after they retire. She stated the actuarial report was done and the adjustments were put on and it added \$664,000 in liabilities to the City's balance sheet. It is a significant liability that we had not had an actual number before. She stated this is a very sensitive estimate.

Mayor Fitch questioned if the City is showing signs of improvement in getting things done in a more timely manner.

Ms. Sinning stated the time line for getting started is about the same. When these audits come out so late they can't get started on the next year until they know the previous year is put to bed. The starting point is about the same date but they don't anticipate having the same issues. She anticipates starting the audit in December and if all goes well they could have it out in March.

(Wells left at approximately 7:15 p.m.)

Mayor Fitch stated the City has taken steps to address the issue of getting things done in a more timely manner and also in hiring an outside consultant.

Ms. Sinning stated the City has been very responsive to the findings.

Endicott stated Crawford & Associates have, for a long, long time, acted as our consultants. They have budgeted funds to have them come in and help the accounting staff look at these documents before they go to the auditor. He stated they are one of the best known firms in the country.

Marcy Twyman, Crawford & Associates, stated the performeter is a combination of financial ratios that they have put together and come up with a financial score based on the financial statement audit for 2009. She stated the performeter rating is a 6.4 which is above satisfactory even though it was a decline from the previous year. She stated the strongest position is in financial performance. She stated for the most part the revenues did cover the expenses. The two weaker areas are in financial position and financial capability. The reason the rating is down from last year relates to the issuance of additional debt.

Mitchell requested Ms. Twyman explain the chart regarding Debt Service Load.

Ms. Twyman stated this looks at how much of our expenses are related to debt service or how much of the City's expenses are related to debt service. This shows that for every dollar, the City spends 14 for debt service.

Mitchell questioned the average for other cities.

Ms. Twyman stated that Lawton is probably in the top third. She stated 5 is the average.

Mitchell questioned if it was primarily because of our reliance on sales tax.

Ms. Twyman stated most cities are reliant upon sales tax for funding.

Mitchell stated we are funding more through sales tax versus property tax.

Ms. Twyman stated the GO debt does have an impact on that rating especially this year when you issued more. She stated most cities don't have GO bonds. She stated that Lawton actually saw an increase in sales tax revenue for 2009. That was not the case in most cities.

Mitchell stated overall our financial condition one year to the next is stable.

Endicott stated that we are absolutely stable in his opinion. He stated they hope to get the 2010 audit distributed prior to the budget process.

MOVED by Drewry, SECOND by Shoemate, to accept the annual audit report of the City of Lawton for the year ending June 30, 2009. AYE: Zarle, Haywood, Shoemate, Tennis, Drewry, Burk, Shanklin. NAY: None. MOTION CARRIED.

12. Hold a public hearing and consider an ordinance closing a portion of a public utility easement on Lot 2, Block 18, Rolling Hills Development, Part 4A, located at 2061 SW 45<sup>th</sup> Street. Exhibits: Ordinance No. 10-\_\_\_, Application, Site Plan and Location Map.

Jensen stated they will go ahead and open the public hearing and announce that the public hearing will be continued until December 14, 2010. This will allow time for Mr. London to encase the sewer main.

PUBLIC HEARING OPENED.

13. Consider approving an ordinance amending Section 17-1-6-161, Division 17-1-6, Article 17-1, Chapter 17, Lawton City Code, 2005, by increasing the vacation accrual rates of regular non-union employees with more than thirty years of service with the City, providing for severability and establishing an effective date of January 10, 2011. Exhibits: Ordinance No. 2010-\_\_\_\_.

Shanklin questioned how many people this affected.

Jim Russell, Human Resources Director, stated there are currently three employees that are over thirty years. With an effective date of January 10<sup>th</sup> there will be six.

MOVED by Zarle, SECOND by Burk to adopt **Ordinance 10-39**, waive the reading of the ordinance, read the title only and establishing an effective date of January 10, 2011. AYE: Shoemate, Tennis, Drewry, Burk, Shanklin, Zarle, Haywood. NAY: None. MOTION CARRIED.

(Title read by City Attorney) Ordinance 10-39

An ordinance pertaining to personnel policies and procedures amending Section 17-1-6-161, Division 17-1-6, Article 17-1, Chapter 17, Lawton City Code, 2005, by increasing the vacation accrual rates of regular non-union employees with more than thirty years of service with the city, providing for severability and establishing an effective date of January 10, 2011.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

COL Lacey invited everyone to the Veteran's Day ceremony at 9:00 a.m. in front of McNair Hall. He stated there will be an awarding of the Silver Star at this event.

Tennis stated on Saturday, November 20<sup>th</sup> from 8:00 a.m. to 12 Noon the Parks and Recreation Division will allow residents to fish for trout in Lake Helen at Elmer Thomas Park. They will also be collecting can goods for a food drive.

Haywood questioned if they needed a fishing license.

Tennis stated no one will need any kind of license or permit from 8:00 a.m. to 12 noon.

Shanklin stated there is a woman in his ward who owns a pawn shop on Gore Boulevard. She was only open for 30-40 days when the city staff shut her down because she was in the wrong zoning. He stated we should have tried to work with her. He stated he will agenda an item if the City Manager does not use his authority and let her in there.

Mitchell stated he does not know what authority he has if she is in the wrong zoning classification. She does not own the building, she was renting the space. The owner filled out a permit for application and put jewelry store, not pawn shop. Staff issued the occupancy permit and then a pawn shop opens. At this point the owner has to go through a rezoning application.

Shanklin stated that she is the one who is going to lose.

Mitchell stated he cannot just administratively change zoning. If they had applied for a permit for a pawn shop then they would have been told that they would need to request a rezoning.

Shanklin questioned if we were making a pawn shop a dirty name.

Mitchell stated he cannot make changes to the zoning ordinance.

Shanklin stated he could if he wanted to. He questioned what would happen if he did.

Mitchell stated the adjoining property owners could file a petition. The purpose of zoning is so that you notify the public of what is being proposed.

Tenis stated he saw the application and the contractor, Mr. DeLuca is one the who signed the application.

Shanklin stated everyone knew it was a pawn shop when she moved it.

Bryan Long, Assistant City Manager, stated she had been represented over the course of the past three months by two separate attorneys. They have provided this information to both attorneys and they have not heard from either attorney.

Shanklin stated this is not her fault and we should be trying to help her.

Mitchell stated they are trying to help her but she does not own the building. He stated a local attorney owns the building and he should have been aware of what was eligible under that zoning classification.

Shanklin questioned if we were going to try and help her.

Mayor Fitch stated we are going to help her in any way we can but there are others involved that have created this problem.

Mitchell stated he would be attending the Oklahoma Academy in Norman on Monday, Tuesday and Wednesday of the following week.

Mayor Fitch announced that Saturday, November 20<sup>th</sup> is the date for Holiday in the Park.

Mayor Fitch distributed copies of the proposed changes submitted by the Charter Review Committee and stated a special meeting will be held on Tuesday, December 7<sup>th</sup> at 6:00 p.m. to discuss the proposed changes. He requested that councilmembers review the changes and be ready to discuss the recommendations.

The Mayor and Council convened in executive session at 7:55 p.m. and reconvened in regular, open session at 8:11 p.m. Roll call reflected all members present excluding Wells.

#### BUSINESS ITEMS: EXECUTIVE SESSION ITEMS

14. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the pending case of City of Lawton vs. Bob L. Mansell, et. al, CJ-2007-681, and if necessary, take appropriate action in open session. Exhibits: None.

Jensen read the title of item 14.

MOVED by Shanklin, SECOND by Drewry, to appoint Councilmember Zarle as a settlement conference representative for that case to be held on December 14, 2010 at 10:00 a.m. AYE: Drewry, Burk, Shanklin, Zarle, Haywood, Shoemate, Tennis. NAY: None. MOTION CARRIED.

15. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the pending damage claim of Anthony Hernandez and Lee Ann Martin, DC-2010-054, and if necessary, take appropriate action in open session. Exhibits: None.

Jensen read the title of item 15.

MOVED by Burk, SECOND by Drewry, to approve the pending tort of Anthony Hernandez and Lee Ann Martin, filed on behalf of their daughter, Kristen Grounds, consisting of medical bills in the amount of \$29,553.78 and authorize the City Attorney to prepare and file any and all documents necessary to finalize the settlement of this claim. AYE: Burk, Shanklin, Zarle, Haywood, Shoemate, Tennis, Drewry. NAY: None. MOTION CARRIED

There being no further business to consider, the meeting adjourned at 8:13 p.m. upon motion, second and roll call vote.

FRED L. FITCH, MAYOR  
ATTEST:

TRACI HUSHBECK, CITY CLERK