

Meeting of 2010-12-21 Regular Meeting

MINUTES
LAWTON CITY COUNCIL REGULAR MEETING
DECEMBER 21, 2010 6:00 P.M.
WAYNE GILLEY CITY HALL COUNCIL CHAMBER

Mayor Fred L. Fitch Presiding
Also Present:
Larry Mitchell, City Manager
Tim Wilson, Acting 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 Pastor Keith Miles, Central Baptist Church, followed by the Pledge of Allegiance.

ROLL CALL

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

ABSENT: None

AUDIENCE PARTICIPATION:

Andrea Decker, 2720 SW J Avenue, stated she would like to extend her appreciation to City Prosecutor Neil West, Animal Control Officer Brown and Sgt. Robert Whitten, Lawton Police Department. She stated she would like to have the name of the person at the Lawton Police Department who supervises Officer Jerry Shively because she received horrendous treatment by this officer on two separate occasions. She stated he is intimidating and she had to go to the City Prosecutor because of the failure of this officer to do his job. She stated this had to do with a dog attack with her neighbor.

Mayor Fitch suggested she direct her concerns to Lawton Police Chief Ronnie Smith.

JoAnn Waters stated she is from Texas and is coming before the Council at the advice of Judge McCall. She is here due to a judgment against the property her family owns at 1752 14th place. The judgment was granted when her attorney failed to show up for the hearing on November 4th. Her attorney also failed to notify her of the hearing. They have had the property secured three times and have bought material and began repairs. Due to vandalism, theft and arson they have given up on the repairs. They have exhausted all attempts to repair or sell the property and the only option left is demolition. She requested that they be allowed to demolish the home or the fees be reduced by the City.

Wilson stated this house was previously declared dilapidated and the property owner did not abate the nuisance. Staff proceeded to district court and they have obtained a judgment to abate the nuisance. He stated Ms. Waters is not the owner of the property and does not have interest in the property. They need to go ahead and tear this down.

Anthony Griffith, Neighborhood Services Supervisor, stated a contract has already been awarded to take this house down.

Mitchell questioned when this case was brought before the City Council.

Stephen Greb, Assistant City Attorney, stated this came before the Council on August 25, 2009.

Mayor Fitch questioned if Ms. Waters was the owner of the property.

Ms. Waters stated she has some administrative papers from her sister who inherited the property from grandma Tommy Wells. She does believe the house needs to be demolished, but she would like to be allowed to contract it out herself.

Haywood stated that the neighbors have called him many times and some of the neighbors have been hospitalized because of this house. It has caught on fire two times. He stated Ms. Waters told him they would take this house down in May and that never happened. He stated it is time.

Ms. Waters stated they would like to keep the property in their family.

Haywood stated he would recommend that they deny the request made by Ms. Waters.

Mayor Fitch stated Ms. Waters will still own the property, but there will be a lien placed upon the property for the cost of demolition. He stated this process has been going on for a year and a half and the City has been lenient enough.

Ms. Waters stated she has a verbal agreement with the same contractor that the City will be using for half the price. She questioned if they will know the amount of the fees. She stated her family has retained the services of another attorney who has asked for a continuance until he can get up to speed on the case.

Greb stated that Ms. Waters cannot pull a permit for either remodel or demolition because she is not the owner of the property. He stated the estate of Tommy Wells is the record owner of the property. He stated Ms. Waters has failed to get appointed as the personal representative of the estate. Staff is asking the Council to take no action and let the process go forward.

Wilson stated that after the property is demolished, Mr. Griffith does prepare a statement of the demolition costs which is filed in the County Clerk s office and would be available if Ms. Waters desires to pay off that lien.

Wells suggested that the Council let the process continue and move on with the agenda.

Haywood stated they have been dealing with this for over two years and he agreed that the process needs to take care of itself.

Mayor Fitch confirmed that the city is in the process of demolition and it will continue.

CONSIDER APPROVAL OF MINUTES OF LAWTON CITY COUNCIL REGULAR MEETING OF NOVEMBER 23, 2010.

MOVED by Drewry, SECOND by Burk, to approve the minutes of Lawton City Council regular meeting of November 23, 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.

Tennis requested item #2 needs be considered separately.

MOVED by Drewry, SECOND by Zarle, to approve the consent agenda with the exception of item #2. AYE: Drewry, Burk, Shanklin, Zarle, Haywood, Wells, Shoemate, Tennis. NAY: None. MOTION CARRIED.

1. Consider the following damage claim recommended for approval: Stephane and Tanja Walker in the amount of \$45.00. Exhibits: Legal Opinion/Recommendation.

2. Consider the following damage claim recommended for denial: Lori and Dalas Anderson in the amount of \$2,500.00. Exhibits: Legal Opinion/Recommendation.

Tennis stated he feels this claim should be paid. He stated the code as it stands today does not say anything about the owners getting their pets back, it says they can be confiscated. He feels they need to pay this claim. He stated he and Councilmember Burk have met with staff and he feels they have come up with a suitable due process opposed to confiscating people s personal property and not giving it back.

Kelea Fisher, Assistant City Attorney, stated that her office has recommended full denial of this claim. She stated when the animal welfare staff witnessed Ms. Anderson attempting to sell these puppies, he did what the city

ordinance required him to do which is confiscate the puppies and issue a citation. She stated Ms. Anderson was cited for illegally attempting to sell or transfer these animals without a BAT permit. The law is very clear in Oklahoma with respect to the officer's actions and the actions of the shelter after that occurred. The Governmental Tort Claims Act provides that when a city employee is in good faith enforcing a city ordinance, the city is immune from liability for those actions. She stated Ms. Anderson has pled guilty to the citation in Municipal Court and has paid the \$500 fine. He stated she is now coming before the Council asking them to undo her own guilty plea and not only give her back her \$500, but \$2,000 on top of that. She stated the most important reason why this claim should be denied is that when these ordinances were enacted in 2007 it was because this community was facing an extreme animal overpopulation issue and since the enacting of these ordinances they have seen a significant decrease in the overpopulation and a significant decrease in the amount of abandoned animals and animals that have had to be euthanized. She feels that out of town residents should have to abide by the ordinances that countless city of Lawton residents have had to abide by.

Burk stated it was not a question that she plead guilty and he does not think that the City of Lawton did anything wrong, but he feels the code is flawed. His problem with this issue is that they had no way to reclaim those pets.

Delores Deluomo, 1914 E. Gore, stated she feels the claim should be denied. She questioned how you can determine the value of the puppies. She questioned if other residents who have had their puppies confiscated would be filing claims. She stated the City Council passed this law in 2007 and animal control has acted on the law and have done everything right. She stated that Lawton is respected and admired for this ordinance and she does not want anything done to undermine the good that has come from this ordinance.

Haywood questioned if at the time Ms. Anderson received the citation, was she given the option of keeping the puppies.

Donquell Brown, Animal Control Officer, stated no. The ordinance states that the officer is required to confiscate the animals at that point in time.

Burk stated he does not feel the City of Lawton did anything wrong, but he feels there was no provision for someone to be able to reclaim their personal property. They need to do what is right.

Tenis stated there is no written policy that says that these people cannot get the puppies back. That is what this is about.

Shoemate questioned if we were getting the word out to the public and Fort Sill to make sure they are aware of our policies and codes.

Mayor Fitch stated in the paper every day where it lists pets for sale, the requirements are listed for breeders and sellers. He stated this ordinance has been in place for three years and this is the first incident that has come up.

Wilson stated legally, under the Oklahoma Tort Claims Act, we are not liable for this claim. There is no legal liability for the taxpayers of this city to have to pay this claim.

Tenis questioned why the City of Lawton would not be responsible when the owners or their family cannot claim their puppies.

Wilson stated the ordinance provides that the puppies are confiscated and requires the owners to sign over the animals to the City of Lawton and even though they did not do that, it is still the opinion of the City Attorney that they are not entitled to get those animals back.

Mayor Fitch stated this ordinance has been in place three years and it has been reproduced in Oklahoma City and several other communities within the state of Oklahoma and he believes that Fort Sill is also adopting this ordinance. He stated a business item on the agenda will address an amendment to this ordinance, but this was the law at this time and you are asking the citizens of Lawton to pay a claim that they legally do not have to pay.

Wells questioned if the ordinance states that they cannot get the puppies back.

Fisher stated the ordinance provides that the animals will be immediately confiscated and at that time they become the property of the City of Lawton. If the claimant had gone to trial in Municipal Court and it was found that she was not illegally selling these animals and the citation was dismissed and we had adopted out these animals then she would have a civil claim. In this instance this is not what happened. The shelter has to get those animals adopted out as soon as possible so they do not have to be euthanized. The City of Lawton acted in accordance with policy and procedure and the ordinance as it existed at the time.

Wells questioned if this was one of the cases if they pay against the advice of the attorney, could Council be held liable individually.

Wilson stated they could be potentially held liable by a taxpayer.

Fisher stated there is a provision in the code that states that kittens and puppies born to cats and dogs in violation of this section of the ordinance shall be forfeited and given to the care of the animal welfare division and they become the City's property upon confiscation.

Lori Anderson, claimant, 103 Lions Cove, Walters, OK, stated that Officer Brown was just doing his job but she just has an issue with how she was treated at the animal shelter. She told staff that one of the puppies was a family pet. She offered to adopt her pet back but that was not an option. She stated that no one in her family was allowed to adopt the puppies and she does not feel it is fair that she had done everything she could to get her dogs back.

Haywood questioned if Ms. Anderson knew of the city ordinance.

Ms. Anderson stated no and that is why she pled guilty. She felt that since they were pure bred that is why she was not given the opportunity to get them back.

Shanklin questioned if they dogs were adopted out.

Tenis stated yes, by city employees. He stated the City Attorney recommended to him that they do not try to get the puppies back. He was told they didn't want to upset the people who adopted the puppies.

Mitchell stated they did make an attempt to retrieve one of the puppies in hopes they could return the pet back to the claimant. He stated the adoption was not unusual and animal welfare staff frequently send out photos of animals to be adopted. He stated staff is very active in trying to get the word out about animals that are available for adoption and the fastest way is to send out an all employee email. He stated it had nothing to do with the puppies being pure bred.

MOVED by Tenis, SECOND by Burk, to approve the claim of Lori and Dalas Anderson in the amount of \$2,500.00. AYE: Tenis, Burk. NAY: Shoemate, Drewry, Shanklin, Zarle, Haywood, Wells. MOTION FAILED.

3. Consider approving contract with Theatreworks USA for performances of If You Give A Mouse A Cookie & Other Story Books on Friday, March 4, 2011. Exhibits: Contract on file in City Clerk's office.

4. Consider approving Change Order # 2 for the Rehabilitation of Old Lawton High School Phase IV. Exhibits: Architect's Change Order No. 2, dated December 1, 2010.

5. Consider approving a credit adjustment in the amount of \$1,648.84 for one month's bill to the Sunnyside Acres Water Association's service account #00022147 for the association's master meter located at 4502 SE Bishop Road for undetected, underground leaks on the association's service line. Exhibits: Letter from Sunnyside Water Association dated 6/1/2009, Letter from Sunnyside Water Association dated 11/24/2010 and invoice from Andy's Plumbing dated 2/6/2009.

6. Consider approving a credit adjustment in the amount of \$1,108.59 for two months' bills to the Bishop Estates System's service account #00022119 for the association's master meter located at 5902 SE 45th Street for undetected, underground leaks on the association's service line. Exhibits: Statement from Best Mechanical Plumbing dated 11/12/2010.

7. Consider approving Change Order No. 2 for the 2008 CIP Waterline Replacement Phases 1 and 2 Project #2008-12 with Bowles Construction Company. Exhibits: None.

8. Consider adopting **Street Light Resolution No. 467** to authorize the installation/removal of street lights at the location listed in the Resolution. Exhibits: Street Light Resolution No. 467.

9. Consider adopting a resolution authorizing the Mayor to execute a project maintenance agreement with the Oklahoma Department of Transportation (ODOT) for Traffic Signal Installations and Intersection modification at the southerly intersection of the US-62 and Fort Sill Boulevard interchange in the City of Lawton, Federal-Aid Project # NHY-20N(030), Job Piece No. 27048(04). Exhibits: **Resolution 2010-134** and ODOT letter dated November 30, 2010. Project Agreement including signal plans is on file in the City Clerk's office.

10. Consider adopting a resolution authorizing the Mayor to execute a project maintenance agreement with the Oklahoma Department of Transportation (ODOT) for Traffic Signal Installations and Intersection modification at

the southerly intersection of the US-62 and Sheridan Road interchange in the City of Lawton, Federal-Aid Project # NHY-20N(032), Job Piece No. 27049(04). Exhibits: **Resolution 2010-135** and ODOT letter dated November 30, 2010. Project Agreement including signal plans is on file in the City Clerk's office.

11. Consider approving the record plat for Wyatt Village, Part 2 and accepting the improvements, maintenance bonds, money in lieu of park land and money in lieu of detention facilities. Exhibits: Plat Map. Escrow Agreement and Maintenance Bond on file in City Clerk's Office.

12. Consider approving appointments to boards and commissions. Exhibits: None.

13. Consider approval of payroll for the period of December 13-26, 2010.

NEW BUSINESS ITEMS:

14. Consider adopting an ordinance amending Animal Welfare Ordinance Chapter 5, Article 5-1-106, sections (C-1), (H), (N), and (O) of the Lawton City Code 2005, allowing owners violating the Breeding/Advertising/Transfer (BAT) permit to reclaim their confiscated animals by coming into compliance with, paying all fees associated with and obtaining a BAT permit, providing severability and declaring an emergency. Exhibits: Ordinance 2010-____.

Jerry Ihler, Public Works Director, stated that Councilmembers Burk and Tennis had requested staff look at the ordinance as it relates to the BAT permit as presently animals that are confiscated from owners that are violating the BAT permit are automatically forfeited to the City of Lawton. They were asked to look at changing the ordinance in a manner that would afford the owners an opportunity to redeem those animals within one business day and come into compliance with the provisions of the BAT permit. The owner would have a two week period to provide all of the health documents and vaccination information and they would have to obtain the BAT permit.

Drewry stated the Council worked so hard on this original ordinance and she questioned if this goes against everything they were trying to accomplish.

Ihler stated he does not believe it goes against what they were trying to accomplish, if the people who come in to redeem the animals follow the BAT permit requirements.

Mayor Fitch questioned if someone redeemed their animals and paid the BAT permit, how we would know if they are going to be vaccinated.

Ihler stated they cannot guarantee they will do that, but they are given a citation for not meeting the requirements of the BAT permit. That fine is \$500.

Mayor Fitch stated he believed they had to pay and then when they have everything done they are reimbursed.

Ihler stated that is correct. He stated residents are allowed to breed if they follow the requirements of the BAT permit.

Mayor Fitch questioned the cost of a BAT permit.

Ihler stated it is \$250 per litter.

Burk stated he feels the BAT permit works and he is in agreement with what the BAT permit says and the process they go through. The only thing he does not like is that a legitimate owner does not have the opportunity to go back and get their pets if they are willing to pay all the fees associated with the BAT permit. If they don't do what they are supposed to do, we write them a citation.

Wells questioned if they could charge fees for spay and neutering and shots and when they come back with proof they can get their money back.

Burk stated they looked at that but it is very hard because these are puppies and they cannot be spayed or neutered at that time, they are too young. He stated he feels this is the best idea.

Wells questioned if they could add the cost of spaying and neutering to the \$500 fine.

Ihler stated with an adoption they have to be spayed and neutered, but with the BAT permit they do not.

Burk stated he feels the BAT permit is working and he does not want to change much.

Mitchell stated staff gets more complaints from people who are buying animals that aren't healthy from people who are illegally selling them.

MOVED by Burk, SECOND by Tennis, to adopt **Ordinance 10-45**, waive the reading of the ordinance, read the title only and declaring an emergency. AYE: Tennis, Drewry, Burk, Shanklin, Zarle, Haywood, Wells, Shoemate. NAY: None. MOTION CARRIED.

(Title read by City Attorney) Ordinance 10-45

An ordinance amending Article 5-1-106, Sections (C-1), (H), (N), and (O) Lawton City Code, 2005, by adding a provision for owners violating the breeding/advertising/transfer (BAT) permit to reclaim confiscated animals and establishing a time period to provide documentation of health records for each confiscated animal reclaimed, providing for severability and declaring an emergency.

15. Direct staff as to the prioritization of the two current Transportation Enhancement (TE) grant applications submitted to the Oklahoma Department of Transportation. Exhibits:

Comment Letter from ODOT, Lawton Bicycle and Pedestrian Project Phase II and III Route Map and Conceptual drawing of I-44 Tri-level Interchange Enhancement.

Richard Rogalski, Planning Director, stated on September 28, 2010, City Council approved the submission of two applications to the Oklahoma Department of Transportation for the Transportation Enhancement (TE) Program for landscaping improvements and enhancement of the Tri-level interchange on Interstate 44 and for the implementation of the Phase III prioritized projects in the Lawton Metropolitan Bicycle and Pedestrian Plan. He stated ODOT has asked for a prioritization. He stated the tri-level was originally submitted in 2006.

Burk stated he would like to see the tri-level enhancement project done first. He feels this leads right into the improvements being made downtown.

Zarle questioned who would maintain this project.

Burk stated it would be our responsibility and they would contract with someone to maintain the project.

MOVED by Burk, SECOND by Tennis, to prioritize as follows: 1) Tri-level interchange and 2) Bicycle and Pedestrian Plan. AYE: Zarle, Haywood, Wells, Shoemate, Tennis, Drewry, Burk, Shanklin. NAY: None. MOTION CARRIED.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

COL Lacey stated there will be a welcome ceremony for the new Field Artillery Commandant on January 10th.

The Mayor and Council convened in executive session at 7:13 p.m. and reconvened in regular, open session at 7:17 p.m. Roll call reflected all members present.

ADDENDUM:

1. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the pending claim of Eddie Cordes Auto Finance and, if necessary, take appropriate action in open session.

Wilson read the title of the addendum.

MOVED by Wells, SECOND by Shoemate, to approve a settlement in the amount of \$4,267.47 to Eddie Cordes Dodge. AYE: Shanklin, Zarle, Haywood, Wells, Shoemate, Tennis, Drewry, Burk. NAY: None. MOTION CARRIED.

There being no further business to consider, the meeting adjourned at 7:18 p.m. upon motion, second and roll call vote.

/s/ Fred L. Fitch

FRED L. FITCH, MAYOR

ATTEST:

/s/ Traci Hushbeck

TRACI HUSHBECK, CITY CLERK