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MINUTES OF THE CITY COUNCIL, CITY OF CONWAY, ARKANSAS

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Conway, Arkansas  
Tuesday 6:30 pm  
April 8, 2014

On this date the City Council of the City of Conway, Arkansas met in regular session. The following members being a quorum were present and acting: Alderman Hawkins, Alderwoman Mehl, Alderman Grimes, Alderman Ledbetter, Alderwoman Smith, Alderwoman Whitmore, and Alderman Jones. Also, present and acting: Mayor Tab Townsell, City Clerk Michael Garrett, and City Attorney Michael Murphy. Alderman Pruitt was not in attendance.

**Call to Order: Mayor Tab Townsell**

**Roll Call: City Clerk/Michael O. Garrett**

**Minutes Approval: March 18<sup>th</sup> and March 25, 2014**

Alderwoman Whitmore motioned to approve the March 18, 2014 and March 25, 2014 minutes as submitted. Alderwoman Smith seconded the motion. There was no discussion. The motion passed 7-0.

John Swanson, MEMS, explained due to the recent Medicare extension being signed into law, MEMS is will is able to reduce their financial request and refund the city \$27,000.00.

**1. Report of Standing Committees:**

**A. Community Development Committee (Planning, Zoning, Permits, Community Development, Historic District, Streets, & Conway Housing Authority)**

**1. Consideration to accept the nomination of Ray Kordsmeier to the Conway Corporation board of Directors for a seven year term.**

Alderman Hawkins motioned to accept the nomination of Mr. Kordsmeier. Alderwoman Smith seconded the motion. There was no discussion. The motion passed 7-0.

**2. Ordinance to rezone property located at 3615 Prince Street from A-1 to MF-3.**

**O-14-32**

Beau Wilcox, Attorney at Law, representing DT Real Estate LLC, stated his client owns 2 properties, 3615 Prince St which is a one-half acre parcel; he also owns an adjacent 1 acre parcel at 3635 Prince St. Mr. Wilcox believes the general opposition the proposed rezoning is founded on speculation and unfounded fear, and the failure to recognize the ever changing dynamic along the Prince St corridor. Mr. Wilcox stated in 2001, 3635, 3645, 3655 Prince St was zoned MF-3, multi-family residential (max capacity of 24 units per acre) without opposition which leaves a one-half acre island at 3615 Prince St; he does not believe the current zoning is an appropriate use of this property. Mr. Wilcox explained his client plans to redevelop 3635 Prince St, and 3615 Prince St into a multi-family complex, if an MF-3 zoning can be obtained. Mr. Wilcox stated within a one-half mile radius of this property there is a manufactured home park, mini-storage facility, Kum & Go, and numerous other agricultural islands, and stated there is a great mixed use character to this area. Mr. Wilcox explained the

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Conway Planning Dept. agrees, this request is appropriate for the area, and would only increase the traffic counts by 75-80 vehicle trips daily, which is low in comparison to the total traffic counts of 9,000 just a few years ago. Mr. Wilcox stated if any drainage issues arise, these would be addressed by Ronnie Hall, City Engineer. Mr. Wilcox stated the existing ingress is not ideal for gaining entry onto Prince St but if approved his client would make the necessary adjustments to the ingress/egress to allow for easy flow traffic in and out of this development. Mr. Wilcox showed council a photograph of what his client plans on developing; it shows an 8 unit structure which is esthetically pleasing with a maximum of 2 floors. Chris Thronberry, 901 Reedy Rd., stated his property is adjacent to the property in question and he is opposed to the proposed rezoning and wants to protect his privacy and property. Mr. Thronberry estimates the elevation of this property is 30-40 feet higher than his property, and anything built there would have view of his backyard, patio, and parts of his home. Mr. Thronberry went onto say he is concerned about drainage as that part of his property is already damp and mushy. Mr. Thronberry stated he is also concerned about safety in the area as well as the possibility that it could ingress/egress from Reedy Rd which is a narrow street. Greg Wren, 48 Shady Valley Drive, feels his property is most affected and sits at a 30 ft. elevation; the proposed development would have view of his backyard. Mr. Wren stated he is concerned about his property value decreasing which would affect others in the area as well. Mr. Wren went onto say he is concerned about traffic, safety, noise and lighting; a property should not solely be rezoned to match an adjacent property, the reasoning is just not there and asked council to consider his right to privacy and to vote in opposition of this rezoning. David Allen, 52 Shady Valley Drive, stated he is concerned the proposed rezoning would increase noise, traffic, unsafe conditions for pedestrians, cyclists, and motorists, light pollution, as well as privacy concerns. Mr. Allen stated this not only Shady Valley residents, but residents of adjacent neighborhoods and asked the property owner to consider another zoning. Cindy Hudson, representing Turnberry Subdivision, spoke against the proposed rezoning and shares the concerns of the other speakers, especially vehicular safety, while turning at the hill, as it is already a dangerous area. David Bailey, 50 Shady Valley Drive, spoke in opposition of the proposed rezoning. Ron Nichols, 23 Shady Valley Drive, spoke in opposition of the proposed rezoning. Jake Molder, 5 Essex, stated he is opposed to the proposed rezoning as it will increase traffic which will in turn make turning onto Reedy Road even more dangerous than it is today. David Sterns, 1125 Edinburgh Drive, stated we should disregard the rezoning that occurred in 2001 as many things have changed since that time, and feels we should not disregard the recommendation of the Conway Planning Commission as it negates the purpose for which they serve. Alderman Grimes asked if there were plans to straighten Reedy Road, and if this property has access to Reedy Road. Bryan Patrick, Planning & Development Director, stated as he understands it, Reedy Road ran straight in the past, but it was deemed a site issue, so it was veered as it is today, and he is not sure if we would want to make any changes to Reedy Road. Alderman Grimes asked if retention ponds would be required on the current MF-3 property. Mr. Patrick stated one cannot have any more water coming off a property than runs off today. Alderwoman Smith asked if the applicant had considered a PUD. Mr. Wilcox stated he would not want to say anything that would bind his client to a long term decision and he is hesitant of a PUD at this time because he is unsure if he will own any or all of this property and he is unsure how to plan with the mixed zoning. After some discussion Mr. Wilcox stated the area between Reedy Road and Hogan Lane, bordered by Prince St., is home to numerous characters of development and his client wants to be a good neighbor and develop in a manner that is consistent with the zoning. Alderman Jones motioned to deny the rezoning. Alderwoman Smith seconded the motion. Alderman Grimes asked if the other parcels zoned MF-3 were developed independently if

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each development would have its own ingress/egress. Mr. Patrick stated we want as few driveways as possible and we try to have a joint driveway to be shared, when there are 2 different owners developing next to one another. Alderwoman Smith asked if this is denied can they come back with a request for a PUD. Mr. Patrick stated not for a period of 1 year, or by obtaining a two-thirds majority vote from city council or the planning commission. Alderman Grimes stated he can easily see 73 apartment units being built here in the future, but he would prefer to see a PUD plan presented for this area. Alderman Grimes stated he is willing to vote to waive the 12 month requirement if they chose to come back with a PUD. Alderwoman Smith concurred. There was no further discussion. The clerk called the roll with the following voting "Aye": Alderman Hawkins, Alderman Grimes, Alderwoman Mehl, Alderman Ledbetter, Alderwoman Smith, Alderwoman Whitmore, and Alderman Jones. The motion to deny passed 7-0.

**3. Consideration to approve the bids received for traffic signal improvements at Oak Street and Harkrider Street.**

Finely Vinson, Traffic Engineer, recommended awarding the bid to the low bidder All Service Electric, Inc. in the amount of \$49,987.50. Alderwoman Smith motioned to award this bid to the low bidder. Alderwoman Whitmore seconded the motion. There was no discussion. The motion passed 7-0.

**4. Consideration to enter into an agreement with Entergy to relocate electric power lines along Sturgis Road at South Interchange.**

Ronnie Hall, City Engineer, explained an overhead Entergy power line is conflicting with the work on the Sturgis Road Overpass and asked council to approve this agreement at a cost of \$11,545.97. Alderwoman Smith motioned to enter into this agreement. Alderwoman Whitmore seconded the motion. There was no discussion. The motion passed 7-0.

**5. Consideration to approve the appraisal values for right of way required for South Donaghey - Favre Lane roundabout.**

Ronnie Hall, City Engineer, explained we have an updated appraised value on Tract 1 (14,532 sq. ft.) - Fore Co. Inc. and Shadowstorm, LLC in the amount of \$75,000.00 from \$35,000.00. Mr. Fore and Mr. Coats have discussed this and Mr. Coats has re-evaluated his appraisal and determined \$75,000.00 is fair market value. Mayor Townsell stated it could cost us more in the long run if this tract should be taken into litigation. City Attorney Michael Murphy water/sewer projects would be handled in this manner, but since this is a street improvement, this may not apply. Alderman Hawkins stated he feels that we would be increasing the value of Mr. Fore's property. Mr. Hall stated we can proceed with condemnation and let the courts determine the value. After some discussion Mr. Hall stated we did not pay this low of an amount for any right-of-way acquisitions on Prince Street; this amount is figured at \$5.16 per sq. ft. Mr. Hall went onto say the property is zoned C-2 and the first appraisal was compared to residential or office, and he believes Mr. Coats re-evaluated the appraisal to give the C-2 zoning more consideration. Alderman Grimes suggested pursuing a friendly condemnation and let the court determine the value. Mr. Hall asked if we are approving the original appraised value. Alderman Jones stated \$35,000.00. Mr. Hall stated recommended approving Tract 2 (Jordan & Davis Haas - 714 sq. ft.) at \$2,200.00 and Tract 3 (Butch & Tammy Freeman - 1,081 sq. ft.) at \$3,400.00. Alderwoman Smith motioned to approve proceeding with

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condemnation on Tract 1, and to approve the recommended amounts on Tract 2 & 3. Alderwoman Mehl asked if Conway School District is giving us the right of way needed on their parcel. Mr. Hall stated Mr. Bishop has said the school district would give the right of way. Mr. Hall stated a fence will have to be replaced on Tract 2 & 3, which is separate from this issue. There was no further discussion. The motion passed 7-0.

**6. Resolution authorizing the City Attorney to proceed with condemnation to acquire Tract 1 Right of Way on South Donaghey.**

**R-14-11**

Alderwoman Smith motioned to adopt the ordinance. Alderwoman Whitmore seconded the motion. There was no discussion. The motion passed 7-0.

**7. Consideration to approve quotes received for asphalt paving for 2014 Projects.**

Ronnie Hall, City Engineer, explained there are several unresolved disputes with the Rogers Group and stated Tim Gorman and Jay McConnell from Rogers Group are present to address council. Tim Gorman, Vice President, Rogers Group explained these issues have lingered for some time, and stems back to material that came from their Toad Suck quarry, which has been in operation for 40 years. Mr. Gorman explained, these projects mentioned, especially Tyler Street reconstruction, involve many circumstances that resulted in these failures; many test samples have occurred to try and determine the causes, but in his opinion, we still do not have been unable to determine a complete cause. Mr. Gorman explained when he first started working at Rogers Group, he wanted to get these issues resolved and move forward, and he was given permission to move forward with repairs to resolve the issue; an independent consultant was hired, and based on the recommendations we were given, we spent \$300,000.00 for repairs, but unfortunately all the repairs did not last, so we still have a portion of these issues unresolved. Mr. Gorman stated many of the test reports developed point back to a high amount of fines in the base stone, which lies between the dirt and the asphalt; it provides strength for the vehicles and holds the road in place. Mr. Gorman explained the samples were taken after the fact; Rogers Group has performed quality control, and test results, when the materials were shipped out per specifications, unfortunately this road was built while traffic continued to travel on it, as a result when traffic travels over rock it breaks it down and creates more dust, which created some of the problem. Mr. Gorman stated the golf course along Tyler Street allowed a lot of water to run off onto the road which created, in his opinion, sub-surface which reduced the strength of the soil and the rock under the asphalt. Mr. Gorman explained when the strength is reduced, in combination with heavy traffic flow, it creates asphalt failure. Mr. Gorman stated another important point is the test samples were taken with a back hoe over a year after the material was already in place, which further compounds the material making more fines than were initially placed in there. Mr. Gorman stated with this being said, the samples taken from the roadway are not a true representation of the roadway. Mr. Gorman stated there were several jobs we did, at the same time, where the material came from the Toad Suck quarry; one being Salem Road overpass; in this case we loaded the wrong material at the quarry for this project. Mr. Gorman stated the test results showed it was out and we took the material up, and put new material down, and it is still holding up today. Mr. Gorman stated he feels we are on top of our quality control and we have supplied material that was in the specification to this project; he feels the biggest issue with Tyler Street, had to do with the water, and the fact that it is a lower lying area; there are

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drainage easements there, and explained you will have moisture come up to the surface of the roadway even after several months have passed. Mr. Gorman stated Rogers Group wants to do the right thing for the city and we feel like we could save the city on its annual projects. Mr. Gorman explained we are all locals, very involved in the community, and this is home for us, and we want to work through the issues with the city and find resolution. Alderwoman Smith asked when Tyler Street would be repaired. Mayor Townsell stated there is no obligation to them at this point, unless we go to court. Mayor Townsell stated they have voluntarily taken the asphalt up on Tyler and milled lime into the base, and they feel that is all they need to do. Mayor Townsell stated 5 years after the fact, Tyler Street is still in better shape than it was before they repaired it. Alderman Ledbetter stated the contractors are taking advantage of the lower prices from Rogers Group when they bid our jobs, but we are not. Mayor Townsell stated we are seeking direction from council. Alderman Ledbetter motioned to award the quote from Rogers Group in the amount of \$681,917.00. Alderwoman Mehl seconded the motion. Alderman Hawkins asked if Mr. Hall approves. Mr. Hall stated he approves of awarding this bid, but does not approve of the fact that Rogers Group says they have fixed the problem, as their fix was flawed. Alderman Grimes concurred with Alderman Ledbetter. Alderwoman Smith stated she wants to see Tyler Street repaired at some point. Mr. Gorman stated we will work with the city to repair Tyler at a fair cost; regardless of the last 5 years, we do have a good working relationship. Alderwoman Smith asked if this is bid out yearly. Mr. Hall stated we now take quotes and then council can select the vendor you choose; the state does not require bids on asphalt. Mayor Townsell stated really we are selecting all of these quotes. Mr. Hall stated you could do that, which would allow the city to call upon another vendor, at a higher cost, if Rogers Group was tied up on another job. Mr. Hall stated in the past, we have selected the low bidder, if available, and if they are not available we could move on to the next lowest bidder etc. Mayor Townsell asked Alderman Ledbetter and Alderwoman Mehl if this is acceptable to them. Alderman Ledbetter and Alderwoman Mehl stated yes. Mayor Townsell stated this would allow us to accept these various quotes in order from lowest to highest according to availability, with Rogers Group being the lowest. There was no discussion. The motion passed 6-1. Alderwoman Smith voted in opposition.

**8. Consideration to approve quotes received for 5 year Loan for financing Western Loop South Interchange (Structures & Grading).**

Mayor Townsell recommended council approve the low quote from First Security Bank at 1.92%. Alderwoman Smith motioned to approve 5 year financing on this project. Alderwoman Whitmore seconded the motion. There was no discussion. The motion passed 6-0. Alderman Hawkins was not present for the vote.

**9. Ordinance authorizing the Mayor and City Clerk to enter into a 5 year financing agreement to fund the Western Loop South Interchange (Structures & Grading).**

Mayor Townsell requested this item be withdrawn at the request of our bond attorney, Gordon Wilborn, until the language can be more in line with state statutes. Alderwoman Whitmore motioned to hold this item in committee. Alderwoman Smith seconded the motion. There was no discussion. The motion passed 7-0.

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**B. Public Safety Committee (Police, Fire, District Court, CEOC, Information Technology, City Attorney, & Animal Welfare)**

- 1. Consideration to accept the nomination of Jerry Gipson for the position on the MEMS Board of Directors as the City of Conway representative.**

Mayor Townsell stated Mr. Gipson was recommend by Fire Chief Mike Winter, he is an EMT, and has served in the training division of the Conway Fire Dept. Alderman Ledbetter motioned to accept the nomination of Jerry Gipson. Alderwoman Smith seconded the motion. There was no discussion. The motion passed 7-0.

- 2. Consideration to approve travel for sixteen full time clerks and judges at District Court.**

Mayor Townsell asked council to remove this item as he and District Court have agreed to send the 2 judges and clerks, which will cut the cost down to \$1,885.22; this certification is recommended by the state office of the courts. Alderman Hawkins motioned to remove this item from the agenda. Alderwoman Smith seconded the motion. There was no discussion. The motion passed 7-0.

- 3. Consideration to approve bids received for CNG kits for the Conway Police Department.**

Mayor Townsell stated we received 1 bid from Crain Automotive in the amount of \$91,045.50 to install 7 Chevrolet Tahoe's with CNG conversion kits. Alderman Ledbetter asked if this is approximately the same cost as before. A.J. Gary, Chief of Police, stated the cost has risen somewhat. Alderman Jones motioned to accept the bid from Crain Automotive. Alderwoman Smith seconded the motion. There was no further discussion. The motion passed 7-0.

- 4. Ordinance accepting donated funds from the Rescue Waggin' program for the Conway Animal Welfare Unit.**

**O-14-33**

A.J. Gary, Chief of Police, stated this particular program allows our animals, which are not adopted, to be picked up and taken to other areas of the country to be adopted; this is the first reimbursement we have received. Chief Gary stated this covers our expenses of pet care given to the animals that participate in this program. Alderwoman Whitmore motioned to waive the readings of the ordinance. Alderwoman Smith seconded the motion. The motion passed 7-0. Alderwoman Whitmore motioned to adopt the ordinance. Alderwoman Smith seconded the motion. There was no discussion. The clerk called the roll with the following voting "Aye": Alderman Hawkins, Alderman Grimes, Alderwoman Mehl, Alderman Ledbetter, Alderwoman Smith, Alderwoman Whitmore, and Alderman Jones. The motion passed 7-0.

**New Business:**

- 1. Discussion of the notification of the termination letter for airport services for the existing Conway Municipal Airport.**

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Mayor Townsell stated we have an agreement with Cope Aviation Services to provide fixed base operator service for the old airport; Mr. Cope bought out the old Acxiom airport lease. Mayor Townsell stated part of the lease with Mr. Cope, which dates back to 1999, determined how the city would compensate Mr. Cope, who was the continuation of these other bodies who leased this property from us previously, short of the full term of the lease. Mayor Townsell stated what they engaged in was lease hold improvements; they leased land for a certain period of time, they constructed facilities expecting the full term of that lease which we are now terminating. Mayor Townsell read sections from the addendum of the old Acxiom lease: Section 4: "If the city initiates construction of a new airport facility prior to the expiration of the original term of this lease, either party has the right to terminate this lease, said termination to be effective on the date the new facility becomes operational, by getting written notice of its intention to terminate ninety (90) days prior to said termination. In the event of such termination, the City agrees to pay CASI according to a formula set out in Paragraph No. 5 below and said payment shall be made to CASI on or before six (6) months following the date of termination." Section 5: "Upon the termination for the lease as set out in Paragraph No. 4 above, CASI shall receive payment from the City using the following formula: The total expenditures of CASI in the amount of \$280,000.00 for leasehold improvements, in addition to any buildings, structures and improvements (and all furniture, fixtures and equipment affixed to the realty or to said buildings, structures and improvements) erected, constructed or placed upon the land henceforth, divided by the total number of months remaining on this lease as of the date of this addendum agreement multiplied by the months remaining on this this lease at the date of termination. Mayor Townsell stated this means that the \$280,000.00 is pulled down to \$175,000.00 plus whatever has been affixed to real property as long as CASI provides documentation of the cost of any and all construction. Mayor Townsell stated we will be notifying Mr. Cope that we are going to terminate the lease agreement, move to the new airport, and compensate him per the agreement; he has the right to present any documentation of these various costs, if any. Mayor Townsell stated these funds are in our budget for the new airport.

**Old Business:**

- 1. Ordinance to regulate and license door to door solicitors and peddlers for the City of Conway.**

Mayor Townsell stated the city attorney has asked for more time to work on this ordinance. Alderwoman Smith motioned to hold this item in committee. Alderwoman Whitmore seconded the motion. There was no discussion. The motion passed 7-0.

**Special Announcement:**

- ❖ **City Council Workshop Meeting II - April 15<sup>th</sup>, 2014 @ 5:30pm - CPD/Upstairs Conference Room.**

**Adjournment**

**PASSED this 8<sup>th</sup> day of April, 2014**

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**APPROVED:**

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**Mayor Tab Townsell**

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**City Clerk Michael O. Garrett**