

Mayor Kathy Harrison called the regular meeting of the Eureka Springs City Council to order at 6 p.m. Monday, Aug. 8, in the jury room of the Carroll County Western District Courthouse.

**PRESENT:** Mayor Kathy Harrison, Aldermen Robert “Butch” Berry, Beverly Blankenship, Aaron Falotico, Terry McClung, Rick Rojek, Lori Weaver, City Attorney Tim Weaver, Parks and Recreation Commission Director Bruce Levine and City Clerk-Treasurer Mary Jean Sell.

**PLEDGE OF ALLEGIANCE:**

Mayor Harrison led the Pledge of Allegiance to the Flag.

**APPROVAL OF THE AGENDA:**

Mr. McClung moved to approve the agenda. Ms. Weaver seconded.

Ms. Blankenship moved to add the vote on the second reading of Ordinance 1998 as Old Business Item 11. Mr. McClung seconded.

Ms. Weaver said Ordinance 1997, regarding bid limits, is still waiting on the state law to go into effect. The local ordinance has not been prepared.

On the agenda as amended, all voted aye. Motion passed 6/0/0.

**EXECUTIVE SESSION:**

At 6:05 p.m., Mr. Falotico moved to go into executive session to discuss a personnel issue and possible disciplinary action. Mr. Rojek seconded. Five voted aye. Ms. Blankenship was opposed. Motion passed 5/1/0.

Council returned to the table at 6:30 p.m.

Mayor Harrison announced a letter of reprimand will be written and discussed with the employee.

**APPROVAL OF THE MINUTES:** July 25, Special meetings July 26, Aug. 1

**July 25** – Mr. McClung moved to approve the minutes of July 25. Mr. Rojek seconded.

Mr. McClung noted on Page 2, second paragraph, the word should be “providing” not “proving.” He noted on Page 5, discussion item #4, the date should be Aug. 8, not Aug. 1.

Mr. Berry noted on Page 3, Item #3, the discussion of the lease for Harmon Park Community Building, that Bill Earngey is a past chairman of the Parks and Recreation Commission, not the current chairman.

Mr. Rojek moved to amend the minutes of July 25 as amended. Mr. Falotico seconded. All voted aye. Motion passed 6/0/0

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**July 26** – Special meeting – Mr. Falotico moved to approve the minutes of the July 26 special meeting as presented. Mr. Rojek seconded. All voted aye. Motion passed 6/0/0

**Aug. 1** – Special meeting - Mr. McClung moved to approve the minutes of the Aug. 1 special meeting as presented. Mr. Rojek seconded. All voted aye. Motion passed 6/0/0

**COMMISSION, COMMITTEE, AND AUTHORITY REPORTS AND VACANCIES:**

Hospital Commission – Position 6 – Expires 9/7/05

Historic District Commission – Position 2 – Expires 3/7/08

CAPC – Position 1 – Expires 6/30/05

Mr. McClung urged the mayor to reappoint Steve Roberson to the CAPC and Dan Bennett to the Planning Commission, saying both have experience.

Mr. Rojek agreed wholeheartedly.

## **DEPARTMENT & COMMISSION REPORTS:**

Police, Transit, Public Works, Parks, HDC

**Police** – Ms. Sell read aloud the report from the Police Department

**Transit** – Mayor Harrison read aloud the report from the Transit Department. She said the contract to purchase the Planer Hill parking lot, at the intersection of Highways 62 and 23, had been closed on Friday, Aug. 5, and the city had taken possession of the property that afternoon.

Mr. McClung said he was distressed and offended that the City Council was kept out of the loop for the negotiations and signing of the contract. He said it should have been the Council's decision to go forward with the contract.

Mayor Harrison said Mr. Jones (Jimmy Jones, former owner) would not sign a contract with any contingency clauses. She waited until she knew for sure the funds from the Federal Transportation Authority (FTA), the Arkansas Highway and Transportation Department (AHTD) and other agencies were guaranteed before she signed the contract.

There was no report from the Public Works Department.

**Parks** – Mr. Levine presented a topographical map of Harmon Park as the finished result of work by the Eureka High School EAST Lab students.

He said he is ready to put playground equipment for Harmon Park out to bid. The old equipment will be moved to Lake Leatherwood City Park.

He presented a proposal for a restroom design by Larry Troillett for Harmon Park. A 50/50 grant from the state Parks and Tourism Department has been received for construction of the concession stand at the Lake Leatherwood Baseball Field. He said the Commission has approximately \$74,000 to spend on the building.

The Commission has gotten a \$15,000 grant from the Arkansas Historic Preservation Program (AHPP) to repair the roof of the band shell in Basin Spring Park. A condition of accepting the grant is to give a conservation easement for the entire park to AHPP. Mr. Levine said the Basin Park Improvement Committee members and the Parks Commission have agreed to return the grant. They do not want to give the easement.

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#### Open Mic

Mr. McClung moved to begin the open microphone portion of the meeting at 7 p.m. Mr. Falotico seconded.

The purpose of open mic is to allow residents to address the Council on any topic. The Council does not engage in questions or discussion of the issues at this time.

**Eric Scheunemann** – He said he is speaking as a member of the Planning Commission. He presented copies of the state law and Municipal Code defining the duties of the commission, and the state law regarding territorial jurisdiction.

**Barbara Harmony** – She is founder and coordinator of the National Water Center. She expressed her appreciation for Dr. Van Brahana working with the city on the hydrology study of the Corley Street/East Mountain area.

**Mickey Schneider** – She said she is representing merchants of south Main. She presented a petition with 13 signatures asking the council to “refine” the wording of Section 18-251 of the old Municipal Code regarding peddling and the distribution of coupons, handbills, etc.

**Marianne Tomaszkiwicz** – Asked the Council to do something about Eureka Kids. She does not want them evicted from the Harmon Park Community Building. She wants something done to benefit the good kids in the community.

**Harley Fox** – Founder of Project Save Our Children from Drunk Drivers. He said he now needs \$1,150 to fully fund his education program. He announced a poker run for Saturday, Aug. 13, to raise funds for the program.

The open mic ended at 7:15 p.m.

**HDC** – Ms. Sell said the Commission had recently approved construction of two houses within the Historic District. She said she and Certified Local Government (CLG) Coordinator Glenna Booth have talked with approximately half a dozen property owners in the last two months about building homes.

**OLD BUSINESS:**

**1. Report from Dr. Van Brahana regarding Corley St. opening.**

Dr. Brahana is a hydrology expert, specializing in the Karst formations found in this geographic area. He was retained by Richard and Jane Johnson, property owners on Corley St. The Johnsons have requested the street be opened so they will have access to their property and can build a house. Residents in, and below, the area have expressed concern about possible erosion of the hillside, contamination of Laundry/Onyx Spring, the number of trees that may have to be removed and the effects of rainfall run-off on the hillside during heavy rainstorms.

Dr. Brahana said he found no evidence of sinkholes in the area. He said the construction of Corley St. would not harm Laundry Spring if it is developed in an environmentally friendly way. He suggested using a permeable roadbed, not paved. He said there are fabrics available for application to the hillside to keep erosion at bay.

He said using a curving, narrow width road, less than 30 feet wide, could avoid tree cutting. He suggested using contouring (creating berms) in the area to facilitate the infiltration of runoff to help recharge the spring. Using these recommendations, he does not believe Corley St. will have a negative impact on the springs.

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Mr. Weaver said there is a new state law which requires all newly constructed roads to support an 8,500-pound firefighting vehicle. He questioned Dr. Brahana on several scenarios for construction in the area.

Mr. McClung moved that the city provide a 30-foot wide easement for a 15-foot wide road, 400 feet long, ending at the Johnsons’ north property line. The property owners, at their expense, will be responsible for building an obstruction in the gully to hold and allow water to pool, including Berryville Ave. Mr. Berry seconded.

Mr. Rojek moved to amend the motion by specifying the condition of the road as laid out by Dr. Brahana in Paragraph 2 of his letter. Mr. Falotico seconded. On the amendment, by roll call, those voting in favor were Mr. McClung, Mr. Berry and Mr. Rojek. Those opposed were Ms. Blankenship, Mr. Falotico and Ms. Weaver. The amendment motion failed 3/3/0.

There was additional discussion of the original motion.

Mildred Krebbs, 39 Steel St., asked the Council to consider replacing every street in town and to think about the ordinary things in town.

Mayor Harrison read aloud a letter from Karen Lindblad, 17 Vaughn: “Unfortunately I am unable to attend tonight’s meeting to present these petitions in person but I hope that you will seriously consider them none the less. The citizens that signed them are seriously concerned that our springs be above all protected from damage including development near, on or above these springs. The reservation areas of our springs were set up many years ago and do not protect the entire recharge zones because they are not large enough. Because of this the springs could be seriously damaged by over development in Eureka. This city was built here because there were springs. They are what we will pass on to future generations. We are asking that you vote no to the opening of Corley Street and to any further development that will damage Onyx Spring, Carry Nations Spring and Little Eureka Spring.”

The petitions Lindblad referred to carry the title “We the undersigned urge the Eureka Springs City Council to protect our precious springs on Steele Street (Onyx Spring/Laundry Spring, Carry Nation Spring and Little Eureka Spring) by voting NO to the opening of Corley Street as a road for vehicular traffic. We urge you to take into consideration the impact that constructing a road directly above these springs might have; and ask that you not take any chances with our historic irreplaceable springs!”

There are nine pages of petitions with a total of 151 signatures.

On the original motion to allow development of the street, Mr. McClung, Mr. Rojek and Mr. Berry voted aye. Ms. Weaver, Mr. Falotico and Ms. Blankenship voted no. The motion failed 3/3/0.

Mr. Berry moved to take a short break at 8:22 p.m. Ms. Weaver seconded. All voted aye. Motion passed 6/0/0. The meeting resumed at 8:37 p.m.

**2. Discussion of Ordinance 1996 – regarding grease traps (3<sup>rd</sup> reading)**

Mr. McClung moved to suspend the rules and place Ordinance 1996 on its third reading by title only. Mr. Falotico

seconded. By roll call, all voted aye Motion passed 6/0/0

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Mayor Harrison read the title of the ordinance aloud.

Mr. Falotico moved to approve Ordinance 1996 on its first reading by title only. Ms. Blankenship seconded.

Mayor Harrison said she had discussed the proposed changes to the ordinance with Building Official Justin Fuson. In his opinion, the state plumbing code includes options for new technologies and allows building officials the authority to grant variances.

Mr. McClung moved to postpone the vote on the third reading of the ordinance to the next meeting and to instruct the building official to provide sections of the state code that apply and his reasons for not including the new technology and Hot Springs ordinance options. Mr. Falotico seconded. All voted aye. Motion passed 6/0/0

Mr. Fuson arrived approximately 30 minutes later. He distributed copies of the Arkansas Plumbing Code Section 105 Approval (105.1 Modifications and 105.2 Alternative materials, methods and equipment).

Mr. Fuson explained any type of commercial grease trap installation plan has to be approved by the State Health Department. The state plumbing code gives leeway for approval of alternative devices.

Mr. McClung withdrew his motion to table the vote on the third reading of Ordinance 1996. Mr. Rojek seconded. On the third reading of Ordinance 1996, all voted aye. Motion passed 6/0/0

**3. Discussion of Ordinance 1973 – regarding sidewalks (3<sup>rd</sup> reading)**

Ms. Blankenship moved to suspend the rules and place Ordinance 1973 on its third reading by title only. Mr. Rojek seconded. By roll call, all voted aye. Motion passed 6/0/0

Mayor Harrison read the title of the ordinance aloud.

Mr. Berry moved to approve Ordinance 1973 on its third reading by title only. Mr. Rojek seconded.

Mr. Falotico moved to amend the ordinance by taking out “Any sidewalk within four (4) feet of an existing limestone sidewalk must also be replaced with a limestone slab” from the first paragraph of Section 9.08.2. Mr. McClung seconded. Mr. McClung and Mr. Falotico voted aye. Ms. Weaver, Mr. Berry, Ms. Blankenship and Mr. Rojek voted no. Motion failed 2/4/0

On the motion to approve Ordinance 1973 on the third reading, Ms. Weaver, Mr. Berry, Ms. Blankenship and Mr. Rojek voted aye. Mr. Falotico and Mr. McClung voted no. Motion passed 4/2/0

**4. Discussion of lease of Harmon Park Community Building.**

Eureka Kids program attorney Matt Bishop went through the proposed contract, highlighting points for discussion.

Mr. Weaver said the Council needs to adopt Resolution 516 restoring control of the Harmon Park Community Building.

Mr. Falotico moved to suspend the rules and read Resolution 516. Mr. McClung seconded. All voted aye. Motion passed 6/0/0

Mayor Harrison read the resolution aloud.

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Mr. McClung noticed that the description of the property in the resolution referred to the entire Harmon Park instead of just the community building. He asked to have the description changed to reflect only the community building.

Mr. Rojek moved for the city to enter into the lease agreement with Eureka Kids, with the changes to the lease as discussed, and to unfreeze the monies being held for work at the community building so equipment can be purchased and installed. Mr. Falotico seconded. All voted aye. Motion passed 6/0/0

**5. Discussion of the new fire station at 144 E. Van Buren.**

Fire Chief David Stoppel said he would like to go ahead and get the engineering drawings done for the new fire station so it could be put out for bid. He would like for construction to start in April of 2006 so it could be completed before cold weather starts.

Mr. McClung moved to have the engineering drawings and specifications written for the new fire station so bid

packages can be prepared, with a ceiling of \$25,000 to be spent. Mr. Rojek seconded. All voted aye. Motion passed 6/0/0

**6. Discussion of Ordinance 1997 – regarding bid limits (1<sup>st</sup> reading)**

Mr. Berry moved to table the ordinance. Mr. Falotico seconded. All voted aye. Motion passed 6/0/0

**7. Discussion of Ordinance 1999 – regarding loading zone at Pendergrass Corner (1<sup>st</sup> reading)**

Ms. Blankenship moved to place Ordinance 1999 on its first reading. Mr. Falotico seconded. All voted aye. Motion passed 6/0/0

Mayor Harrison read the ordinance aloud.

Mr. Falotico moved to approve Ordinance 1999 on its first reading. Mr. Berry seconded.

Mr. McClung moved to amend the ordinance to add an emergency clause. Mr. Falotico seconded. All voted aye.

Motion passed 6/0/0

On the motion to approve the ordinance on its first reading as amended, all voted aye. Motion passed 6/0/0

**8. Discussion of Ordinance 2000 - regarding naming of Lower Wall St., from Owl St. to Armstrong St., as one-way down hill. (1<sup>st</sup> reading)**

Ms. Blankenship moved to place Ordinance 2000 on its first reading. Mr. Rojek seconded. All voted aye. Motion passed 6/0/0

Mayor Harrison read the ordinance aloud.

Mr. McClung moved to amend the ordinance to have traffic move downhill. Mr. Rojek seconded. All voted aye.

Motion passed 6/0/0

Mr. McClung moved to approve Ordinance 2000 on its first reading as amended. Ms. Blankenship seconded. All voted aye. Motion passed 6/0/0

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**9. Discussion of Ordinance 1995 – regarding property and personal tax levies. (2<sup>nd</sup> reading)**

Ms. Blankenship moved to suspend the rules and place Ordinance 1995 on its second reading by title only. Mr. Falotico seconded. By roll call, all voted aye. Motion passed 6/0/0

Mayor Harrison read the title of the ordinance aloud.

Mr. Falotico moved to approve Ordinance 1995 on its second reading by title only. Mr. Rojek seconded. All voted aye. Motion passed 6/0/0

**10. Discussion of HDC and Planning Commission enforcement officer.**

Mayor Harrison said Mr. Fuson has asked for an assistant and this person might be assigned to take care of some of the HDC and Planning Commission enforcement issues. She said enforcement is important to the commissions.

Mr. Falotico said he wasn't sure the city had the funding for the position this year.

Council agreed to discuss the position during the next budget workshop.

**11. Discussion of vote on second reading of Ordinance 1998 – regarding waiving bid process for Fire Safety Trailer.**

The Fire Department has received a 90/10 matching funds grant from FEMA (Federal Emergency Management Agency) to purchase the \$36,083 unit. The City would put down \$1,000 when the unit is ordered and pay the remaining \$2,608.30 when the unit is delivered in approximately 11 months.

Fire Chief David Stoppel agreed to take the \$1,000 deposit from the \$25,000 allocated for the new fire station drawings.

On the motion to approve Ordinance 1998 on its second reading, five voted aye. Mr. Falotico voted no. Motion passed 5/1/0

Ms. Blankenship moved to suspend the rules and place Ordinance 1998 on its third reading by title only. Mr. Rojek seconded. By roll call, five voted aye, Mr. Falotico voted no. Motion passed 5/1/0

Mayor Harrison read the title of the ordinance aloud.

Mr. Berry moved to approve Ordinance 1998 on its third reading by title only. Mr. Rojek seconded. Five voted aye. Mr. Falotico voted no. Motion passed 5/1/0

Mr. McClung moved to read the emergency clause. Mr. Mr. Rojek seconded. Five voted aye. Mr. Falotico voted no. Motion passed 5/1/0

Mayor Harrison read the emergency clause aloud.

## **NEW BUSINESS:**

### **1. Discussion regarding painting of new transit shuttle vans. (Falotico, Blankenship)**

Mr. Falotico moved to postpone the discussion to the Aug. 22 regular meeting. Mr. Berry seconded. All voted aye. Motion passed 6/0/0

### **2. Resolution regarding the city taking control of Harmon Park Community Building.**

This was taken care of during Old Business Item #4 regarding the lease agreement for the building.

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### **3. Discussion with attorney regarding the Latimer lawsuit.**

Attorney Matt Bishop presented a request for a settlement of the Sandra Latimer lawsuit against the city regarding a conditional use permit (CUP) for the Inn At Rose Hall, 46 Hillside Ave. The case is scheduled for trial Sept. 14.

Bishop said that Ms. Latimer is willing to pay \$5,000 and to drop the pending lawsuit if the city will grant her the CUP to operate a bed and breakfast with wedding services, effective as of Jan. 25, 2001, and to grant a CUP to operate a bed and breakfast with wedding services to Susan Misavage, potential purchaser of the property, if the purchase agreement is closed before March 15, 2006.

Attorney Tom Kieklak has represented the city on behalf of the Municipal League since this lawsuit was filed in March of 2001. He gave an explanation of the city's position in the lawsuit.

Mr. Weaver explained the possible fines under the Municipal Code.

Mr. Falotico called for the question to halt discussion. Mr. McClung seconded. All voted aye. Motion passed 6/0/0

On the motion to settle the lawsuit, Mr. McClung, Mr. Berry and Ms. Blankenship voted aye. Mr. Rojek, Ms. Weaver and Mr. Falotico voted no. Motion failed for lack of majority 3/3/0

### **4. Resolution for Phase IV grant to provide lights for Lake Leatherwood Baseball Field.**

Mr. Levine presented Resolution 514 in support of an Outdoor Recreation Grant to obtain a 50/50 matching grant to provide funding for lights for the Lake Leatherwood Baseball Field. The resolution authorizes the mayor to make application to the Arkansas Department of Parks and Tourism for assistance to develop recreational facilities for the city.

Mr. Falotico moved to read Resolution 514. Ms. Blankenship seconded. All voted aye. Motion passed 6/0/0

Mayor Harrison read the resolution aloud.

## **COUNCIL COMMENTS:**

**Mr. Berry** asked for a budget meeting. The group decided on 6:30 p.m. Thursday, Aug. 11. He congratulated everyone on the purchase of the Planer Hill parking lot and asked why the Council was not invited to the Friday afternoon ceremony.

**Mr. Falotico** thanked those who spoke during the open mic. He wants to know where the allocation of funds came from for the purchase of the new ambulance earlier this year. He said the Council had not approved the purchase and it should be the Council's decision.

**Ms. Blankenship** asked Mr. Weaver about the City Advertising and Promotion Commission (CAPC) list of delinquent taxpayers and what is being done. Mr. Weaver said he had discovered that the city ordinance regarding

prosecution of delinquent taxpayers puts the burden on the county prosecutor because the charge is a felony. He said the ordinance gives the CAPC the power to impose a lien on property or to ask the county prosecutor to handle the matter.

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Ms. Blankenship reminded everyone that the request from Mark Jipp regarding the city's possible ownership of the stonewall behind his property on Ellis Grade is on the Aug. 22 agenda.

**Mr. McClung** said the survey for the city of the Veranda Inn property and the stonewall has been done, but he does not yet have the bill.

He said there is an open sewer line on private property between Wall and Douglas streets which could affect Maxwell Spring. He said the line has been open four months.

Mr. Weaver said the city has been in litigation over the situation. Injunctions have been filed and hearings have been held. He is waiting for a hearing in circuit court on the matter.

Ms. Sell read an announcement of the Elementary School's 25<sup>th</sup> anniversary celebration as part of the annual school open house from 1:30 to 4:30 p.m. Thursday, Aug. 18.

**MAYOR'S COMMENTS:**

Mayor Harrison said we now own the biggest parking lot in town. Mr. Richie will be working with a group from the University of Arkansas to design the development of the features for the parking area and the city's property on the highway above the parking lot.

**ADJOURNMENT:**

Mr. Falotico moved to adjourn at 11:30 p.m. Mr. Rojek seconded. All voted aye. Motion passed 6/0/0

This is the signature page for the minutes of the Aug. 8 regular Coty Council meeting.

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Mayor Kathy Harrison

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City Clerk-Treasurer Mary Jean Sell