

Mayor Kathy Harrison called the regular meeting of the City Council to order at 6:05 p.m. Monday, Feb. 14, in the jury room of the Western District Carroll County Courthouse.

PRESENT: Mayor Kathy Harrison, Aldermen Robert “Butch” Berry, Beverly Blankenship, Aaron Falotico, Terry McClung, Rick Rojek, City Attorney Tim Weaver, Public Works Director Robert Forrest, Mayor’s Assistant Brenda Spencer, Parks and Recreation Director Bruce Levine, Historic District Commission (HDC) Chairman Debbie Frisbie, Planning Commission Chairman Leah Karnes and City Clerk Mary Jean Sell. Alderman Lori Weaver was absent.

PLEDGE OF ALLEGIANCE TO THE FLAG:

Mayor Harrison led the Pledge of Allegiance to the Flag.

APPROVAL OF THE AGENDA:

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

Mayor Harrison asked that a proclamation for the 100th anniversary of Rotary International be added as New Business Item #9. She said she would present a shortened version of her State of the City address.

The amended agenda was approved 5/0/0

APPROVAL OF THE MINUTES: December 27, 2004 January 24 and January 28, 2005

Dec. 27 – Mr. McClung moved to approve the minutes of Dec. 27 as presented. Mr. Rojek seconded, Four voted aye. Mr. Berry voted nay. Motion passed 4/1/0

Jan. 24 – Ms. Blankenship moved to approve the minutes of Jan. 24. Mr. Falotico seconded. Mr. Berry said that in the discussion of Corley Street in Item #1 of Old Business that he wanted the Public Works Department to look at the rain water run-off situation on Steel St. He thought comments from James DeVito should be included if the comments from Karen Lindblad were included.

Ms. Blankenship moved to remove the paragraph regarding Ms. Lindblad’s comments. Mr. Falotico seconded. All voted aye. Motion passed 5/0/0

Mr. Berry moved to approve the minutes of Jan. 24 as amended. Ms. Blankenship seconded. All voted aye. Motion passed 5/0/0

Jan. 28 – Ms. Blankenship moved to approve the minutes of Jan. 28 as presented. Mr. McClung seconded. All voted aye. Motion passed 5/0/0

COMMISSION, COMMITTEE, AUTHORITY REPORTS AND VACANCIES:

Planning Commission – Position 6 – Expires 1/1/06

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DEPARTMENT & COMMISSION REPORTS:

Police, Transit, Public Works, Parks, HDC and Planning

Ms. Sell read written reports from the Police and Transit Departments

Mr. Forrest reported “business as usual” for the Public Works Department. He hopes to have the final plans for the new waste water treatment plant to the Arkansas Department of Environmental Quality (ADEQ) the first week of March. Magnetic Road has been prepared for asphalt paving in the second week of March. Work on Martz Circle sewer lines is progressing with approximately eight manholes installed. Work on Pendergrass Corner will start this week along with installation of storm drains in the same area. The project should be finished by March 15.

There was a discussion of the asphalt overlay paving of Spring St. from Main to Pine St. Mr. McClung said he had gotten a lot of calls of opposition to the project. He thought maybe the street could be patched with concrete instead of installing the asphalt.

Mayor Harrison said using asphalt would seal the cracks in the street and, with the drainage boxes, stop the majority of water infiltrating through the street. She said the support walls underneath are endangered from the water. Using jackhammers on the street could possibly cause damage to adjoining buildings.

Mr. Rojek wanted to know if the HDC had approved the project. Mayor Harrison said the HDC did not approve street paving projects but she was willing to make a presentation to the Commission.

Mr. Berry said the asphalt would be covering the problems, not fixing them. He said he has a lot of concern about the project.

Mr. Levine reported the Harmon Park master plan would be discussed in a Parks Commission workshop at 5 p.m. Thursday, Feb. 17. He has gotten notice from ADEQ to proceed with the waste water treatment facility at Lake Leatherwood Ball Fields. He said the discussion of the Green Zone ordinance should be “scrapped.”

Ms. Frisbie reported the HDC has been asked to host a National Alliance of Preservation Commission workshop/”camp” the first weekend of November for members of HDCs across the state. The application for national significance on the National Register of Historic Places will be reviewed by state officers in April.

As to the paving of Spring Street, Ms. Frisbie said HDC members want to review the project. The Mayor and Mr. Forrest are to come to the Feb. 16 meeting and make a presentation. A public hearing will be held during the March 2 meeting.

Mr. Falotico asked about the sidewalk ordinance the HDC is reviewing. Ms. Frisbie said there would be a workshop prior to the Feb. 16 and March 2 meetings to discuss the proposals.

Ms. Karnes reported the Planning Commission is beginning a master plan process and the sign ordinance subcommittee is reviewing the proposed sign ordinance. She asked the Council to establish a search committee for a city planner with expertise in developing master plans.

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OLD BUSINESS:

1. Discussion of Ordinance #1984, an ordinance to amend Chapters 114-4(b) and 70-4 of the Eureka Springs Municipal Code regarding manufactured homes. (3rd reading)

Ms. Blankenship moved to suspend the rules and place Ordinance 1984 on its third reading by title only. Mr. Falotico seconded. By roll call, four voted aye, Mr. Berry voted nay. Motion passed 4/1/0

Mayor Harrison read the title of the ordinance aloud.

Ms. Blankenship moved to approve Ordinance 1984 on its third reading by title only. Mr. Rojek seconded. Ms. Blankenship, Mr. Falotico and Mr. Rojek voted aye. Mr. McClung and Mr. Berry voted nay. Mayor Harrison voted aye to pass the motion. Motion passed 4/2/0

At 6:46 p.m. the Council took a break and resumed at 7:02 p.m. for open mic.

Open Microphone

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.

Mark Jipp, co-owner of the Veranda Inn, 38 Prospect, presented a folder of history of Highway 62B, now known

as the Historic Loop. There is a large stone wall behind the house on the property. Mr. Jipp believes it was built by state crews or prison labor crews, but there is not any documentation he can find about who actually built the wall. He believes that when the city took over the maintenance of the Historic Loop May 15, 1990, that the responsibility for the wall became the city's.

James DeVito said he believes the 200-foot rule (prohibiting operation of businesses with conditional use permits (CUPs) within 200 feet of each other in the R-1, historic residential, area) smacks of discrimination against bed and breakfast establishments. A lot of homes have been repaired and restored to become bed and breakfasts. The issue is about parking. The market should dictate location of businesses, not the government.

Stephanie Kerr, 23 Hillside, owner of Hidden Springs Bed and Breakfast. She was surprised to see a discussion of the rezoning of Hillside on the agenda. She and her neighbor have been doing an analysis of Hillside and are working with attorney Terry McGuire and Associates on a rezoning project. She has talked with 12 neighbors and nine of them are affirmative to rezoning; one would actively oppose rezoning; one is open to discussion and another is opposed. Since Hillside is now a commercial truck route, she would like to see the zoning of the street match the use. She recommends C-3, quiet use.

Gayle dela Kruse, 18 Hillside, has resided on Hillside 25 years. She doesn't believe rezoning the street will change much about the nature of the area. She believes it could become like White Street. It has been a commercial street in the past. The city needs to promote business. There are six empty businesses where there used to be live music.

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Jan Bullock, Spring Street resident, is opposed to covering Spring Street with asphalt. It has been concrete for 75 years and has a historic look. The city should seek funding from the state and federal government to resurface with concrete.

L.J. Smole, business owner on Center Street, asked the Council to consider the timing of the paving (of Spring Street) project, considering Easter is early this year, and to postpone until after the season.

Harley Fox, founder of Save Our Children Against Drunk Driving, asked the Council for \$8,000 to match a grant from the City of Berryville to purchase a specially-equipped car and other equipment to teach children about the problems of driving while impaired. The car will cost approximately \$15,000 and he wants an additional \$17,000 for visual aids. He hopes Green Forest, Berryville and Eureka Springs will fund the project. His telephone number is (870) 654-2352 and his e-mail is Project Save Our Children @Yahoo.com.

Eric Scheunemann, member of the Planning Commission/Board of Zoning Adjustment, said several residents have spoken to him about the paving of Spring Street. They do not believe asphalt is historic, it will raise the temperature downtown several degrees in the summer. He is concerned about the integrity of the water and sewer lines under the pavement. He thanked the Council for wanting to move ahead.

Beau Satori reminded everyone that 125 years ago today the state recognized the incorporation of the City of Eureka Springs. He now has a survey wheel that he can use to measure sidewalks. He has lived at Pendergrass Corner 29 years. He is concerned about the corner and the potential for beautification of the area. He would rather see the city replace concrete with concrete and beautify the area.

Ron Tracy said he was the engineer who has done the work for the Spring Street paving project. There is no perfect pavement, but I-40, St. Smith and Little Rock have returned to asphalt streets. The University of Arkansas and the Arkansas Highway and Transportation Department (AHTD) have done a study and found asphalt to be a reliable surface. The potential for diesel to drip on the surface and degrade it has not been a problem.

Bud Umland, resident at 2106 E. Van Buren, said he doesn't know how to build a street, but he asked the Council to keep in mind how the businesses along North Main Street were nearly bankrupted during the construction of that street. He asked the Council to support Mr. Fox's project. He said he wants to be vocal against the 200-foot ordinance, he doesn't like it.

Tom Johnson said he has been a resident of Carroll County 13 years. His grandparents settled here in the 1890s. The architecture of Eureka Springs influenced him to become an architect. The architecture of the city is more than the buildings, it all works together. He doesn't want a smooth, monolithic form within the city. Visitors need to slow down to enjoy the town. He said asphalt has no usable strength, will rut on the turns and will not last. It would be like putting vinyl siding on the streets. He asked the Council not to allow a St. Valentine's Day Massacre of historic downtown.

Joe Zickmund said progress is based on fair and equitable treatment with regards to the CAPC (City Advertising

and Promotion Commission) tax. The state legislature is in session and the city needs to contact the legislature to avoid further inequitable situations. The paving of Spring Street will detrimentally affect the businesses and would the Council please consider the impact of closing the street. **City Council 2/14/05 4**

Susan Morrison said she is a business owner on Spring Street. She understands why the city would consider asphalt. Asphalt does modernize the street and old part of town. She would love to see a “new historic look.” Her clients are here for the ambiance of the town and walking along a wonderful old street. Whatever the solution is, she would like it to be as low impact as possible.

Mark Mattmuller agrees with Morrison and Satori that Spring Street needs to be repaired. As for the 200-foot rule, a lot of business people here are in trouble. There are enough commercial properties available. He asked for the repeal of the CAPC tax on retail and restaurant establishments.

Tony Halter said the 200-foot rule is wonderful for the community and city. Houses get chopped up for rental units and that insults the whole neighborhood, some of these houses have been hacked to death. If persons want commercial property, they should buy commercial property. He thinks the concrete street with its cracks is beautiful. Paving with asphalt will insult the integrity of the whole town.

Irene Murray, 46 Hillside, is in favor of abolishing the 200-foot rule. When the Writers’ Colony at Dairy Hollow was given its CUP, the 200-foot rule wasn’t even discussed. The Dunns are no longer here because of the 200-foot rule and that is not the only incident. She is for abolishing the rule and giving more people a chance.

The regular City Council meeting resumed at 7:50 p.m.

NEW BUSINESS:

1. The State of the City Address

Mayor Harrison read an abbreviated address, opening with the commemoration of the city’s 125th anniversary of incorporation on this date in 1880. She noted the city’s participation for the first time in the America in Bloom competition and winning National Overall Urban Forest Community and second place in communities with a population of 5,000 and under. She noted the city’s award as an Arkansas 2004 Volunteer Community of the Year and being named as the oldest Tree City USA in Arkansas, having participated in the program 22 years.

She continued with a review of projects in the Public Works, Transit, Police and Emergency Services Departments.

2. Discussion of Ordinance #1987, an ordinance to amend Chapters 114-2(b) regarding historic churches.

Mr. Berry moved to place Ordinance 1987 on its first reading. Mr. Falotico seconded. All voted aye. Motion passed 5/0/0

Mayor Harrison read the ordinance aloud.

Mr. Berry moved to approve Ordinance 1987 on its first reading. Mr. Falotico seconded.

Ms. Karnes explained this ordinance has come forward so that buildings built as churches would not have to rely on a “grandfather” status, but could be allowed to exist as churches in the R-1, historic residential, zone. She said the ordinance was not specifically because of the situation with the Old Stone Church at 80 Mountain St. but because other churches were within 200 feet of each other.

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On the motion to approve the ordinance on its first reading, all voted aye. Motion passed 5/0/0

3. Discussion of Board of Appeals for stone walls.

Mr. Falotico moved to open discussion. Mr. Berry and Mr. Rojek seconded.

Mr. Falotico moved to have an ordinance prepared authorizing the City Council as the Board of Appeals. Mr. Berry seconded.

Mr. Forrest asked that the ordinance include a protocol and chain of command for review of walls.

On the motion, all voted aye. Motion passed 5/0/0

4. Discussion to repeal Municipal Code 114-7(16) “Restrictions in R-1 Victorian residential,” as

established by Ordinance 1879, in 2001, referring to 200-foot limit. (Berry, Clung)

Mr. McClung said when he first came to town and was working in the real estate industry that people would rent bedrooms in their homes to accommodate visitors on War Eagle Weekends (third weekend in October). The bed and breakfast industry in Eureka Springs developed from that practice. Property values of neighborhoods increased. He believes the 200-foot rule stifles the use of properties for bed and breakfasts. There are enough guidelines in the Municipal Code, primarily those relating to parking, that thwart the development of properties.

Mr. Berry said he was on the Planning Commission and helped draft the 200-foot rule. He said the commission was trying to keep residential neighborhoods in tact. Since then, situations have come up and this may not be the best way to regulate the situation. He is not convinced repealing the regulation is the right thing to do.

Mr. Berry moved to refer Ordinance 1879 to the Planning Commission for study and recommendations. Mr. Falotico seconded.

Mr. Falotico said there seems to be a lot of confusion about the ordinance and he wants it clarified. He also wants a way to appeal the Planning Commission decisions without going to court.

On the motion, four voted aye, Mr. Rojek voted nay. Motion passed 4/1/0

5. Discussion to rezone Hillside Drive from King Street down to Highway 23 North/Main Street to C-3. **(Berry, McClung)**

Mr. McClung presented maps explaining the zoning and property use and ownership along Hillside. He said the street had historically been 50-50 commercial and residential properties.

Ms. Blankenship suggested referring the matter to the Planning Commission for recommendations.

Zoie Kaye, owner of Inn at Rose Hall at 56 Hillside, said she bought her property as R-1. The concept of a bed and breakfast is to be part of a neighborhood. The rezoning will change the neighborhood and she would like for it to stay the way it is. She sees this as masterful manipulation at its finest.

Bill Voiers, 96 Angle St., has lived in the area more than 20 years and would like

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to see it remain as it is. He has no objection to the two bed and breakfasts across from his property. Since Hillside became more heavily traveled during the repairs to North Main Street, there have been more dead animals and pets on the street than ever before. Bed and breakfasts don't produce a lot of traffic, but opening the street for retail business will make the situation dangerous.

Gayle dela Kruse, 18 Hillside, said the street was dirt when she moved on it 25 years ago. It was then widened and paved. She thinks the rezoning won't change the street because it is no longer a neighborhood. Every delivery truck in town goes down the street,

Mr. Berry said there are other solutions to the situation rather than rezoning. He would like the Planning Commission to look at the situation, with the consideration of the proposed Arts and Culture District, with zones for specific uses. He doesn't think the Council should initiate the rezoning.

Mr. McClung moved to pass on to the Planning Commission to rezone Hillside from Main St. to Spring St. as an application from the city. Motion died for lack of a second.

6. Discussion of Ordinance #1988, an ordinance to rezone a vacant lot at 215 W. Van Buren from A, Agriculture, to C-2, Contemporary Commercial.

Ms. Blankenship moved to place Ordinance 1988 on its first reading. Mr. Rojek seconded. All voted aye. Motion passed 5/0/0

Ms. Sell read the ordinance aloud.

Mr. Berry moved to approve Ordinance 1988 on its first reading. Mr. Rojek seconded.

Attorney Wade Williams said there is an error in the listing of the property owners. He will supply the correct information to amend the ordinance.

Mr. Falotico moved to amend the ordinance to correct the ownership information. Mr. Berry seconded. All voted aye. Motion passed 5/0/0

On the motion to approve the first reading, all voted aye. Motion passed 5/0/0

7. Reconsideration of rezoning of the Old Stone Church 80 Mountain St., to C-3, quiet use.

Mr. Falotico moved to open discussion. Ms. Blankenship seconded.

Attorney Wade Williams said the Council had approved a rezoning, but the Council could not overturn a negative recommendation from the Planning Commission. He said the Planning Commission has not given a recommendation to the Council on the matter.

Ms. Karnes said the Planning Commission vote on the matter had failed at 3 to 2. Granting the proposed change would give a special privilege to the property. She said residents of the neighborhood were concerned that a C-3 zoning would allow the establishment of a restaurant in the building.

Mr. Williams agreed that the motion to approve the rezoning did not pass the Planning Commission, but the Commission never approved a motion to deny the rezoning.

Mr. McClung moved to approve rezoning for 80 Mountain St.

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Mr. Weaver said an ordinance was needed and one has not been prepared.

Mr. Williams repeated that the city ordinance requires a recommendation from the Planning Commission and one has never been made to the Council.

Ms. Karnes read from the minutes of the Planning Commission's Dec. 9, 2004, meeting in which the motion to approve the rezoning was defeated.

After additional discussion, Mr. McClung moved to craft an ordinance to rezone the property to C-3. Motion died for lack of a second.

Mr. Berry moved to deny the rezoning request for 80 Mountain St. Mr. Rojek seconded.

Mr. Weaver said the matter should go back to the Planning Commission to establish a clear record.

Mr. Berry withdrew his motion. Mr. Rojek withdrew his second.

Mr. McClung moved to accept the responsibility to the ordinance and to go through the process of holding a public hearing on the rezoning as per the Municipal Code. Mr. Berry seconded.

Mr. Falotico moved to table the vote until additional information about the application could be provided to the Council. Ms. Blankenship seconded. All voted aye. Motion passed 5/0/0

8. Resolution #509, a resolution to permit Mayor and City Clerk/Treasurer to execute our annual agreement to obtain a credit card for the use of city officials.

Ms. Blankenship moved to read Resolution 509. Mr. Berry seconded. All voted aye. Motion passed 5/0/0

Mayor Harrison read the resolution aloud.

9. Proclamation of Rotary International's 100th Birthday.

Mayor Harrison read the proclamation marking the 100th birthday of Rotary International on Feb. 23 and citing the establishment of the Eureka Springs Rotary Club in 1923.

COUNCIL COMMENTS:

Mr. McClung asked the Mayor if the Spring St. paving project is going ahead.

Ms. Blankenship said the Council needs to set a workshop for the capital improvement budget. The group agreed to 6:30 p.m. Tuesday, Feb. 22.

Mr. Falotico reminded the group that there should be a motion and a second before any discussion.

Mr. Berry said there needs to be an effective way to notify citizens of emergency situations, referring to the recent shutting down of electric service at 5 p.m. by the utility company.

He asked if the Mayor had followed up on the Council's request to notify the Johnsons of the decision to do an environmental impact study on the property they propose to purchase on Corley St. and their request to have the street opened. Mayor Harrison said she had notified them and told them of the Council's wish to have them pay half of the cost.

Mr. Berry said he is working on a contract with the City of Bentonville. Every change order or amendment to the contract has to be approved by the city council. He would like to have a discussion on the proposal that the City Council approve and/or review all construction bids, contracts and professional services. Mr. Rojek and Mr. Falotico seconded.

Mr. Rojek thanked the citizens for coming for open mic. With regard to the Spring St, paving project he wants to be sure every scenario has been exhausted before the project goes ahead. He doesn't think asphalt is the right thing to do, but he wants to make double and triple sure.

MAYOR'S COMMENTS:

Mayor Harrison said she had gotten a lot of telephone calls about the Spring St. paving project. She said the paving product to be used will finish out a light gray color. She said she is a real preservationist and wouldn't ruin the look of downtown. She said the walls underneath the street are in danger. She would not have suggested this if there was any other way to make the necessary repairs. The water flowing through and under the street has got to be stopped. The city doesn't have \$5 million to repair and replace the street surface with concrete.

She wished the city a happy birthday.

ADJOURNMENT:

Mr. Falotico moved to adjourn at 10:20 p.m. Mr. McClung seconded. All voted aye. Motion passed 5/0/0

This is the signature page for the minutes of the regular City Council meeting Feb. 14, 2005.

Mayor Kathy Harrison

City Clerk Mary Jean Sell