

Mayor Kathy Harrison called the regular meeting of the Eureka Springs City Council to order at 6 p.m. Monday, March 28, 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 and Lori Weaver, City Attorney Tim Weaver, Public Works Director Robert Forrest, City Advertising and Promotion Commission (CAPC) Marketing Director Lynn Berry, Mayor’s Assistant Brenda Spencer and City Clerk Mary Jean Sell.

PLEDGE OF ALLEGIANCE TO THE FLAG:

Mayor Harrison led the Pledge of Allegiance to the Flag.

APPROVAL OF THE AGENDA:

Mr. Falotico moved to approve the agenda. Mr. Rojek seconded. All voted aye. Motion passed 6/0/0

APPROVAL OF THE MINUTES: March 14, 2005

Ms. Blankenship moved to approve the minutes of March 14. Mr. Rojek seconded. Five voted aye. Mr. McClung voted nay. Motion passed 5/1/0

COMMISSION, COMMITTEE, AUTHORITY REPORTS AND VACANCIES:

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

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

Historic District Commission – Position 6 – Expires 3/7/05

Mayor Harrison said she has received two applications for re-instatement of members of the Parks and Recreation Commission.

DEPARTMENT AND COMMISSION REPORTS:

CAPC, Hospital, Fire/EMS, Building and Cemetery

CAPC – Ms. Berry reported on her sales trip to military bases in the region. She said there are 1.2 million people within a 12-hour drive. A seminar had been held this afternoon to teach local businesses people how to work with military vouchers. *Front Porch Magazine*, published by MFA-Farm Bureau Insurance is featuring Eureka Springs on its cover and there is a story inside. The magazine has a circulation of 285,000.

Ms. Blankenship asked about delinquent CAPC tax payers. Ms. Berry said she is working with an attorney to get letters written and several of the accounts have been turned over to a collection agency. The agency will collect the taxes owed for a 50 percent commission. Mr. Weaver said warrants are being prepared for some of the delinquent collectors.

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Hospital – Ms. Sell reported the hospital’s interim administrator, Craig Ortego, had scheduling conflicts and could not attend this meeting. He will attend the April 4 meeting and provide a report.

Mayor Harrison read aloud the report from the **Fire/EMS Department**.

Ms. Sell read the **Building Official’s** monthly report aloud. She said the **Cemetery Commission** is still working on employment issues.

Mr. Falotico asked that the January financial reports be available for the next meeting.

OLD BUSINESS:

1. Discussion of the Johnsons' request to open Corley Street and consultant's fee schedule.

Mayor Harrison said she has received letters from the Johnsons asking that Dr. Van Brahana from the University of Arkansas in Fayetteville be used as consultant on the environmental impact of roadway construction to the Corley St. area, including the two nearby springs. Dr. Brahana has agreed to do the work pro bono, without cost.

She has walked the area with Charles Nickle, consulting engineer with USI. She introduced Terry Carpenter, vice-president of USI. He said he had looked at the area Friday, March 25, with three considerations: (1) what type of road is proposed and the impact on adjoining property; (2) effects on the downhill areas; and (3) the city's responsibility.

Carpenter said the city has no obligation to construct a roadway for the sole purpose of access to one property, only those roads which are of mutual benefit to the city and citizens.

He said it will be very difficult without extensive, and expensive, underground testing to determine the impact of construction upstream and downstream of the roadbed.

He said a lot of trees will need to be removed which will make erosion a factor. Terraces or retaining walls will have to be constructed to keep the hillsides in place. The existing city ordinances do not allow for the protection of aquifers/springs and it could be very expensive to put measures in place, with no guarantee the protection would be enough.

He said the city would have to construct some method of collecting the storm water from the hill. The water could possibly go all the way to the bottom of the hill and flood Water Street, possibly some of the homes in the area. During questioning by Mr. Berry, Mr. Carpenter said that if a private individual built a roadway, it would have to meet all of the city's standards, including dealing with effects of run-off downstream.

Mr. Weaver said the city is not obligated to open the street. The city will have to pick a street standard for construction. At the moment, Corley St. is considered a green space, not a platted street. The Council will have to determine its status before going forward on the Johnsons' request.

Mr. Falotico moved to authorize Dr. Brahana's study of the Corley St. area, looking toward opening Corley St. according to city standards and ordinances, and the city is to use the report as a tool for opening the street. Ms. Blankenship seconded.

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Mr. McClung said he doesn't think (the opening of Corley St.) is a practical road.

Mr. Forrest asked the Council to keep in mind that he (Public Works) has to maintain the road. If it is gravel, the gravel will wash downhill every time it rains.

Ms. Blankenship said the construction of retaining walls could be cost prohibitive. Referring to Mr. Carpenter's comments, she quoted him as saying the city should not build the roadway.

Mr. Berry said Dr. Brahana is very knowledgeable of Eureka Springs and the springs and is working with Barbara Harmony on developing a recharge area for Grotto Spring. He said he didn't think it would be possible to make Laundry Spring's water drinkable, but he didn't want to do something to cause the spring to dry up.

Mr. Falotico then moved to accept Dr. Brahana was a person who will conduct an environmental impact study, pro bono, and will take into consideration the city's minimum street standards, and the study is not binding either party into a contract. Ms. Blankenship seconded. All voted aye. Motion passed 6/0/0

NEW BUSINESS:

1. Discussion of parking lot use – citizen – Linda Rogers

(The parking lot under discussion is on North Main, between the Basin Spring Bath House and the Greenlee Funeral Home building. The city owns approximately half of the parking area, adjoining the Bath House building. The City Council allowed a Sunday Market on its property during the summer of 2004. The area was used Sunday evenings for seating for the showing of movies on the side of the Basin Bath House Building.)

Ms. Rogers said that allowing one person to use the parking spaces on the second most important shopping day of the week has been seriously detrimental to surrounding businesses. She believes there must be a better location for the market somewhere else in town. She said one parking space in that lot brings in \$200-\$300 per week. She said it takes \$10,000 in sales tax on retail sales to recoup the parking money lost.

Mickey Schneider said the city is losing parking revenue, the vendors do not have city business licenses and are

not collecting sales tax or CAPC tax.

Sara Knight, co-owner of Paper Odyssey at 63 N. Main, said she had talked to several North Main business owners who were very happy with the market because it brought more people into the North Main area on Sundays. She encouraged the Council to continue to allow the use of the parking area for the market.

James DeVito, owner of DeVito's Restaurant, 5 Center St., said there are better locations in town for the Sunday Market. The North Main parking is needed for downtown customers.

Lisa Knapp, owner of Sweet Memories, 53 Spring St., suggested merchants need to be open longer hours to take advantage of visitors.

Charlotte Buchanan, founder of the Sunday Market, said the market is established in that Main Street location. Hotels are selling packages with information about the market.

Ms. Blankenship said the Council voted last year to allow the market to support the North Main businesses because they had asked for help following the construction of the highway. She said a limit of one year should have been specified on the market.

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Ms. Buchanan said she had tried to talk with parking officers and merchants in the area to get them to park out of downtown and be shuttled in for work.

Mr. Berry said he has heard from both sides of the issue. He said market vendors are the ones parking in the adjoining spaces, not visitors. He is concerned about vendors not paying the city sales tax and CAPC tax.

Ms. Blankenship said it is the law that vendors have state sales tax permits and a CAPC permit. Do the market vendors have the permits?

Mr. McClung said he wanted to go on record saying that he didn't think the mayor should give permission for the use of the parking lot.

Mr. McClung moved at 8 p.m. to take a five minute break. Ms. Blankenship seconded. All voted aye. Motion passed 6/0/0

The meeting resumed at 8:15 p.m.

2. Discussion of Wall of Art – referred by HDC

(The Art Wall project is proposed by Charlotte Buchanan as 28 4-foot by 8-foot concrete panels mounted on the city's concrete wall on First St., behind the parking lot between the Basin Spring Bath House building and the Greenlee Funeral Home building. The theme for the panels is fruits and vegetables. Local artists have agreed to participate in the project.)

Mr. Rojek moved to allow the art work to be placed on the cement wall on First St. Mr. Falotico seconded.

Ms. Weaver said she supported the project as long as there are no legal problems.

Mr. Rojek said the project sounds like fun, there will be beautiful panels and it will be exciting to have in the downtown area, no matter what is on the panels.

Mr. Berry said it is a great idea but he doesn't want it used as a method for people to come back to the Council to say we are promoting the market.

Charlotte Buchanan said she had talked with Mr. Forrest a year ago about the wall. She said the project is to support local artists. Community First Bank has agreed to fund \$2,500 to purchase the blank panels and pay the artists. She said the wall could be part of a connecting artery for the galleries on Spring St. to the ones on North Main St. as part of the Arts and Culture District.

Mr. Weaver said other cities have similar projects, but he is not sure how. He does not want the city to be perceived as sponsoring one group of artists over another.

Ms. Blankenship called for the question to halt discussion. Mr. Rojek seconded. Two voted aye.

Mr. Rojek moved to amend his original motion to say the panels do not have to go back to the HDC for approval. Mr. Falotico seconded. All voted aye on the amendment. 6/0/0

On the motion to allow the wall and the wall not to return to HDC, all voted aye. Motion passed 6/0/0

3. Discussion of Ordinance #1989, an ordinance to establish a Board of Appeals for stone walls.

Mr. Falotico moved to place Ordinance 1989 on its first reading. Ms. Weaver seconded. All voted aye. Motion passed 6/0/0

Mayor Harrison read the ordinance aloud.

Mr. Falotico moved to approve Ordinance 1989 on its first reading. Ms. Weaver seconded.

During discussion, Mr. Falotico moved to amend his motion to direct that a section be inserted into the ordinance setting guidelines if there is a failure to notify applicants within 20 days and to change Sec. 2 to give applicants 20 days, not 10, to appeal a decision of the Public Works director. Mr. Berry seconded. All voted aye. Motion passed 6/0/0

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

4. Discussion of Resolution #512 – a resolution requesting changes to state legislation regarding the CAPC. McClung, Rojek

Mr. Rojek moved to discuss the resolution. Mr. McClung seconded.

Ms. Blankenship said she had talked with the Municipal League about the proposals and to attorneys. She said the attorneys are not sure the existing state statute which enables the Eureka Spring CAPC is legal. She said all of the state legislators would be looking at the changes and the Council members need to think about what will happen if the changes are made.

Ms. Berry said the last day for submission of proposed legislation has passed, but State Rep. Phil Jackson has reserved shell bills. He has also asked the state attorney general for an opinion on whether or not changing the “gift shop” category to “retail sales” was in fact expanding the tax collection base to the extent an election might be needed.

Mr. McClung moved to approve Resolution #512. Mr. Rojek seconded. Four voted aye. Mr. Falotico and Ms. Weaver voted no. Motion passed 4/2/0

Mayor Harrison read Resolution #512 aloud.

5. Discussion of Ordinance #1990 – an ordinance to adopt the city code book.

Mr. Falotico moved to place Ordinance 1990 on its first reading. Ms. Blankenship seconded. All voted aye. Motion passed 6/0/0

Ms. Sell read the ordinance aloud.

Mr. Falotico moved to approve Ordinance 1990 on its first reading. Mr. McClung seconded.

Mr. Berry moved to removed from Sec. 7, the words “or someone assigned by the Clerk/Treasurer” regarding the placing of amendments within the code book pages. Mr. Falotico seconded. All voted aye. Motion passed 6/0/0

Mr. Falotico moved to accept the first reading of Ordinance 1990 as amended. Mr. McClung seconded. All voted aye. Motion passed 6/0/0

6. Discussion of the structure of the CAPC – Falotico, Blankenship.

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

Mr. Falotico said the operation of the CAPC needs to be examined. If the state statute is found to be special legislation, therefore illegal, the structure will have to be changed. He believes something different is needed and the people should decide what it is.

Mr. McClung said that the CAPC has been operating the same way for years and if it was going to be tested, it would have been done.

Ms. Blankenship said it is not lawful for a store excluded from collecting the (2 percent gross sales) tax to voluntarily collect the tax. According to the Municipal League, it is a bigger no no for the CAPC to accept the voluntarily collected tax.

As discussion continued, Mr. McClung asked Mr. Falotico why he thought the city is in jeopardy. Mr. Falotico said people have said they will sue the city over the collection of the tax.

CAPC Commissioner Steve Roberson asked the Council for more specific direction. He said if the state legislation is changed, it is up to the Council to make local changes, not the Commission.

Ms. Blankenship said she wants the Commission to look at the collection levels and to see what might be needed if the collection level is dropped or a 1/2 cent sales tax is added.

Roberson said if the gift shop category is removed, that will take away approximately 30 percent of current collections. It would mean lodging and restaurants would have to collect at least 50 percent more or the tax level on them would have to go to 3 percent to remain at the current amount of collections.

Discussion on this issue went on for 50 minutes without motions or actions taken.

7. Discussion of Ordinance #1114 – an ordinance providing for emergency council meetings – changing notification procedures. Rojek, Berry

Due to the lateness of the hour, Mr. Rojek asked that the discussion be postponed to the next meeting. All agreed.

8. Discussion of capital expenditures – Council

Mr. Falotico moved to approve the capital expenditures budget of \$820,013 as determined in the Thursday, March 24, workshop. Ms. Weaver seconded. All voted aye. Motion passed 6/0/0

CITY COUNCIL COMMENTS:

Ms. Blankenship said the more research she has done on the CAPC ordinance issue, the more questions she has. She said the Municipal Code requires all business owners to have current business licenses. The deadline for renewal was Feb. 14 and a 10 percent penalty is now being charged. People who have not renewed their licenses need to do so.

Mr. Falotico said he wants the city financials for January, February and March presented at the next meeting and wants monthly financial reports at the first of each month. Mr. Berry seconded. Ms. Blankenship said reports would be more complete if

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they were prepared for the second meeting of each month.

Mr. Falotico amended his motion to have monthly financial reports at the second meeting of each month. Mr. Berry seconded. All voted aye. Motion passed 6/0/0

Mr. Falotico said he wanted to clear up rumors in the community. He and his wife are expecting their first child.

MAYOR’S COMMENTS:

Mayor Harrison said she had provided written information to the Council on bids awarded during March.

ADJOURNMENT:

Mr. McClung moved to adjourn at 9:50 p.m. Mr. Falotico seconded. All voted aye. Motion passed 6/0/0

This is the signature page for the minutes of the regular City Council meeting March 28, 2005.

Mayor Kathy Harrison

City Clerk Mary Jean Sell

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