

**CITY OF EUREKA SPRINGS**

**CITY COUNCIL**

**REGULAR MEETING**

**MONDAY**

**September 12, 2005**

---

Mayor Kathy Harrison called the regular meeting of the Eureka Springs City Council to order at 6 p.m. Monday, Sept. 12, in the courtroom of the Western District Carroll County Courthouse.

**PRESENT:** Mayor Kathy Harrison, Aldermen Robert “Butch” Berry, Beverly Blankenship, Aaron Falotico, Terry McClung, Rick Rojek, Lori Weaver, City Attorney Tim Weaver, Hospital Administrators Craig Ortego and David Wheeler, City Advertising and Promotion Commission (CAPC) Marketing Director Lynn Berry, Parks 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. Falotico moved to approve the agenda. Mr. Rojek seconded.

Mayor Harrison said the minutes for the special meeting of Sept. 7 should be added.

Mr. Falotico said the discussion of payment arrangements for the Still lawsuit settlement should be added as New Business Item #4.

Mayor Harrison said there are two ordinances regarding the 911 system to be added as New Business Item #5 Ordinance 2002 and New Business Item #6 Ordinance 2003.

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

**APPROVAL OF THE MINUTES: Aug. 8, 2005 Aug. 22, 2005**

**Aug. 8** – Mr. McClung moved to approve the minutes of Aug. 8. Mr. Rojek seconded.

Mr. McClung noted a correction on Page 4, paragraph 3, in his motion regarding the Johnsons’ property on Corley St. He said the easement should end at their north property line.

Mr. Falotico moved to approve the Aug. 8 minutes as amended. Mr. Rojek seconded. All voted aye. Motion passed 6/0/0

**Aug. 22** – Mr. McClung moved to approve the Aug. 22 minutes. Mr. Rojek seconded.

Mr. Rojek noted his name was spelled wrong on Page 4.

On the motion to approve the minutes, as amended, all voted aye. Motion passed 6/0/0

**Sept. 7** – Mr. Falotico moved to approve the minutes of the special Council meeting Sept. 7. Ms. Blankenship seconded. All voted aye. Motion passed 6/0/0

**City Council 9/12/05 1**

**COMMISSION, COMMITTEE, 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 - Mayor Harrison nominated Richard Grinnell to the position. She said he will continue to serve on the HDC.

Planning Commission – Seat 3 – Expires 7/1/05

**DEPARTMENT & COMMISSION REPORTS:**

Hospital, Police, Transit, Public Works, HDC, Parks

**Hospital** – Administrator Craig Ortego presented his quarterly report. He reviewed the financial condition of the hospital in the past year and the present condition. He said efforts are going to be made in the next few months to upgrade

equipment, services and available treatments.

**CAPC** – Ms. Berry announced the city has been named a grand champion in the heritage category of the 2005 America in Bloom competition, beating 47 other cities including New York City, Chicago and Cleveland. She also read her activity report for the month.

**Police** – No report

**Transit** – Ms. Sell read aloud the report from Transit Director Lamont Richie. Mayor Harrison said replacement decals for the new shuttle vans would be paid for from transit's maintenance funds.

**Public Works** – No report

**Parks** – Mr. Levine reported on the opening of the waterway for Grotto Spring by using a pumper fire truck to put several thousand gallons of water into a sinkhole above the spring. This test is part of the "One Clean Spring" project. A skateboard festival is planned for late October or early November. The Arkansas Ready Mix Association has indicated it might be willing to put down a pervious surface on the handicap trail at Lake Leatherwood Ball Fields as a test project.

Council members agreed to a short break at 6:52 p.m. Meeting resumed at 7:05 p.m.

### **Open Microphone**

The Council allows citizens to speak to any issue during the first meeting of each month. Each speaker is asked to limit comments to three minutes. The Council does not respond or engage in discussion during this time.

**Marilyn Donoho** – said she feels strongly about living on Steel St. and is one of many area residents concerned about preserving the area's beauty. She wants the Council to keep the town from turning into an ugly town in the way many other towns have turned ugly through development.

**Shelly Brown** – thanked the Mayor for the two vetoes. She is disappointed in the Council decisions disregarding the feelings of the citizens. She believes the repercussions will be overwhelming in the future. Referring to Mr. Ortego, she said he needs to run the city.

### **City Council 9/12/05 2**

**Mickey Schneider** – said the 35<sup>th</sup> annual Antique Automobile Show was destroyed because participants were told they had to pay \$5 each to park downtown on Saturday. She said half the members have been lost. She said the Council has blown one of the city's biggest events out of the water. The Council should consider the people and merchants and start thinking about the town.

**Pat Matsukis** – said she and Gwen Bennett are insulted by the sale of the CUP (conditional use permit). She read a loud a letter from Ms. Bennett expressing her disappointment in the sale of the CUP. Ms. Bennett recounted her long history of action against the commercialization of Hillside and efforts to keep it a residential neighborhood. Ms. Bennett asked that the city's land use plan not be invalidated or the zoning laws violated by selling this CUP.

**Karen Lindblad** – said she was at the meeting to support the Mayor's vetoes. She asked the Council to fulfill their vows to follow the laws of the city. She said opening of Corley St. would be illegal without the matter going to the Planning Commission for consideration and recommendations. She asked the Council to read the land use plan.

**Beau Satori** – said he is in favor of supporting the Mayor's vetoes because it is the classic conflict of private interest vs. public trust. He said the Corley St. area is sensitive because of the spring reservations. The Latimer issues are seven years old and the city has won each of the court cases filed by the Latimers. He said it is irregular, improper and immoral to sell out the CUP.

**Sandra Synar** – said Eureka Springs is special. She lives at the base of a hill where rocks frequently tumble down. Windows in her house have been broken by rocks. She is concerned that construction on Corley St. will cause more of the hillside to slide down into her house and Marilyn Donoho's. She supports the Mayor's veto.

**Harley Fox** – with Project Save Our Children. He said he has raised \$17,865 toward the purchase of a vehicle and teaching equipment for his drunk driver-training program in the three county schools. He still needs donations to raise the remainder of the start-up costs. He appreciates the help and donations he has received.

**Alan Black** – with Kid's Café project of Eureka Kids. Said the grand opening for the program went well. Participants in the program have made individual gifts of decorated saucers for the Mayor, Council and Clerk that he distributed.

The Council meeting resumed at 7:28 p.m.

## **OLD BUSINESS:**

### **1. Stone Wall Board of Appeals discussion of wall on Ellis Grade.**

Mr. Berry moved to convene as the Stone Wall Board of Appeal. Mr. Rojek seconded. All voted aye. Motion passed 6/0/0

A survey by Huston Surveying of Omaha, Ark., of the property at 38 Prospect including three lots, the wall and a portion of the Ellis Grade roadway was done for the City. Copies were provided for Council members.

Ms. Blankenship said the survey shows half of the stonewall to be on Mark Jipp's property and half on the City's property.

Attorney Kent Crow said the request is for a decision of ownership to determine the responsibility for maintenance of the wall. Since there are no records of who

### **City Council 9/12/05 3**

constructed the wall or for what purpose, Mr. Jipp is asking the Council for a determination of responsibility.

Mr. Falotico moved for the City to accept 50/50 responsibility, with the property owner, for the Ellis Grade wall included in Block 44 Lots 4, 5 and 6 of the Clayton Addition survey. Ms. Blankenship seconded. All voted aye. Motion passed 6/0/0

### **2. Discussion of Ordinance #1997 – regarding bid limits (2<sup>nd</sup> reading)**

Mr. Berry moved to suspend the rules and place Ordinance 1997 on its second 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 1997 on its second reading by title only. Mr. McClung seconded. Five voted aye, Mr. Falotico voted no. Motion passed 5/1/0

### **3. Discussion of Ordinance #2000 – regarding naming of Lower Wall St., from Owl St. to Armstrong St., as one-way down hill. (3<sup>rd</sup> reading)**

Ms. Blankenship moved to suspend the rules and place Ordinance 2000 on its third reading by title only. Mr. Rojek seconded. By roll call, five voted aye, Mr. Berry voted no. Motion passed 5/1/0

Mayor Harrison read the title of the ordinance aloud.

Mr. Rojek moved to approve Ordinance 2000 on its third reading by title only. Mr. McClung seconded.

Mr. Berry said he is not convinced this is the way the traffic should flow.

Ms. Lindblad asked if the matter had been considered by the Planning Commission as mandated by the state statutes and local ordinances.

Mr. Falotico said the Council could act as the Planning Commission since all city commissions report to the City Council.

On the motion, four voted aye. Mr. Berry and Mr. Falotico voted no. Motion passed 4/2/0

### **4. Discussion of Ordinance #1994 amending Municipal Code Chapter 7.84, Signs. (1<sup>st</sup> reading)**

Mr. Berry moved to refer the ordinance back to the Planning Commission. Mr. Falotico seconded.

Mr. Berry said the major changes he found in the new ordinance were to definitions and the section regarding price signs is still in the ordinance. It was ruled illegal by a court decision several years ago and should have been removed from the ordinance.

After further discussion, the Council agreed to attend the Planning Commission's workshop at 5 p.m. Thursday, Sept. 22, to discuss the sign ordinance changes.

On the motion, all voted aye. Motion passed 6/0/0

### **5. Discussion of CAPC request for city to fund auditorium. (McClung, Rojek)**

Mr. Rojek moved to discuss the request during the 2006 budget meeting. Mr. Falotico seconded. All voted aye.  
Motion passed 6/0/0

**City Council 9/12/05 4**

**6. Discussion of CAPC request for city to pay loan for SAT match. (McClung, Rojek)**

Mayor Harrison said the city has made two payments for the SAT (Saving America's Treasures \$250,000 grant) matching loan. The CAPC reimbursed for the 2004 payment but has not been able to reimburse for the 2005 payment.

Mr. McClung said the CAPC is struggling for funding of its operations and programs at this time. He said the CAPC needs help from the City to ease the burden of this year's payment and the remaining three payments (approximately \$52,000 per year for the five year term of the loan).

After 30 minutes of discussion, Mr. McClung moved to defer the issue to the next regular meeting. Mr. Rojek seconded. All voted aye. Motion passed 6/0/0

**NEW BUSINESS:**

**1. Discussion of Mayor's veto of Corley St. vote.**

(Note: The Council voted in a regular meeting Aug. 22 for the City provide to the Johnsons a 30' easement in which to build a gravel road approximately 15' wide, at its widest, approximately 400' in length along Corley street and that the owner be responsible for the installation of this road and also included in that is Berryville Avenue at the end of the easement where Corley Street adjoins their property, on the north side. Mayor Harrison vetoed the vote Aug. 24.)

Mr. McClung moved to overturn the veto. Ms. Blankenship seconded.

After approximately 15 minutes of discussion, Mr. Rojek called the question to stop discussion. Mr. McClung seconded. All voted aye. Motion passed 6/0/0

The vote on the motion to overturn the veto, by roll call, four voted aye, Mr. Falotico and Ms. Weaver voted no. Motion passed 4/2/0

**2. Discussion of Mayor's veto of Latimer lawsuit settlement vote.**

(Note: The Council voted in a regular meeting Aug. 22 to accept the proposal for settlement, which allows, in part, Sandra Latimer to pay the city \$35,000. The City is asked to issue a conditional use permit (CUP) to operate a bed and breakfast with wedding services at 46 Hillside Ave. The City is asked to transfer the CUP to Susan Misavage to operate a bed and breakfast with wedding services in the same location, providing she purchases the property on or before March 15, 2006. The Mayor vetoed the vote Aug. 24.)

Mr. McClung moved to overturn the veto. Mr. Rojek seconded.

Mr. Falotico asked Mr. Berry to recuse himself from voting because he is the architect of record for the construction of Rose Hall at 46 Hillside. He asked Ms. Weaver to recuse herself from voting because her husband is the city's attorney.

Mr. Berry refused, saying he has no financial or personal interest in the issue. He had an e-mailed opinion from Municipal League attorney David Schoen supporting his position.

Mr. Weaver agreed that Ms. Weaver should recuse herself. She agreed.

Mr. McClung called the question to stop discussion. Mr. Rojek seconded. Five voted aye. Ms. Weaver did not vote. Motion passed 5/0/1

**City Council 9/12/05 5**

On the motion to overturn the veto, four voted aye, Mr. Falotico voted no, Ms. Weaver did not vote. Motion passed 4/1/1

**3. Discussion of modification of Municipal Code regarding peddling.**

Mr. Weaver said any attempt to regulate the written content of a coupon could be considered a violation of the U.S. Constitution which guarantees free speech. If there is harassment involved in the manner in which the coupons are distributed, it is possible harassment charges could be filed by the individuals involved.

**4. Discussion of funding the settlement agreement in the Still lawsuit.**

(Note: In a special meeting Sept. 7, the Council agreed to a \$120,000 settlement in the whistleblower lawsuit brought by Marilyn Still. The Council agreed to pay \$60,000 by Sept. 30 and \$55,000 by March 1, 2006, with the language included in the settlement of no fault to the city or liability. The motion was with the understanding that Mr. (Ron) Tracy (Tracy Engineering Inc. of Tulsa, OK) pays \$5,000, plus the accrued interest of approximately \$500 on the City's second payment.)

Mr. Falotico suggested the first payment be made from Public Works Department funds since Ms. Still and Mr. Tracy were involved with a public works project at the time of the allegations in the lawsuit.

Mr. Weaver said monies from the general fund budgeted for public works could be used, but not the assigned tax revenues.

Mr. McClung moved to discuss the matter in the next budget workshop. Mr. Rojek seconded. Five voted aye. Motion passed 5/1/1 Mr. Berry was away from the table.

### **5. Discussion of Ordinance #2002 regarding separating the city's 911 system from the county's.**

Emergency Services Director David Stoppel explained that the Quorum Court has been collecting a fee from the telephone companies for the past 13 years to pay for the Carroll County 911 system. The Eureka Springs 911 system derives no funding from this fee. Mr. Stoppel believes the city needs its own system and that it could be a support system if the Carroll County system should fail in some way.

Ms. Blankenship moved to place Ordinance 2002 on its first reading. Mr. Rojek seconded. All voted aye. Motion passed 6/0/0

Mayor Harrison read the ordinance aloud.

Ms. Blankenship moved to approve Ordinance 2002 on its first reading. Mr. Rojek seconded.

Mr. Berry moved to remove the paragraph at the bottom of the first page. Mr. Falotico 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

Mr. Berry moved to suspend the rules and place Ordinance 2002 on its second reading by title only. Mr. Rojek seconded. By roll call, all voted aye. Motion passed 6/0/0

Mayor Harrison read the ordinance aloud.

Mr. McClung moved to approve Ordinance 2002 on its second reading by title only. Mr. Rojek seconded. All voted aye. Motion passed 6/0/0

### **City Council 9/12/05 6**

Mr. Rojek moved to suspend the rules and place Ordinance 2002 on its third reading by title only. Mr. Berry seconded. By roll call, all voted aye. Motion passed 6/0/0

Mayor Harrison read the ordinance aloud.

Mr. Rojek moved to approve Ordinance 2002 on its third reading by title only. Mr. Berry seconded. All voted aye. Motion passed 6/0/0

Mr. Falotico moved to read the emergency clause. Mr. Berry seconded. All voted aye. Motion passed 6/0/0

Mayor Harrison read the emergency clause aloud.

### **6. Discussion of Ordinance #2003 calling for a special election for 911 system funding.**

Ms. Blankenship moved to postpone until after the budget meeting. Mr. Falotico seconded. All voted aye. Motion passed 6/0/0

### **COUNCIL COMMENTS:**

**Mr. McClung** asked about the Planer Hill parking lot funding. Mayor Harrison said the funds have been requested from the state but have not arrived yet. He asked Mr. Weaver to attend the next CAPC meeting, Wednesday evening, to discuss going forward with delinquent accounts. Mr. Rojek seconded the request. Mr. McClung asked if the sewer line on Wall St. has been repaired. Mr. Weaver said there is a conflict about where the stoppage is in the line. The Building Official and a contractor are to meet to discuss the leak.

**Mr. Falotico** said he wants the Building Official to present a report on the Harmon Park Community Building at the

next meeting. He wants Ordinance 2004, regarding establishing a city finance department, on the next meeting agenda. He suggested setting a budget workshop for 6:30 p.m. Thursday. He wants department heads to start preparing their 2006 budget requests.

**Ms. Blankenship** wants the Building official to provide a report on grease trap inspections at the next meeting. She wants a discussion of Ordinance 1932, regarding city attorney duties, on the next meeting agenda. Mr. Falotico seconded the request.

**Ms. Weaver** thanked everyone for participating in open mic.

**Mr. Rojek** thanked citizens for their input and Mr. Falotico for his work on Ordinance 2004.

#### **MAYOR'S COMMENTS:**

Mayor Harrison said she hopes all of the elected officials will take the National Incident Management System (NIMS) course as soon as possible.

She said everyone here involved in getting prepared for Hurricane Katrina evacuees were able to do their assignments in good order.

#### **ADJOURNMENT:**

Mr. Falotico moved to adjourn at 10:15 p.m. Mr. Berry seconded. All voted aye. Motion passed 6/0/0

**City Council 9/12/05 7**

-  
This is the signature page for the minutes of the regular meeting of the City Council Sept. 12, 2005.

---

Mayor Kathy Harrison

---

City Clerk-Treasurer Mary Jean Sell

**City Council 9/12/05 8**