CITY OF EUREKA SPRINGS
CITY COUNCIL
REGULAR MEETING MONDAY JUNE 28, 2010

Mayor Dani D. Joy called the regular meeting of the Eureka Springs City Council to order at 6 p.m. Monday, June 28, 2010, in the jury room on the second floor of the Western District Carroll County Courthouse.

PRESENT: Mayor Dani D. Joy, Aldermen Robert Butch Berry, Beverly Blankenship, Patrick Brammer, James DeVito, Mickey Schneider, Joyce Zeller, City Attorney Tim Weaver, Public Works Director Dwayne Allen, Parks Director Bruce Levine, City Clerk-Treasurer Mary Jean Sell CMC.

PLEDGE OF ALLEGIANCE TO THE FLAG:
Mayor Joy led the Pledge of Allegiance to the Flag.

APPROVAL OF THE AGENDA:
Mr. Brammer moved to approve the agenda. Mr. DeVito seconded.
Ms. Blankenship asked to add a discussion of the Land Bank as New Business Item #3. Mr. Brammer seconded.
Mayor Joy added a discussion of a proposed ordinance dealing with activities in Basin Spring Park as New Business Item #4.
Ms. Zeller moved to remove Old Business Item #2 regarding moving of meetings. Ms. Schneider seconded.
On the motion to approve the agenda as amended, all voted aye. Motion passed 6/0/0

APPROVAL OF THE MINUTES: June 14, 2010
Mr. DeVito moved to approve the minutes of the regular City Council meeting June 14, 2010. Mr. Brammer seconded.
Ms. Blankenship noted corrections in the vote to approve the minutes of the May 24 meeting and that she had seconded the motion to table the discussion of renting city-owned parking lots in New Business Item #3.
On the motion to approve the minutes as amended, five voted aye. Mr. Berry abstained. Motion passed 5/0/1

COMMISSION, COMMITTEE, AUTHORITY REPORTS AND VACANCIES:
HDC Position 6- expires 3/7/11
Planning - Position 1 - expires 7/1/11 Position 2 - expires 1/1/11 Position 6 -expires 1/1/12
CAPC - Position 6 -expires 6/30/14 Re-nomination Joanne Graupner
Hospital - Position 3 - expires 6/1/15 Ms. Blankenship moved to approve the re-nomination of Joanne Graupner. Ms. Schneider seconded. All voted aye. Motion passed 6/0/0
Parks - Mr. Levine brought a report on the testing of the water quality of six springs and East Leatherwood Creek above and below the city's wastewater treatment plant by the U.S. Geological Survey, beginning in September of 2009. In general, the water in the tested springs does not look bad and Magnetic is the best of all
Public Works Director Mr. Allen reported the spillway work at Black Bass Dam has been completed. He is considering grouting the seam between the original dam and the 1920s addition which leaks water. He has not made up his mind about that project. As long as the lake level is kept below the dam's seam line there is not much water leakage.
He is looking for grant funds to make further repairs to the dam from Federal Emergency Management Agency (FEMA). He said funds have become available to repair damages caused by the flooding in 2008.

PUBLIC COMMENTS:
Three persons spoke to the deer issue. One said there were no reported cases of Lyme Disease from ticks in Arkansas in 2008. Another thanked the HDC (Historic District
Commission) for revising its fencing guidelines. Another suggested banning salt licks and requiring squirrel feeder be placed higher off the ground.

OLD BUSINESS:
1. **Discussion of underground channel/tunnel repairs**

Mr. Brammer moved to open discussion. Mr. DeVito seconded. All voted aye. Motion
passed 6/0/0
Mr. Allen said he had interviewed three of the seven firms who had responded to the request for qualifications (RFQs) for the tunnel project. One firm is willing to work in steps, with payment, as we go.
Mayor Joy said there are two grants of $625,000 each available, at an 80/20 match from the Arkansas Transportation Enhancement Program for counties sustaining flood damage in 2008. The applications are due in August. She hopes to get the repair of the tunnel funded through one of

these grants.

Mr. Allen said a ball park, on engineering the repairs of the length of the tunnel is approximately $20,000.

Ms. Blankenship moved to put $25,000 from water and street funds into professional services for water to pay for the engineering. Mr. DeVito seconded. All voted aye. Motion passed 6/0/0

2. Discussion of Ordinance No. 2122 to rezone Lots 7 and 6 Block 10 Bays Survey off Magnetic Road from R-1, Victorian Residential, to C-1, Victorian Commercial, 2nd reading

Mr. Brammer moved to suspend the rules and place Ordinance No. 2122 on its second reading by title only. Ms. Schneider seconded. By roll call, five voted aye. Mr. Berry abstained. Motion passed 5/0/1

Mayor Joy read the title of Ordinance 2122 aloud.

Mr. Brammer moved to approve the second reading of Ordinance 2122 by title only. Ms. Schneider seconded. Five voted aye. Mr. Berry abstained. Motion passed 5/0/1

Ms. Schneider moved to suspend the rules and place Ordinance No. 2122 on its third reading by title only. Mr. DeVito seconded. By roll call, five voted aye. Mr. Berry abstained. Motion passed 5/0/1

Mayor Joy read the title of Ordinance 2122 aloud.

Mr. Brammer moved to approve the third reading of Ordinance 2122 by title only. Ms. Schneider seconded. Five voted aye. Mr. Berry abstained. Motion passed 5/0/1

3. Opinion on city's ownership of streets and alleys

Mayor Joy said she has received an opinion from Municipal Judge Ralph Ohm of Hot Springs, AR, as to whether or not the City owns its streets and alleys. She read the letter aloud:

Honorable Mayor Joy:

As per your request, please be advised that I have recently had the opportunity to review the documents that were forwarded to me by Ms. Wilkerson on June 4, 2010. I have had a chance to review the Order of Incorporation, the Eureka Springs Land Act, Acts of the Arkansas Legislature, 1885, a Compromised Decree, and City Council Minutes. To begin with, please be advised that this letter should not be considered as any type of title opinion concerning the ownership of the streets and alleys located within the City of Eureka Springs, Arkansas. In the event someone decides to purchase these properties and seeks a Warranty Deed, they should secure title insurance to guarantee ownership of this property. However, with the understanding that this letter should not be considered as a title opinion nor should it be relied upon by any purchaser of this property, it would appear as though the City of Eureka Springs does in fact own the streets and alleys located within the incorporated city limits.

As I know you are aware, most cities acquire their streets either through the eminent domain process or through a dedication being accepted by the city from a developer or builder. Under those circumstances, when the city decides to abandon those streets, they are to be returned to the original owner or their successor entitle which generally involves adjacent to the street. Consequently, the city has nothing to sell since it only acquired the right to use the property for purposes of streets and alleys.

After reviewing the documents that have been forwarded to me, it certainly appears as though the City of Eureka Springs received a Deed from the United States Government for Three Hundred Twenty (320) acres to establish the City of Eureka Springs, Arkansas. This Deed further reflects that the city was to use a process to transfer Deeds to lots according to a pre-approved survey. With this understanding, the City of Eureka Springs would be the owner of the streets and alleys located within this Three Hundred Twenty (320) Acre legal description. (The N –"Œ© of Sec. 15, Tp 20, N.R. 26 W 320 acres in the County of Carroll, State of Arkansas)

Consequently, if the city decides to abandon streets and alleys within this geographical area, the city would be in a position to sell those properties to land owners.

As you know, the City of Eureka Springs is atypical of most cities located throughout the State of Arkansas. Perhaps, that is what makes this city so special.

I hope this provides you with the information that you need concerning this matter. After you have had the opportunity to review this letter, should you have any questions or if I can be of assistance to you in any way, please do not hesitate to contact me.

Respectfully, /S/ Ralph C. Ohm Ralph C. Ohm,

There was no further discussion or action.

4. Discussion of deer population

Ms. Schneider moved to open discussion. Mr. DeVito seconded. All voted aye. Motion passed 6/0/0

There was general discussion about the deer population within the city limits, whether or not to ban feeding, whether or not to have a controlled hunt.

Mr. Weaver provided a proposed ordinance to ban feeding of deer.

Mr. DeVito moved to give the ordinance a number (2123) and place it on its first reading. Mr. Berry seconded. Four voted aye. Ms. Blankenship and Ms. Schneider voted no. Motion passed 4/2/0

Ms. Sell read Ordinance 2123 aloud.

Mr. Brammer moved to approve the first reading of Ordinance 2123. Mr. DeVito seconded.

Mr. Brammer moved to strike non-domesticated deer, from Ordinance 2123. Ms. Schneider seconded.
Mr. Weaver said the State of Arkansas allows the keeping of deer as pets.
Mr. Brammer withdrew his motion. Ms. Schneider withdrew her second.
Mr. Berry moved to insert, or cause to be fed, and asked to list food items. Mr. DeVito seconded.
Mr. Weaver said the enforcement difficulty would be in having police officers identify what a deer is eating as an element of the crime.
Mr. Berry withdrew his motion. Mr. DeVito withdrew his second.
Ms. Blankenship moved to put the sum of $100 in Ordinance 2123 as a penalty for the first offense and $200 as the penalty for the second and subsequent offenses. Mr. Brammer seconded. All voted aye. Motion passed 6/0/0
Mr. DeVito called the question. Mr. Berry seconded. Five voted aye. Ms. Schneider voted no. Motion passed 5/1/0
On the motion to approve Ordinance 2123 on its first reading as amended, four voted aye. Ms. Blankenship and Ms. Schneider voted no. Motion passed 4/2/0

5. Discussion of renting city parking lots

Mr. Brammer moved to open discussion. Ms. Schneider seconded. All voted aye. Motion passed 6/0/0
Ms. Schneider had suggested during the regular meeting of Monday, June 14, that the City no longer rent its downtown parking lots as part of special events because it takes away too much parking for the public.
Ms. Sell presented a study of parking lot rentals from 2007 to date. The number of requests to rent the parking lots has dropped each year, and as of June 24, there have only been three requests to rent the parking lot between the Western District Carroll County Courthouse and the City Auditorium.
Ms. Blankenship moved to table the discussion. Mr. DeVito seconded. Four voted aye. Ms. Zeller and Ms. Schneider voted no. Motion passed 4/2/0

NEW BUSINESS:

1. Discussion of City Clerk-Treasurer position

Mr. DeVito moved to open discussion. Ms. Blankenship seconded. By roll call, five voted aye. Mr. Brammer voted no. Motion passed 5/1/0
Ms. Blankenship said she asked to review the position and salary because this is an election year and any changes need to be made before the filing period in August so potential candidates will know what to expect.
After a brief discussion, Ms. Blankenship moved to leave the city clerk-treasurer's position as it is. Mr. DeVito seconded. All voted aye. Motion passed 6/0/0

2. Application for vacation of alley lying between Lots 10-14, 16 and 17, 20-23 in Block 1, between Lot 17 and portion of Lot 20 Block 1 Bays survey.

Mr. Berry moved to open discussion. Mr. DeVito seconded.
Mr. Levine said the application has been through the Parks Commission and Parks recommends the vacation.
Mr. Brammer said the survey provided with the application does not match the written property description. Mayor Joy said she had a different survey for Council members and handed it out.
Mr. Brammer moved to table the application to the next meeting, Monday, July 12. Mr. DeVito seconded. All voted aye. Motion passed 6/0/0
Following the discussion of the Land Bank, Mr. Weaver told the Council state statutes require a public hearing date to be set tonight.
Mr. Berry moved to set the public hearing on the request to vacate the alley for the second meeting in July and to have the City Clerk make the appropriate notifications. Council members agreed to hold the public hearing at 6:30 p.m. on Monday, July 19. Mr. DeVito seconded. All voted aye. Motion passed 6/0/0

3. Discussion of the Land Bank.

Mr. Levine had brought a proposal for a Land Bank to the City Council in July of 2009.
Ms. Blankenship said the Council did approve $5,000 for a budget to get the Land Bank going. She thought any monies received from the sale of city lands should go into the Land Bank as well.
Ms. Blankenship moved to have a Land Bank account on the City's monthly and annual balance sheets. Ms. Schneider seconded. All voted aye. Motion passed 6/0/0

4. Discussion of a proposed ordinance dealing with activities in Basin Spring Park

Ms. Schneider moved to open discussion. Mr. Brammer seconded. All voted aye. Motion passed 6/0/0
Mr. Levine distributed the proposed ordinance and said the Parks Commission had worked on it for several months. He has given a copy to the Mayor's Art Council for additional review.
Mr. DeVito moved to set up a workshop on the proposal. Mr. Berry seconded. Four voted aye. Ms. Zeller and Ms. Schneider opposed. Motion passed 4/2/0 Mayor Joy said her assistant would contact everyone for a date. (Note: The workshop was set for 1:30 p.m. Wednesday, July 7).

COUNCIL COMMENTS:

Ms. Blankenship said she would like to have a review of the mayor's salary on the next agenda. Ms. Schneider seconded.
Ms. Blankenship said she would like to have a workshop with Jim Williams, director of the City Advertising and Promotion Commission (CAPC) regarding the operation of the City Auditorium. Mayor Joy said she would talk with Mr. Williams and get a workshop set.

ADJOURNMENT:
Mr. Brammer moved to adjourn at 8:12 p.m. Mr. DeVito seconded. All voted aye. Motion passed 6/0/0

This is the signature page for the minutes of the regular Eureka Springs City Council meeting of Monday, June 28, 2010.

APPROVED:

ATTESTED:

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Mayor Dani D. Joy

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City Clerk-Treasurer Mary Jean Sell CMC