

**CITY OF EUREKA SPRINGS  
COUNCIL MEETING  
Thursday, April 7, 2011 6 p.m.  
Final AGENDA**

**CALL TO ORDER**  
**ROLL CALL, ESTABLISH QUORUM**  
**PLEDGE OF ALLEGIANCE TO THE FLAG**  
**APPROVAL OF THE AGENDA**  
**APPROVAL OF THE MINUTES:** March 17, 2011

**PUBLIC COMMENTS**

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

**Parks** – Position 1 – expires 5/1/12  
**Planning** -- Position 1 – expires 7/1/11      Position 6 – expires 1/1/12 – Nomination  
of Mickey Schneider  
**Hospital** – Position 2 – expires 6/1/14 – Bill Fort will retain this seat, and serve as chair.  
Position 4 -- expires 6/1/11 – Pam Crockett will retain this seat.  
Position 5 -- expires 6/1/12 – Dr. Jack Pritchard will retain this seat.  
**Cemetery**  
**CAPC**  
**Police Department**  
**HDC** – Position 4 – expired 11/30/10  
Position 6 – expired 3/7/11 – Nomination of Richard Grinnell

**UNFINISHED BUSINESS:**

1. Discussion of Resolution 484 and Ordinance 1940 -- fee schedule for Planning Commission/BOZA -- Mr. Pownall and Mr. DeVito
2. Discussion of Domestic Fowl Ordinance – Planning Commission
3. Concerned citizen email – Mr. Pownall
4. Discussion of Game and Fish feedback re: deer hunt – Mayor Pate
5. Discussion of Mun. Code 2.36.04 – Operations manual for the Finance Dept. – Ms. Ballance and Dr. Kirkpatrick
6. Parks Capital budget – Parks Commission

**NEW BUSINESS:**

1. Discussion of Black Bass Dam with Dee Purkeypile – Mayor Pate
2. Discussion of Nelli Clark's home/sewage damage – Ms. Ballance and Ms. Alexander
3. Discussion of new accounting software program for Finance Department – Ms. Ballance and Dr. Kirkpatrick
4. Discussion of land bank – Parks Commission
5. Discussion of moratorium on digital/electronic bulletin boards – Planning Commission
6. Ordinance for waiving bid process for ambulance(s) – Mayor Pate
7. Discussion of personal use of public vehicles – Dr. Kirkpatrick and Ms. Ballance
8. Signatories on checks – Ms. Ballance and Dr. Kirkpatrick
9. Open Discussion regarding Basin Park – Dr. Kirkpatrick and Ms. Ballance
10. Clean up resolution – Mayor Pate

**AGENDA SETTING**

**CITY COUNCIL COMMENTS**

**MAYOR'S COMMENTS**

Mayor Morris Pate called the regular meeting of the Eureka Springs City Council to order at 6 p.m. Thursday, April 7, 2011 in the jury room on the second floor of the Western District Carroll County Courthouse.

**PRESENT:** Mayor Morris Pate, Aldermen Ken Pownall, Lany Ballance, Robert "Butch" Berry, James DeVito, Dean Kirkpatrick, Janet Alexander, City Attorney Tim Weaver, City Clerk/Treasurer Ann Armstrong

**PLEDGE OF ALLEGIANCE TO THE FLAG:**

Mayor Pate led the Pledge of Allegiance to the Flag.

**APPROVAL OF THE AGENDA:**

Mr. DeVito moved to approve the agenda. Mr. Pownall seconded. Ms. Ballance requested that all cell phones be turned off. She then moved to place Public Comments at the beginning of the meeting. Dr. Kirkpatrick seconded. Ms. Ballance moved to add item #8 Signatories on checks to New Business. Dr. Kirkpatrick seconded. Ms. Ballance requested clarification of item #6 Parks Capital Budget under Unfinished Business. None was offered. Dr. Kirkpatrick moved to postpone item #7 Discussion of personal use of public vehicles. Ms. Ballance seconded. Mr. Pownall moved to add Surety Bonds to discussion of item #8 under New Business. Ms. Ballance seconded.

Mr. DeVito expressed concern about adding items to the agenda and thus preventing the public from being informed ahead of time.

Dr. Kirkpatrick moved to add item #9 Discussion regarding Basin Park under New Business. Ms. Ballance seconded. Mayor Pate added item #10 Budget Clean Up resolution under New Business. Mayor Pate called for approval of the amended minutes. Dr. Kirkpatrick moved to approve and Mr. Pownall seconded.

Motion carried 6/0/0

**APPROVAL OF THE MINUTES: March 17, 2011**

Mr. DeVito moved to approve the minutes from the March 3, 2011 Council meeting. Ms. Alexander seconded.

Motion carried 5/0/1, with Mr. Pownall abstaining due to his absence.

**PUBLIC COMMENTS:**

Jan Grinnell described an attack by a pit bull on a dachshund while a friend and she were walking on the upper Historic Loop. She called for the Council to take aggressive action against pit bulls in the City. Ms. Grinnell praised the Fire Department for their response to the house fire at 12 Summit. She also said she does not like Council meetings on Thursday noting disruption in personal and news reporting schedules.

Deborah Stoup distributed photos of her dachshund which had been attacked by a pit bull. She expressed fear for small children who might be attacked. Ms. Stoup called for stricter enforcement of the animal control laws and more consequences for irresponsible owners.

Ellen Cutting, Melissa Greene, and Enid Swartz spoke in favor of enforcing current laws regarding restraining animals. They addressed the responsibility for safety of visitors, suggested an increase in work hours for the animal control officer, and displeasure with arming for safety in order to walk pets.

Susie Baker presented large photos of sewage damage to the home of her mother, Nelli Clark. Ms. Baker noted that Ms. Clark is covered in a rash and continues to live with uncertainty as to how the damage caused to her home can be repaired.

Nelli Clark again addressed efforts to get help with the sewage damage to her home. She showed the rash on her arms. Mrs. Clark said the delay in sanitizing her home has left a smell that cannot be removed, and her 37-year investment has been taken away.

Beau Satori suggested more work hours for the animal control officer and larger fines for offenders. He also spoke about the need for new people on commissions.

Karen Lindblad noted she is in favor of the land bank, in opposition to the Basin Park project without adequate public notification, and called for the City to be responsible for the damage to Nelli Clark's home.

Springs Committee Coordinator Barbara Harmony spoke in favor of the \$5000 loan for the land bank. She spoke about the importance of expanding and protecting the springs recharge areas.

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

**Parks** -- Position 1 – expires 5/1/12. Parks Commission Director Bruce Levine and Bill Featherstone prepared for a presentation of a proposed Basin Park project. Mr. Pownall called point of order since he perceived a misrepresentation of this topic. A voice vote to stop the proceedings was understood by Ms. Armstrong to be 3/3. Mr. DeVito said it was 4/2. Mayor Pate accepted the 4/2 count, thus ending discussion.

Mr. DeVito then moved to add this item to the next agenda. Mr. Berry seconded.

**Planning** – Position 1 – expires 7/1/11 Position 6 – expires 1/1/12. Mayor Pate presented Mickey Schneider's application for reconsideration. Mr. Berry moved to approve. Mr. DeVito seconded. Ms. Alexander offered a challenge for the nomination of a second planning commissioner to fill all seats at once. Dr. Kirkpatrick objected to reconsidering the nomination. Ms. Ballance moved to table indefinitely. Dr. Kirkpatrick seconded. A roll call vote followed discussion: Ms. Ballance, Mr. Pownall, Ms. Alexander, Dr. Kirkpatrick – Aye. Mr. DeVito and Mr. Berry – Nay

Motion carried 4/2/0

**Hospital** – Pam Crockett described the current makeup of the commission. Bill Fort will retain Position 2 and serve as chair. Pam Crockett will retain Position 4. Dr. Jack Pritchard will retain Position 5. Michael Merry will serve as vice-chair. Anna Ahlman will serve as secretary/treasurer. Ms. Crockett noted that plans for a new hospital are moving forward and she will keep the Council updated.

**Cemetery** – Ken Fugate addressed the mixed feedback on having Voices (of the Silent City) in the cemetery. He welcomed attendance at the next commission meeting when the topic will be discussed.

**CAPC** – Interim Director Joanne Graupner spoke about the reorganization in CAPC offices. Streamlining and combining jobs resulted in Eric Young and Sheila Hulsey no longer working there. Ms. Graupner said this is to extend the budget for advertising and promoting the City and is not a reflection on performance.

**Police Department** – Written reports were noted.

**HDC** – Position 4 – expired 11/30/10. Position 6 – expires 3/7/14. Mayor Pate presented Richard Grinnell's nomination for Position 6. Mr. DeVito moved to approve the nomination. Mr. Berry seconded. Following discussion, a roll call vote was taken: Ms. Alexander, Mr. Pownall, Ms. Ballance – Nay. Mr. Berry and Mr. DeVito – Aye. Dr. Kirkpatrick – Present.

Motion failed 2/3/1

**UNFINISHED BUSINESS:**

**1. Discussion of Resolution 484 and Ordinance 1940 – fee schedule for Planning Commission/BOZA**

Mr. Pownall motioned to discuss Resolution 484 and Ordinance 1940 – fee scheduling. Ms. Ballance seconded. Mr. Pownall recommended changing the fees for conditional use permits, rezoning applications, and variance requests from \$75 to \$100. He also suggested changing rescheduling public hearings from \$25 to \$50. He noted the absence of tree cut permit fees in the ordinance and code references which no longer exist. He suggested listing all fees in one area to simplify the process. Mr. Pownall moved to table until the next meeting. Mr. DeVito seconded.  
Motion carried 6/0/0

**2. Discussion of Domestic Fowl Ordinance**

Mr. DeVito moved to discuss. Mr. Pownall seconded. Brad Banaszek addressed the purpose for the ordinance. Changes include increasing the number of birds allowed, exclusion of male birds, and cleanliness. Mr. Pownall and Mr. Berry advised having input from animal control and the police regarding enforcement.

Mr. DeVito motioned to assign a number and read the ordinance. Mr. Pownall seconded.  
Motion carried 6/0/0. Ms. Armstrong read Ordinance # 2135 aloud.

Mr. DeVito moved to approve Ordinance #2135 on its first reading. Mr. Berry seconded. Mr. Pownall noted the exclusion of other animals and shelters addressed in the existing ordinance. Mr. Weaver said he believed that was the intent. Mr. Berry noted the absence of the article prohibiting feeding deer. Mayor Pate called for a roll call vote. Ms. Alexander, Dr. Kirkpatrick, Mr. Pownall, Ms. Ballance, Mr. Berry, Mr. DeVito – Aye

Motion carried 6/0/0. Following Ms. Alexander's comment that rabbits are number three on the list of domestic pets, Mr. DeVito motioned to send the ordinance back to Planning to address that issue and also the deer feeding ban. Ms. Alexander seconded.  
Motion carried 6/0/0

**3. Concerned citizen email**

Mr. Pownall described an exchange with a citizen, and asked for equal enforcement of codes.

**4. Discussion of Game and Fish feedback re: deer hunt**

Mr. Pownall moved to discuss and Dr. Kirkpatrick seconded. Mayor Pate read a letter from Assistant Deer Program Coordinator Dick Baxter explaining the difficulties in obtaining a survey of the deer population. It was noted that the cultural carrying capacity (the numbers people consider excessive) won't reflect the biological carrying capacity. Large enough areas of common land bow hunters could access is another problem.

Following discussion, Mr. DeVito motioned to place a public notice in the *Citizen* for people interested in allowing the hunt on private property. Ms. Alexander seconded. Mr. Pownall amended the motion to place the ad in the *Carroll County News*. Ms. Alexander seconded. The motion was further amended by Ms. Alexander to place an ad on the front page of the City web site. Mr. Pownall seconded.

Motioned carried 6/0/0

**5. Discussion of Municipal Code 2.36.04 - Operations manual for the Finance Department**

Ms. Ballance moved to discuss. Mr. Berry seconded. Yvonne Kline indicated progress is being made with the disaster recovery plan for the accounting system. It will be reviewed by the legislative audit team, and she hopes to have it ready for Council review and approval within a couple of weeks.

## **6. Parks Capital budget**

Mr. Berry moved to discuss. Ms. Alexander seconded. Bill Featherstone noted the initial request has been further reduced and is now \$5,000. Funds are still needed for playground resurfacing at Harmon Park (\$2,000) and a surveillance camera for East Mountain (\$3,000).

Ms. Alexander motioned to accept the request. Mr. Berry seconded. Following discussion regarding available funds, a vote was taken.

Motioned carried 6/0/0

Ms. Ballance moved to reconsider the motion. Dr. Kirkpatrick seconded.

Motion failed 2/4/0

## **NEW BUSINESS:**

### **1. Discussion of Black Bass Dam with Dee Purkeypile**

Mr. DeVito moved to discuss. Mr. Pownall seconded. Mr. Purkeypile noted the vulnerability of the lift station below the dam. The dam is deteriorating rapidly as evidenced in the photographs he presented. Options are removing the dam, bringing the dam back to historic design, applying rock armor to the existing face, lowering the dam, and elevating or relocating the lift station.

Mr. Purkeypile agreed to estimate costs in the order of magnitude.

### **2. Discussion of Nelli Clark's home/sewage damage**

Mr. Pownall moved to discuss. Ms. Ballance seconded. Mr. Pownall made a motion to write an ordinance for the purpose of paying \$3,000 to Ms. Clark from Public Works funds. Ms. Ballance seconded. Discussion of the \$1,000 deductible, the 61 Peerless event, and purchasing Ms. Clark's home followed. Mr. Weaver opined that money from the City would be taken by the insurance company, and purchasing would be illegal unless eminent domain was exercised and the house destroyed. He read from the statute on tort immunity. Mr. Berry noted the absence of written procedures for such cases.

Mr. DeVito made an amended motion to pay Ms. Clark the deductible of \$1,000. Mr. Berry seconded. Following discussion, a roll call vote was taken: Ms. Alexander, Mr. Berry, and Mr. DeVito – Aye. Mr. Pownall and Ms. Balance – No. Dr. Kirkpatrick – Present. Mr. Weaver called the 3/2/1 vote a tie, and Mayor Pate voted No.

Motion failed 3/3/1

Mr. Pownall amended the initial motion to read: approve \$999 to cover part of Ms. Clark's deductible, and up to \$2,001 for documented expenses not covered by insurance. Ms. Ballance seconded. Mr. Weaver indicated the funds could possibly still be taken by the insurance company.

Fifteen minute break

Ms. Clark's attorney, Tim Parker, addressed Council and expressed concern for any payment to Ms. Clark at this time. He requested that all motions be withdrawn. The motions and seconds were withdrawn.

### **3. Discussion of new accounting software program for Finance Department**

Ms. Ballance moved to postpone. Mr. DeVito seconded. Motion carried 6/0/0

### **4. Discussion of land bank**

Mr. DeVito moved to postpone until the next meeting. Mr. Pownall seconded. Motion carried 6/0/0

### **5. Discussion of moratorium on digital/electronic bulletin boards**

Mr. DeVito made a motion to have a moratorium on digital/electronic bulletin boards for the next ninety days. Mr. Pownall seconded. Motion carried 6/0/0

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**6. Ordinance waiving bid process for ambulance(s)**

Mayor Pate asked for a motion to discuss. Mr. DeVito moved and Mr. Pownall seconded. Ms. Alexander moved to purchase two Frazier ambulances. Dr. Kirkpatrick seconded. Mr. DeVito indicated the purchase of one is all the City can afford right now. Mr. Pownall questioned whether funds for either are available. Following discussion, Ms. Kline stated the depreciation fund has enough for one ambulance. Mayor Pate withdrew the request.

**7. Discussion of personal use of public vehicles** – postponed during approval of the agenda

**8. Signatories on checks**

Ms. Ballance moved to discuss. Mr. Pownall seconded. Ms. Ballance suggested that elected officials sign checks. Mr. Pownall noted signatories would have surety bonds, so it doesn't matter. Ms. Ballance relayed Mr. Shoen's and the Attorney General's opinions supporting Council's right to designate signatories. Mr. DeVito spoke in support of having the finance director sign. Following discussion, Ms. Ballance motioned to have signatories for the City checking account(s) be elected officials in the following order: mayor, city clerk/treasurer, mayor pro-tem, with the finance director as a fourth. Ms. Alexander seconded. Ms. Kline noted the auditor has indicated that the person who reconciles the accounts should not sign checks. Mr. DeVito moved to table until the next meeting. Ms. Alexander seconded.

Motion carried 6/0/0

**9. Open Discussion regarding Basin Park**

Mr. DeVito moved to table until the next meeting. Dr. Kirkpatrick seconded.

Motion carried 6/0/0

**10. Cleanup resolution**

Mr. DeVito moved to discuss. Mr. Berry seconded. Ms. Kline noted the process involved in reconciling the 2010 budget versus expenditures. She explained deficits, funding sources and timelines. Mr. DeVito motioned to assign a number, read and approve the resolution. Mr. Berry seconded.

Motioned carried 4/1/1, with Mr. Pownall voting No and Ms. Ballance recusing.

Ms. Armstrong read Resolution #579 **A RESOLUTION AMENDING THE 2010 ADOPTED BUDGETS FOR THE CITY OF EUREKA SPRINGS, ARKANSAS, FOR THE YEAR 2010; APPROPRIATING MONEY FOR EACH AND EVERY ITEM OF EXPENDITURE THEREIN AND FOR OTHER PURPOSES**

**AGENDA SETTING:**

Ms. Ballance added discussion of yellow bags. Mr. Pownall seconded.

Ms. Ballance added discussion of the crosswalk at Pendergrass Corner. Mr. Pownall seconded.

Ms. Ballance added signs at Main and Spring Sts. Mr. Pownall seconded.

Ms. Ballance added discussion of the condition of Leatherwood Park. Ms. Alexander seconded.

Ms. Ballance added discussion of public restrooms. Ms. Alexander seconded.

Ms. Ballance added discussion of budget amendments. Mr. Pownall seconded.

Mr. Pownall added discussion of ordinance regarding dog control. Ms. Alexander seconded.

Mayor Pate added backflow valves/check valves for water and sewer.

**CITY COUNCIL COMMENTS:**

Dr. Kirkpatrick seeded a private donations collection for Nelli Clark, noting that Tad's (Quickcheck) will be a collection center.

**MAYOR'S COMMENTS:**

Mayor Pate said he had taken a lot of beating up on the Nelli Clark issue. He noted Mr. Weaver's reading portions of the tort liability Statute 21-9-302. Mayor Pate also referenced Municipal Code 3.16.01, Settlement of Claims. This deals with citizens' right to file claims with the office of the Mayor, and the Council's right to hear the claim and authorize a settlement. He said he could not find in state statutes or the Municipal Code anything authorizing the Mayor to make a settlement on a tort issue.

Mayor Pate then read a list of upcoming events.

**ADJOURNMENT:**

Mr. DeVito moved to adjourn at 11:16 p.m. Dr. Kirkpatrick 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 Thursday, April 7, 2011.

ATTEST:

  
\_\_\_\_\_  
City Clerk/Treasurer Ann Armstrong

APPROVED:

  
\_\_\_\_\_  
Mayor Morris Pate