

Mayor Pate called the special meeting of the Eureka Springs City Council to order on Tuesday, August 2, 2011 in the jury room on the second floor of the Western District Carroll County Courthouse. Mayor Pate noted the meeting was called by Aldermen Lany Ballance, Parker Raphael, and Dr. Dean Kirkpatrick. The purpose of the meeting: **Discussion of the cell tower being constructed on Judah St.**

**PRESENT:** Mayor Pate, Aldermen James DeVito, Butch Berry, Lany Ballance, Dean Kirkpatrick, Parker Raphael, City Clerk/Treasurer Ann Armstrong, and City Attorney Tim Weaver  
**ABSENT:** Ken Pownall

Mayor Pate asked if the media had been notified. *Citizen* reporter C.D White confirmed *Carroll County News* was aware of the meeting. Mr. Weaver said that, in the past, "the radio station has been on the list and any TV station that asked would have been added to the list also." Extensive discussion followed regarding a list of media who are to notify the Clerk/Treasurer if they choose to be notified of special meetings. Dr. Kirkpatrick motioned to cancel the meeting until it's known what the proper procedures are and everyone has been notified. Ms. Ballance seconded and amended the motion to say Council will reconvene at 3:00 p.m. Mr. DeVito said, "there may not be a quorum this afternoon at 3:00." Ms. Balance rescinded the amendment and kept her second.

Speaking from the side, Municipal League Attorney Mark Hayes suggested (recessing) until files could be (examined for) the media list. Ms. Ballance noted the Freedom of Information Act says the media is to (inform the Clerk/Treasurer) each year if they want to be notified. Ms. Armstrong assured Mr. Hayes no media entity other than the *Citizen* had requested notification. Mr. Hayes said he'd like to review the State Statutes with the City Attorney. Mayor Pate called for a recess.

When the meeting reconvened, Ms. Armstrong again assured the table there is no hard copy or computer file of media requests for notification. During the break, she had called administrators of KESA in Eureka Springs and KTHS in Berryville, and the editor of the *Carroll County News* to ask whether they would like the meeting stopped until they could arrive. The only call back came from KTHS who said, "No thank you for today, and (they'll) send something in writing for the future".

Mr. Hayes read case notes from Statute 25-19-106(B2) supporting the media responsibility to notify the Clerk.

Dr. Kirkpatrick withdrew his motion to cancel the meeting and Ms. Ballance withdrew her second. Mr. Berry motioned to discuss the cell tower issue. Mr. Raphael seconded.

Motion carried 5/0/0.

Following discussion about opening Public Comments, Mr. Raphael motioned in favor. Ms. Ballance seconded. (There was no vote.)

**PUBLIC COMMENTS:**

**Pat Matsukis**, 5 Mountain St., addressed the many mistakes along the way. She noted the opportunity to put the City's needs first, over private enterprise. Ms. Matsukis recalled that the CUP issued was to extend storage buildings. She said this sets a tone of "you can do whatever you want to do if you just lie" and that is not who we are as a town.

**Jeff Danos**, 2 Woods Circle, said it seems there were decisions made between the City and the FCC recently, without the knowledge of the City Council. He spoke about the letter between

Smith Communications and the Municipal League, and “certain mitigations”. The WiFi connection mentioned was unknown to the Parks Director, the supposed recipient of one “mitigation”. Mr. Danos expressed concern for someone (unknown) operating on behalf of the City. It is his perception that it was this letter that prompted the FCC to lift the stop-work order.

**Raven Derge**, said (the situation), from the beginning, has been duplicitous in nature. She spoke for revoking the CUP.

**DISCUSSION:**

Ms. Ballance moved to discuss. Mr. Raphael seconded.

Motion carried 5/0/0.

Ms. Ballance spoke about the general release and settlement agreement between Smith Communications LLC vs. the City of Eureka Springs, Arkansas. She noted the referenced CUP and that she has been unable to locate such. Further in the document is reference to a required Certificate of Appropriateness from the HDC, and the apparent absence of such. Referring to C-2 requirements in Municipal Code, she noted a maximum allowance of 45 ft. She has been unable to locate a zoning variance for the property. Ms. Ballance said one or both parties are in breach of contract. She motioned for a stop-work order until this can be straightened out.

Mr. Raphael moved to revoke the CUP and issue a stop-work order. Ms. Ballance seconded.

Mark Hayes addressed the Council. He said there was litigation wherein the cell phone tower provider sued the City. That litigation was resolved by a settlement agreement which is, in effect, a contract. The essence of that contract is: they’ll stop suing (the City) and seeking damages if (the City) will allow them to build the cell phone tower. He believes there was a 6/0 vote by the (previous) City Council. The second issue that’s been brought up, Mr. Danos’ reference to the stop-work order, was not (something in which) the City took part. He said the FCC was contacted by a private citizen and the State Historic (entity) which oversees (such matters). The City was not part this either.

Mr. Hayes then went back to the first issue, saying he believes the City has met its obligations under the contract and if (the City attempts) to breach it now, (the City) is going to be sued. In his opinion, the contract is valid.

In response to a question from Mr. DeVito, Mr. Hayes recalled the initial denial by the City to allow the building of the cell tower. What the City did *not* do was to provide a detailed list of reasons why the denial was put forward. That is a requirement under Federal law.

Mr. Berry recalled a CUP and Certificate of Appropriateness. He asked about the length of time for which building permits are valid. Mr. Hayes’ response was “Once we’re told ‘We’re the Federal Government. You can go ahead and build that tower’, that’s it.”

Mr. DeVito spoke about laws written reactively, and having had to “cut a deal” and not liking it.

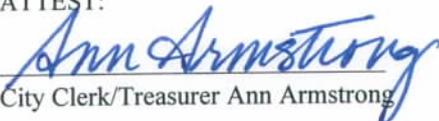
Mr. Hayes recommended charging the City Attorney with frequent (six-eight months) reviews of Federal law so as to do everything within (the City’s) power to protect the historic area of the City.

Mr. Raphael withdrew his motion.

Mr. DeVito moved to adjourn. Dr. Kirkpatrick seconded. Motion carried 6/0/0

This is the signature page for the minutes of the special meeting of the Eureka Springs City Council on Tuesday, August 2, 2011.

ATTEST:

  
City Clerk/Treasurer Ann Armstrong

APPROVED:

  
Mayor Morris Pate

**Special Council Mtg. 8/2/11 2**