

MINUTES

The Rogers City Council met in *regular session* in the Council Chambers of the Maurice H. Kolman City Hall Building on Tuesday, January 23, 2018 at 6:30 p.m. The meeting was called to order by Mayor Greg Hines. Those in attendance were led in the Pledge of Allegiance.

PUBLIC FORUM:

There were no comments from anyone in the audience.

The Public Forum was declared closed.

COUNCIL MEMBERS PRESENT:

Mark Kruger, Buddy Wright, Betsy Reithemeyer, Gary Townzen, Clay Kendall, Jerry Carmichael, and Barney Hayes. Marge Wolf was absent.

OTHER OFFICIALS PRESENT:

City Clerk-Treasurer Peggy David, City Attorney Andrew Hatfield, Senior Staff Attorney Jennifer Waymack, Director of Finance Casey Wilhelm, Water Utilities Superintendent Earl Rausch, Water Utilities Operations Manager Brent Dobler, Parks Superintendent Stan Weaver, Director of Parks & Recreation Jim White, Fire Chief Tom Jenkins, Police Chief Hayes Minor, Community Development Director John McCurdy, Public Relations Specialist Ben Cline, City Planner Ethan Hunter, CDBG Administrator Donna Johnston, and Assistant to the Mayor Carey Anderson.

ACTION ON MINUTES:

(January 9, 2018)

Motion by Wright, second by Townzen to approve the minutes of January 9, 2018 as submitted.

Voice vote: Unanimous -Yes. ***Motion carried.***

Approves the suspending of rules for the meeting.

Motion by Kruger, second by Reithemeyer to suspend the rules to consider all items on the agenda by title only and on a single reading.

Roll call: Unanimous – Yes. ***Motion carried.***

REPORTS OF BOARDS AND STANDING COMMITTEES:

(Agenda Item #1)

RES. #R18-06 Amending the City of Rogers 2018 Budget to Appropriate \$368,273 from Community Development Block Grant Fund Reserves to Various Accounts

The resolution was introduced by Councilmember Reithemeyer and read by title only by City Attorney Andrew Hatfield.

Reithemeyer, chair of the Finance Committee, reported the committee had met, recommended a “Do pass” and recognized Community Block Development Grant Administrator Donna Johnston.

Johnston explain the 2017 CBDG funds were not received until late October, so a majority of the money was not spent and needs to be moved over into the 2018 budget.

Motion by Reithemeyer, second by Kruger to adopt the resolution.

Voice vote: Unanimous – Yes. ***The resolution is adopted.***

(Agenda Item #2)

ORD. #18-03 Assigning Recently Annexed Territory Known as “Certain Lands East of Highway 112” to City Ward 3

The ordinance was introduced by Hayes and read by title by Hatfield.

Hayes reported the Resources and Policy Committee had met, recommended a “Do pass” and recognized Staff Attorney Jennifer Waymack.

Waymack explained with the recent annexation election the area needs to be assigned to a city ward. It has been determined that the area should be assigned to Ward 3.

The Mayor asked, “Shall the ordinance pass?” Roll call: Unanimous – Yes. ***The ordinance is adopted.***

The Mayor asked, “Shall the emergency clause pass?”

Roll call: Unanimous – Yes. ***The emergency clause is adopted.***

(Agenda Item #3)

RES. #R18-07 Authorizing the Destruction of Certain Records of the Offices of Finance, Human Resources and City Clerk/Treasurer

The resolution was introduced by Hayes and read by title by Hatfield.

Hayes reported the Resources and Policy Committee had met, recommended a “Do pass” and recognized Director of Finance Casey Wilhelm.

Wilhelm stated that this resolution would allow for the annual destruction of records from Finance, Human Resources and City Clerk-Treasurer from 2012 and past and 2009 and past.

Motion by Kruger, second by Reithemeyer to adopt the resolution.

Voice vote: Unanimous – Yes. ***The resolution is adopted.***

(Agenda Item #4)

RES. #R18-08 Authorizing an Agreement for Transit Services with Ozark Regional Transit for the 2018 Year in the Amount Not to Exceed \$200,000

The resolution was introduced by Kruger read by title by Hatfield.

Kruger, chair of the Transportation Committee, reported the committee had met, recommended a “Do pass” and recognized City Planner Ethan Hunter.

Hunter explained this annual contract with Ozark Regional Transit is the same terms as previous years.

Motion by Kruger, second by Reithemeyer to adopt the resolution.

Voice vote: Unanimous – Yes. ***The resolution is adopted.***

(Agenda Item #5)

RES. #R18-09 Authorizing a Contract with Gray Barn, A Landscape Company of Fayetteville, AR for City of Rogers Landscaping Services for 2018 in an Amount not to Exceed \$111,203

The resolution was introduced by Councilmember Wright and read by title by Hatfield.

Wright, chair of the Community Services

Committee, reported the committee had met, recommended a “Do Pass” and recognized Parks and Recreation Director Jim White.

White explained that two years ago the landscape maintenance was split between the Street Department and Parks Department. This contract combines all of landscape maintenance with one company.

Motion by Hayes, second by Kruger to adopt the resolution.

Voice vote: Unanimous – Yes. *The resolution is adopted.*

(Agenda Item #6)

RES. #R18-10 Authorizing a Recreation and Sports Agreement and Sublease with Rogers Community School Recreation Association, of Rogers, AR for the 2018 Year

The resolution was introduced by Wright and read by title by Hatfield.

Wright reported the Community Services Committee had met, recommended a “Do Pass” and recognized Jim White.

White explained this agreement has been in place for many years. Last year the agreement was reviewed and amended. This contract continues the long-standing relationship for sports programs.

Motion by Kruger, second by Wright to adopt the resolution.

Voice vote: Unanimous – Yes. *The resolution is adopted.*

(Agenda Item #7)

RES. #R18-11 Authorizing a Lease Agreement with Rogers Youth Center, Inc. of Rogers, AR for Certain Real Property Known as the Rogers Activity Center, Part of Foerster Park and Other Property

The resolution was introduced by Wright and read by title by Hatfield.

Wright reported the Community Services Committee had met, recommended a “Do Pass” and recognized Staff Attorney Jennifer Waymack.

Waymack reported this annual contract has been amended to allow Rogers Youth Center to lease the western side of the old recycling

building to Peddle It Forward.

Motion by Kruger, second by Reithemeyer to adopt the resolution.

Voice vote: Unanimous – Yes. *The resolution is adopted.*

(Agenda Item #8)

ORD. #18-04 Waiving Competitive Bidding for the Purchase of Police Vehicles for Use by the Rogers Police Department

The ordinance was introduced by Kruger and read by title only by City Attorney Andrew Hatfield.

Kruger, a member of the Public Safety Committee, reported the committee had met, recommended a “Do pass” and recognized Police Chief Hayes Minor.

Minor reported this ordinance waives competitive bidding for the purchase of 13 vehicles from a dealer from Northwest Arkansas who will match the state bid price, up-fit the vehicles and honor the warranties.

The Mayor asked, “Shall the ordinance pass?”
Roll call: Unanimous – Yes. *The ordinance is adopted.*

The Mayor asked, “Shall the emergency clause pass?”
Roll call: Unanimous – Yes. *The emergency clause is adopted.*

(Agenda Item #9)

ORD. #18-05 Amending the City of Rogers Municipal Code Concerning Discharge of Firearms; To Allow Citizens of Rogers Who Were Annexed In By An Election to Continue to Safely Discharge Firearms on their Property

The ordinance was introduced by Kruger and read by title only by City Attorney Andrew Hatfield.

Kruger reported the Public Safety Committee had met, recommended a “Do pass” and recognized Chief Minor and Staff Attorney Waymack.

Waymack explained that prior to the annexation election while visiting with the residents in that area we repeatedly heard that they wanted to continue shooting. We thought it was a

reasonable request, so this ordinance allows for those residents affected by annexations to continue to discharge firearms on their property in a safe manner and includes a grandfather clause which is in place until property ownership changes hand or some type of development such as lot-split, subdivided or rezoning occurs.

The Mayor asked, “Shall the ordinance pass?”
Roll call: Unanimous – Yes. ***The ordinance is adopted.***

The Mayor asked, “Shall the emergency clause pass?”
Roll call: Unanimous – Yes. ***The emergency clause is adopted.***

OLD BUSINESS:

None.

NEW BUSINESS:

(Agenda Item #1)

Appeal of Rogers Planning Commission’s Approval of a Conditional Use Permit for Kyle M. Proctor at 3711 Southern Hills Blvd.

Community Development Director John McCurdy explained that the conditional use permit request from Kyle Proctor for a vehicle washing operation at 3711 Southern Hills Blvd. was heard at the January 2, 2018 Planning Commission meeting.

McCurdy reported that at the January 2, 2018 Planning Commission meeting during the Public Hearing there were no comments in favor of the conditional use permit and three speaking against, Clinton Bennett, John Cocker and Jamie Rheeme. The Planning Staff recommended approval. The Planning Commission unanimously approved the conditional use permit. The request for an appeal from Generations Bank was received on January 8th, which is within the 10-day period as provided in city code. Per city code the City Council may vote to grant or deny the conditional use permit.

Kyle Unser, representing Generations Bank, asked the council to deny the conditional use

permit because proper notice was not received by Generations Bank to give the bank the chance to be heard during the Public Hearing.

Unser said city code requires anyone who is within 300 feet of the property in question should receive a certified letter giving notice of the public hearing. When inquiring with the city as why Generations Bank did not receive notification, the city said the letter was sent to First Bank and returned undeliverable. Why wasn't the notice resent? To date, Generations Bank has never received any notice, which is a fundamental right. Another issue is that according to city code, the property owner is the only one who can request a conditional use permit. Mr. Proctor does not own the property and there is no proof that there is a contract to purchase the property and has the authority to request the conditional use permit. We have spoken with the owner of the property who contends that there is no contract to purchase. There are also covenants in place and the proposed use is not compatible with the adjacent properties and incongruent with the City's master land plan. The Planning Commission focused too much on the nearby Casey's location. The code says that compatibility of adjacent properties should be a consideration. The procedure was not followed, and without fundamental notice, Generations Bank had no voice, and this needs to go back to Planning Commission. Clinton Bennett is also present and who spoke at the Planning Commission if anyone wants to recognize him.

Bill Watkins, representing Kyle Proctor, said the applicant of a conditional use permit is required to get mailing addresses from tax records of all property owners within 300-ft. of the proposed property. Whether First Bank or Generations Bank has taken the time to change the name on the tax roll, I can't say, but the list included the name First Bank with the mailing address of Southern Hills Road. When it was returned undeliverable, it was resent with the mailing address of Southern Hills Blvd. and

returned unclaimed. Watkins displayed a copy of the mailing showing that it was unclaimed. Also, according to city code, a notice of public hearing sign was posted on the property. The question of compatibility is a subjective issue and whether it is adjacent or adjoining is not defined in the code. Planning Commission looks at what is going on in the area. Casey's location is an influence. The property is zoned C-2 and surrounding property is C-2. The proposed use is allowed in C-2. Regarding the question of the property owner requesting the conditional use permit, the planning staff provided a copy of the property owner certification in the file with the conditional use permit application. The city staff report supports the issuance of a conditional use permit. The Planning Commission did not find any deficiencies and approved the conditional use permit.

Staff Attorney Waymack said she is not concerned with the notice issue because Generations Bank is having the opportunity to be heard right now. Because their property is within 300-ft. they have the right to appeal the Planning Commission approval. Now, the city council has to decide whether this is an appropriate use. Notification is not an issue.

Unser contended that notification is an issue, is part of the ordinance and should be considered. When the owner found out about the approval he was notified and filed the appeal.

Mayor Hines noted that Generations Bank is a new name change.

Unser said there is signage showing Generations Bank.

Councilmember Carmichael asked who owns the property.

Unser said First Bank is the recorded title holder.

Mayor Hines offered this to the council: You may remand it back to the Planning Commission, but if that is the case, you could be seeing this again two meetings from now.

Councilmember Reithemeyer as a point of personal privilege recognized Clifton Bennett.

Bennett said he had talked to the property owner who says that Proctor does not have a contract to purchase the property.

Watkins said he has seen the contract for the purchase of the property.

Council members discussed whether the conditional use permit is tied to the property owner.

Waymack confirmed that the conditional use permit goes with the property owner. If ownership changes, then the new property owner must obtain a new conditional use permit.

Waymack also noted that city code states that if an appeal is filed, the city council may vote to grant or deny the conditional use permit.

Mayor Hines explained that once a motion is made or the question called the voting process is as follows:

- A “Yes” vote would grant the appeal and negate the Planning Commission action.
- A “No” vote would carry forward the Planning Commission’s decision.

Councilmember Kruger commented that according to the Staff Attorney that in her opinion, we are meeting all legal qualifications, that the Planning Staff has recommended this and the Planning Commission has voted for it.

The Planning Commission’s approval of the conditional use permit is upheld.

The Mayor asked, “Shall the council approve the appeal of the Planning Commission’s decision?”

Roll call: Kendall – Yes; Carmichael, Hayes,

Kruger, Wright, Reithemeyer and Townzen –
No. **Motion *fails*.**

(Agenda Item #2)

ORD. #18-06 Accepting the Replat of Pinnacle Heights Subdivision, Lot 4

The ordinance was introduced by Kruger and read by title only by Hatfield.

Bill Watkins, representing the developer, requested the replat.

The Mayor asked, “Shall the ordinance pass?”
Roll call: Unanimous – Yes. ***The ordinance is adopted.***

The Mayor asked, “Shall the emergency clause pass?”
Roll call: Unanimous – Yes. ***The emergency clause is adopted.***

There being no further business, motion by Kruger, second by Reithemeyer to adjourn the meeting.
Meeting adjourned at 7:12 p.m.

ATTEST:

APPROVED:

Peggy David, City Clerk-Treasurer

C. Greg Hines, Mayor