

EDMOND CITY COUNCIL MINUTES

January 28, 2008

Mayor Dan O'Neil called the regular meeting of the Edmond City Council to order at 5:30 p.m., Monday, January 28, 2008, in the City Council Chambers.

2. Approval of Minutes of January 14, 2008. Motion by Waner, seconded by Miller, to approve Minutes. **Motion carried** as followed:

AYES: Mayor O'Neil, Councilmembers Page, Waner, Lamb and Miller
NAYS: None

3 Appointments to Boards and Commissions:

A. **Appointment to the Edmond Historic Preservation Trust.** Mayor O'Neil nominated Ken Rees for appointment to serve a term expiring in January, 2011. Mayor O'Neil stated this item would be withdrawn.

B. **Appointment to the Central Edmond Urban Development Board.** The University of Central Oklahoma nominated Charlie Johnson for re-appointment to serve a term expiring in October, 2008.

Motion by Lamb, seconded by Waner, to approve Item 3.B.
Motion carried as follows:

AYES: Mayor O'Neil, Councilmembers Page, Waner, Lamb and Miller
NAYS: None

4. GENERAL CONSENT ITEMS: (General Consent Items were voted on collectively except where noted.)

A. **Approval of Administrative Items:**

- 1) **Acceptance of City Manager's Financial Report for month ending December 31, 2007.**
- 2) **Acceptance of City Treasurer's Investment Report for month ending December 31, 2007.**
- 3) **Public Hearing and Consideration of Ordinance No. 3122 amending Title 5 of the Edmond Municipal Code by adding New Sections 5.04.160(A) providing for active water**

supply to toilet facilities; 5.04.160(B) exceptions; 5.04.160(C) penalty; and providing for Repealer and Severability. Staff requested this ordinance due to the increase in citizens continuing to occupy residential structures after the water meter has been removed. Councilmember Lamb stated in the past he sold repossessed homes for the FHA and at that time the water meters were winterized. He asked how to interpret the two hour window allowed in the ordinance in a sales environment when showing houses for sale. Steve Murdock, City Attorney, stated this ordinance would not apply under those circumstances because the residential structures were not occupied. He noted this ordinance only applies to occupied structures.

Motion by Page, seconded by Waner, to approve Ordinance No. 3122 as read by title by City Attorney. **Motion carried** as follows:

AYES: Mayor O'Neil, Councilmembers Page, Waner, Lamb and Miller

NAYS: None

- 4) **Public Hearing and Consideration of Ordinance No. 3123 amending Title 10 of the Edmond Municipal Code by adding Section 10.28.210 providing for overtaking and passing of bicycle.** In 2006, the Oklahoma State Legislature approved a bill requiring drivers to give bicyclists a three-foot clearance when passing. The bill allows municipalities to levy fines if an ordinance is approved authorizing the fines. The Edmond Bicycle Committee recommended adoption of the proposed ordinance. Councilmember Miller stated the ordinance does not address a requirement for the bicyclist to comply with traffic laws. Tim Tillman, Chairman of the Edmond Bicycle Committee, addressed Council and stated bicycles in Edmond have always been treated as vehicles and are subject to all the rights and responsibilities as vehicles on the streets of Edmond. He noted that part of the focus of the Edmond Bicycle Committee is to educate bicyclists. Mr. Tillman stated the Committee's purpose for adopting State law as part of local laws is to provide extra protection for bicyclists. He stated the Committee worked with the City Attorney and basically copied State law word for word into the proposed ordinance.

Motion by Page, seconded by Lamb, to approve Ordinance No. 3123 as read by title by City Attorney. **Motion carried** as follows:

AYES: Mayor O'Neil, Councilmembers Page, Waner, Lamb and Miller

NAYS: None

- 5) **Approval of supplemental appropriations for the Police Public Safety Limited Tax Fund - \$3,133**
- 6) **Approval of transfer of appropriations from 2000 Sales Tax Fund to restore funding for the Covell Underpass construction, right-of-way and preservation project - \$1,500,000**
- 7) **Approval of transfer of appropriations from City Council contingency fund to the City Manager budget to fund agreement with the small group - \$10,000**
- 8) **Approval of transfer of appropriations from the City Manager's budget for remodeling an area of the City First Building - \$2,500**
- 9) **Approval of transfer of appropriations from City Council contingency fund to Facility Maintenance Department to fund construction work on the Convention and Visitors Bureau building - \$5,000**
- 10) **Acceptance of maintenance bonds from the following:**
 - a) Fire Station No. 5, 5300 E. Covell
- 11) **Acceptance of easements from the following:**
 - a) Adfitech
 - b) Rodney A. and Kimberlee A. Babb
 - c) BLD, Inc.
 - d) Steve Bodner
 - e) Sammy Hotel, LLC

B. Approval of Purchases:

- 1) **Approval of purchase of five digital in-car video systems from L3 Communications-Mobile-Vision, Inc. for the five additional police cruisers approved in FY 2007/2008 budget as a sole source supplier in the amount of \$26,475.**

- 2) **Approval of purchase of software and contract services for improvements to CustomerWatch billing system from Mincom, Inc. as a sole source provider in the amount of \$37,900.**
- 3) **Acceptance of proposal for an interior burn prop system for the Fire Training Facility.** Purchasing Manager recommended accepting proposal from FireBlast 451, Inc., in the amount of \$531,345.

Motion by Lamb, seconded by Miller, to approve General Consent Items 4.A.(1,2,5-11) and 4.B.(1-3). **Motion carried** as follows:

AYES: Mayor O'Neil, Councilmembers Page, Waner, Lamb and Miller
NAYS: None

Motion by Page, seconded by Waner, to recess the City Council meeting in order to convene the Edmond Public Works Authority meeting. **Motion carried** as follows:

AYES: Mayor O'Neil, Councilmembers Page, Waner, Lamb and Miller
NAYS: None

Mayor O'Neil reconvened the City Council meeting.

7. Public Hearing and Consideration of amending the Covell Village Planned Unit Development (PUD) Design Statement regarding trailers and storage utility buildings, generally located west of Kelly, south of Covell Road, (Covell Property Development, LLC, applicant) Case No. Z070036. The original PUD Design Statement prohibited the display of pre-fabricated houses and trailers for hauling, rental and sale. The original intent was to prohibit full semi-trailers but not the residential, farm or personal use trailers. The applicant also originally sought to prohibit sales of mobile homes or other similar pre-constructed homes from being displayed at this location. The applicant did not realize that backyard style utility storage buildings would also be prohibited by the original wording of the design statement. The areas for display of the new allowable uses are shown on the Site Plan. The amended wording does not change the wording for the pre-fabricated house sales. The revised application will allow the sale of trailers for personal or small commercial use, whether by rental or sales. Planning Commission recommended approval.

Councilmember Lamb stated the Development Plan or Site Plan restricted the locations on the site where the trailers/storage buildings could be displayed. He stated he wanted to clarify for the record that the amended wording does not supersede those restrictions on location contained in the Development Plan/Site Plan.

Councilmember Page also requested the record show that the open display of the trailers/storage buildings would not front onto the major thoroughfares of Kelly Avenue and Covell Road.

Todd McKinnis, attorney representing Covell Property Development - owners of the property on which the Lowe's store will be located, addressed Council and stated the locations of the trailers/storage buildings is similar to the existing Lowe's and Home Depot stores.

Motion by Miller, seconded by Page, to approve Item No. 7 with the above clarification noted by Councilmember Lamb. **Motion carried** as follows:

AYES: Mayor O'Neil, Councilmembers Page, Waner, Lamb and Miller
NAYS: None

8. Public Hearing and Consideration of Ordinance No. 3124 amending Edmond Plan from General Commercial to Planned Unit Development (PUD) allowing open display, located at 400 S. Bryant, Bryant Square Shopping Center (Under the Sun Garden Center, applicant) Case No. Z070039. The site contains 29,766 square feet and will be used as a garden center. The building was formerly used as a Burger King Restaurant. The exterior of the building will be improved and new signage placed on the property. The ground sign will be a six feet tall, 42 square foot monument type sign. The applicant does not plan to add onto the building except for a covered area. No new drives are planned and the existing shared parking lot is already paved. The current owner of the site, Bryant Square Shopping Center, will continue to own the site and the applicant will lease the building and site. A site plan does not appear to be required. Staff recommended that if the applicant ceases operation, that other garden center type displays not be a permitted use and that the PUD be limited to the original "D-2" uses once the applicant no longer occupies the property. Planning Commission recommended approval.

Councilmember Waner asked if the applicant would have their own dumpster. Staff stated they were focusing on ensuring that each commercial business has their own dumpster and the applicant would use the existing enclosed dumpster location.

Mary Ann Karns, attorney representing the applicant, addressed Council and stated the building is currently vacant. She stated parking would be along the north side of the site as well as shared parking adjacent to their lot which will be more than adequate to comply with parking requirements. Ms. Karns stated the existing landscaping will be retained along the back and side of the lot and seasonal items will be placed in front of the building at different times throughout the year. A black wrought iron fence will be installed around the perimeter of the site. She stated there will be a parapet wall on the roof of the building to screen the mechanical equipment from view. She noted there will not be any products displayed on the sidewalk. Mr. Karns stated the building will contain wall signs on the front and back exterior walls. She stated at this time they are not asking for a variance on the ground sign but it was possible the applicant could request a variance in the future. She stated the applicant amended the design statement to reflect the restriction recommended by staff stipulating that another garden center would not automatically be a permitted use and that the PUD be limited to the original "D-2" uses once the applicant no longer occupies the property. She noted the application is in compliance with all city codes.

Motion by Page, seconded by Miller, to approve Ordinance No. 3124 as read by title by City Planner. **Motion carried** as follows:

AYES: Mayor O'Neil, Councilmembers Page, Waner, Lamb and Miller
 NAYS: None

Motion by Miller, seconded by Lamb, to attach Emergency Clause to Ordinance No. 3124. **Motion carried** as follows and Ordinance No. 3124 is in effect immediately:

AYES: Mayor O'Neil, Councilmembers Page, Waner, Lamb and Miller
 NAYS: None

9. Public Hearing and Consideration of Ordinance No. 3125 rezoning from "D-2" Neighborhood Commercial District to Planned Unit Development (PUD) to allow open display, located at 400 S. Bryant, Bryant Square Shopping Center (Under the Sun Garden Center, applicant) Case No. Z070033. This is a companion to the above item and was discussed at that time.

Motion by Lamb, seconded by Miller, to approve Ordinance No. 3125 as read by title by City Planner. **Motion carried** as follows:

AYES: Mayor O'Neil, Councilmembers Page, Waner, Lamb and
Miller
NAYS: None

10. **Public Hearing and Consideration of Ordinance No. 3126 amending Edmond Plan from Suburban Office Planned Unit Development (PUD) and Office Commercial PUD to General Commercial, located north of Henderson Hills Baptist Church, east of I-35 (Integrus Health, applicant) Case No. Z070037.** The site contains 29.16 acres. The property to the north and east is Arcadia Lake. Across I-35 is the Fox Lake Plaza development which includes the Wal-Mart Supercenter and future retail shops. The applicant has retained an engineer to study the flood plain issue which runs across the property. The applicant has also discussed the sensitive lands issue with the Community Image Department's Urban Foresters. Primary access to the property will be from the I-35 Frontage Road. Planning Commission recommended approval.

Councilmember Waner asked about the conservation assessment area and staff stated that issue has not been determined yet and will be considered during the site plan review process.

Dennis Box, attorney representing the applicant, addressed Council and stated the hospital will be a 40 bed hospital in Phase I. He noted the plat will include the property all the way to the frontage road.

Motion by Lamb, seconded by Miller, to approve Ordinance No. 3126 as read by title by City Planner. **Motion carried** as follows:

AYES: Mayor O'Neil, Councilmembers Page, Waner, Lamb and
Miller
NAYS: None

Motion by Miller, seconded by Waner, to attach Emergency Clause to Ordinance No. 3126. **Motion carried** as follows and Ordinance No. 3126 is in effect immediately:

AYES: Mayor O'Neil, Councilmembers Page, Waner, Lamb and
Miller
NAYS: None

11. **Public Hearing and Consideration of Ordinance No. 3127 rezoning from "D-3" Suburban Office Planned Unit Development (PUD) and "C-1" Low Density Multi-family PUD to "E-1" General Commercial, located north of Henderson Hills Baptist Church, east of I-35 (Integrus Health, applicant) Case No. Z070038.** This is a companion to the above item and was discussed at that time.

Motion by Lamb, seconded by Waner, to approve Ordinance No. 3127 as read by title by City Planner. **Motion carried** as follows:

AYES: Mayor O'Neil, Councilmembers Page, Waner, Lamb and Miller
NAYS: None

12. Public Hearing and Consideration of Ordinance No. 3128 rezoning from "A" Single Family Dwelling to "E-1" General Commercial District, located south of E. 2nd Street, 501 Wade Martin Drive (Oxford Development, Inc., applicant) Case No. Z070041. This site contains two acres and is projected for general commercial zoning on the Edmond Plan. The applicant is also developing the adjacent Falls Commercial and Falls Residential developments. Wade Martin Drive is a private street and not constructed to City standards. The applicant has been in discussions with the adjacent Tuscan Villas Addition regarding improving Wade Martin Drive to City standards in order to have another outlet from the Tuscan Villas Addition as well as the applicant's commercial development. Wade Martin Drive would be required to conform to City standards if it is to be used for commercial purposes. Planning Commission recommended approval.

Randel Shadid, attorney representing the applicant, addressed Council and stated the subject tract was just recently acquired by the applicant and if they are able to acquire the tract to the north they plan to upgrade Wade Martin Drive to City standards.

Lydia Lee addressed Council and stated the applicant has already scraped the adjoining property, known as The Falls, of vegetation which is an eye sore on 2nd Street as well as caused environmental problems. She noted the applicant has returned several times and requested extensions on The Falls development and now they are requesting to expand this project. Ms. Lee requested the applicant not be allowed to bulldoze the site and cause the same environmental problems already seen on the adjoining site until they are ready to proceed with the project.

Staff stated the applicant would be required to submit the required paperwork for a land disturbance permit prior to any scraping of the site in accordance with Title 23.

Motion by Miller, seconded by Lamb, to approve Ordinance No. 3128 as read by title by City Planner. **Motion carried** as follows:

AYES: Mayor O'Neil, Councilmembers Page, Waner, Lamb and Miller
NAYS: None

13. **Public Hearing and Consideration of amendment and extension of a Planned Unit Development (PUD) for Edmond Town Center, located south of Danforth Road, west of Kelly (D.J. Christie, applicant) Case No. Z070041.** The PUD was approved on November 13, 1995, and has been extended two previous times. The site contains 36 acres and is zoned "E-1" General Commercial PUD. Access will be from both Kelly and Danforth. Since the City is in the process of developing plans for the intersection of Kelly and Danforth, the PUD amendment will need to match the City's project regarding drive approaches and locations as to median crossover locations and driveway separation. Traffic control lights have been discussed as a requirement for this project. Ten "E-1" uses have been eliminated from the development. A 70 foot buffer will be maintained next to the existing residential on the south. Planning Commission recommended approval.

General discussion was held regarding connectivity to the Swan Lake Addition. Councilmember Page stated he will require the applicant to provide a linkage to the Swan Lake Addition before he will vote to approve any future development. Councilmember Miller stated he would not require linkage but wanted it to remain an option. Councilmember Lamb stated adequate connectivity is important to the viability of the Swan Lake neighborhood. He stated the residents have many problems being able to make left turns out of their neighborhood and he felt connectivity must remain a viable option for those residents. He noted the out parcels will be serviced by the interior street system.

Mayor O'Neil stated he reviewed the traffic study and it shows the intersection of Kelly and Danforth Roads is the worst intersection in the City as far as the number of accidents. He asked why the traffic study did not address that issue. Steve Manek, City Engineer, stated his department provided the traffic counts to the applicant's engineer as well as the City's proposed improvements for that intersection to address the turning movements and accidents. He stated the City is proposing a traffic signal at Hawthorn Place to help alleviate those problems. Mr. Manek stated the applicant needs to work with the City when they install the turn lane improvements that they coincide with the improvements the City is making to that area. Mayor O'Neil stated he felt the applicant should be more than willing to just work with the City and should make sure that a further problem is not created. Mr. Manek stated the City plans to spend \$3.5 million to improve the intersection regarding access management, to alleviate accidents and to increase capacity at the intersection.

Doug Klassen, MKEC Engineering Consultants, Inc., addressed Council and stated the applicant has worked with staff regarding development of the traffic study and access controls. He stated

he understood the intersection has a very high rate of accidents but nothing can be done at this point.

Councilmember Waner stated the re-submitted PUD date November 27th shows a hotel/motel is one of the uses allowed. She asked the applicant if they were considering a hotel/motel at this site. Mr. Klassen stated at this time the applicant would prefer to keep that as an allowable use.

Tom Thoreson, addressed Council representing the applicant, and stated the applicant does not have a particular user in mind regarding the hotel/motel use but wanted that option for the future. He stated if plans change and a hotel/motel is not constructed then they will need to redesign their site plan which will free up space for additional commercial development. He noted connectivity to the Swan Lake Addition has always been contemplated from a concept standpoint. Mr. Thoreson stated early in the planning stages the neighbors were opposed to connectivity and so it was eliminated from the plans. He stated the applicant would be in favor of connectivity if it is the desire of the area homeowners. He pointed out that most of the streets in that neighborhood are private which could present problems. He stated he would look to staff for direction on that issue. Mr. Thoreson stated the traffic study did the best it could to address the pre-existing traffic conditions and he acknowledged there are contributors from their developments but other businesses in the area are also contributing to the traffic problems. He stated they are willing to do their part to help with the traffic issues but he felt those problems were not just caused by the two existing businesses on the southwest corner of the intersection. Mr. Thoreson stated they have had many discussions with the soccer club regarding purchasing a portion of the soccer complex. He stated they are optimistic that they can come to a successful conclusion on this matter. He stated appraisals are being completed at this time which will perhaps enable both parties to reach an agreeable solution.

Councilmember Waner stated she had reservations about a hotel/motel in an area where there are several shopping centers. She stated the traffic pattern would be different which could further impact the traffic issues.

Mayor O'Neil stated the PUD is contingent upon the City purchasing property from the applicant to expand the soccer complex. Those discussions are still ongoing at this time.

Councilmember Lamb stated he felt a hotel/motel is not consistent with the City's land use pattern for this area but if the soccer complex is expanded and additional tournaments are held at the complex the dynamics of the area would be changed. He felt at

this time the economics of the area would not be adequate for a hotel/motel development. He stated he understood the reason for keeping that option available.

Motion by Lamb, seconded by Miller, to approve Item 13. **Motion carried** as follows:

AYES: Mayor O'Neil, Councilmembers Page, Waner, Lamb and Miller
 NAYS: None

14. Discussion and Consideration of possible rezoning of residential subdivisions that are zoned differently than developed. Mayor O'Neil stated he requested this item be discussed due to recent changes to Title 22, the City's zoning ordinance, which requires site plans and developments to be site specific regarding the zoning category for each location. He stated approximately 20 housing additions are zoned at a higher category than their current usage. He stated this is confusing for a number of residents, some of which have requested this zoning action be initiated. Mayor O'Neil requested Council initiate the zoning changes for the affected housing additions. He stated the first step is notification of the homeowners associations and then each property owner individually. He requested the requirement for the large four by eight foot signs posted on the property be waived along with the requirement of publishing each notice in the newspaper. He stated he felt it was essential to notify all property owners who will be effected by the zoning changes.

General discussion was held regarding the notification costs to all the property owners. Also discussed was the problem that not all the affected neighborhoods have an active homeowners association. Steve Murdock, City Attorney, stated each rezoning initiative would require amending the ordinance and state law requires notification of each property owner within 300 feet and also each ordinance be published in the local newspaper. He stated he felt the only requirement that could be waived is the requirement of posting the four by eight foot sign on the property. Councilmember Miller asked what happens if one or several property owner's object to the rezoning. Councilmember Lamb stated that is an issue that must be determined by Council as to how to solve that issue if/when it arises. Discussion was held on whether all 20 neighborhoods would be notified at once or over a period of time and it was determined that the notifications would be done over a period of time and perhaps by geographic quadrants in the same manner that Edmond Plan IV was reviewed. Councilmember Page stated the purpose of the rezonings are to eliminate the possibility of a property owner bulldozing their

home and constructing a 7-Eleven store on their property. He noted there are some neighborhoods where that concept is a possibility. It was noted by staff that anyone wanting to construct something other than a single family home would be required to amend Edmond Plan IV. with Mayor O'Neil stated the notifications will be sent to the affected homeowners and Council will await their responses and continue on with the process.

Motion by Lamb, seconded by Miller, to direct staff to review the notice provisions, including the posted notice language, that effect the initiative and to consider any other changes that would be required and bring those back to the Council. **Motion carried** as follows:

AYES: Mayor O'Neil, Councilmembers Page, Waner, Lamb and Miller
NAYS: None

15. Executive Session to discuss the following pending claim/litigation (Executive Session authorized pursuant to 25 Okla. State. Sec. 307 (B)(4)):

Assemi vs. City of Edmond

Motion by Waner, seconded by Lamb, to meet in Executive Session to discuss the above pending claim. **Motion carried** as follows:

AYES: Mayor O'Neil, Councilmembers Page, Waner, Lamb and Miller
NAYS: None

Mayor and Councilmembers recessed to the City Council Conference Room at 7:10 p.m. and returned to the City Council Chambers at 7:41 p.m.

Motion by Miller, seconded by Page, to adjourn Executive Session. **Motion carried** as follows:

AYES: Mayor O'Neil, Councilmembers Page, Waner, Lamb and Miller
NAYS: None

16. Consideration of action with regard to the above claim/litigation. No action was taken on this item.

17. NEW BUSINESS:

Sandra Hammett, 815 Buckingham Way, addressed Council and stated she lives in Edmond North Estates at the corner of Covell and

Broadway. She stated recently the federal government approved legislation requiring trains to blow their whistle at each intersection for safety reasons. Ms. Hammett while the legislation removed all the established quiet zones, it did establish guidelines for municipalities to re-establish the quiet zones. She stated she understands that safety is a very important issue, but since she lives near an intersection affected by the legislation, it has affected her lifestyle tremendously because he time the trains goes through the intersection and blows the whistle it wakes her up. She noted this happens several times in the early morning hours. She stated she has spoken with several of her neighbors and an initiative petition is under way to request the City establish these quiet zones. She stated she has also spoken with a representative of the Burlington Northern Santa Fe railroad regarding this problem. She noted the representative, Lyn Hartley, has offered to meet with city officials, at the City's request, in an effort to resolve this problem for the area homeowners. Mayor O'Neil requested Ms. Hammett provide staff with the information to contact Mr. Hartley in order to address this issue.

Lydia Lee, addressed Council regarding the 2000 sales tax election. She stated there is a general misconception by citizens regarding what that tax entails. She stated many citizens are talking about the recent articles regarding the police and fire departments retirees and what they feel was promised to them when the tax was approved. She stated since there are always two sides to every situation, she encouraged the Council to resolve these issues prior to the next election to finance a new public safety center. Ms. Lee suggested an independent fact finding committee be appointed in order to resolve this issue.

18. Motion by Miller, seconded by Lamb, to adjourn meeting.
Motion carried as follows:

AYES:	Mayor O'Neil, Councilmembers Page, Waner, Lamb and Miller
NAYS:	None

City Clerk

Mayor