

EDMOND CITY COUNCIL MINUTES

March 24, 2008

Mayor Dan O'Neil called the regular meeting of the Edmond City Council to order at 5:30 p.m., Monday, March 24 2008, in the City Council Chambers.

2. Approval of Minutes of March 10, 2008. Motion by Miller, seconded by Page, to approve Minutes. **Motion carried** as followed:

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

3. Approval of Special Meeting Minutes of March 6, 2008. Motion by Waner, seconded by Page, to approve Minutes. **Motion carried** as followed:

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

4. City Council Presentations:

- A. Presentation of proclamation proclaiming March, 2008, as "DeMolay Month" in the City of Edmond.
- B. Presentation of the Arbor Day poster contest winners.
- C. Presentation of proclamation proclaiming March 24-28, 2008, as "Arbor Week" in the City of Edmond.

5. Appointments to Boards and Commissions:

- A. **Appointment to the Edmond Arts and Humanities Council.** Mayor O'Neil nominated Janet Kem for appointment to serve a term expiring in February, 2011.
- B. **Appointment to the Visual Arts Commission.** Mayor O'Neil nominated Miles Mitzner for appointment to serve a term expiring in March, 2011.
- C. **Appointment to the Edmond Historic Preservation Trust.** Mayor O'Neil nominated Cindy Young for appointment to serve a term expiring in March, 2011.

Motion by Lamb, seconded by Waner, to approve Items 5.A. through 5.C. **Motion carried** as followed:

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

NAYS: None

6. **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 February 29, 2008.** Larry Stevens, City Manager, addressed Council and stated the report reflects the first nine months of the fiscal year. He noted the sales taxes received are under projections for this fiscal year. He stated the sales taxes increased 4.3% and 7% was projected. He stated budgets for the remainder of this fiscal year have been adjusted as well as the first year of the five year budget plan. Mr. Stevens noted that a 4.3% increase was very healthy and the City is not in a budget crises.

2) **Acceptance of City Treasurer's Investment report for month ending February 29, 2008.** Stephen Schaus, City Treasurer, addressed Council and stated City investments had an unrealized gain of \$879,000. He stated the City Treasurer's office manages a portfolio of approximately \$138M of mostly US Treasury Bonds or US Agency Obligation Securities. He stated of this amount, the Bank of Oklahoma holds approximately \$127M through their trust department and Bank of New York holds approximately \$9M. Mr. Schaus stated they manage the funds with a "buy and hold" strategy which matches receipts to disbursements. He noted the Treasurer's office does not actively trade the portfolio. He stated even though the value of stocks have decreased recently, the value of the City's portfolio has increased due to their investment date. He noted as the bonds mature they will be reinvested but most likely at a lower interest rate than the current rate. Mr. Schaus stated within the past few months the City Council has approved a list of brokers/dealers that bonds can be purchased from. He noted three bids are required prior to any purchases of securities.

3) **Approval of agreement between the Edmond Historical Society and Edmond Historic Preservation Trust to**

provide for the operations and management of Edmond's first public schoolhouse, located at 124 E. 2nd Street. Mayor O'Neil noted that Councilmember Lamb has served on a special committee to help create a partnership between the two entities and he requested comments from him. Councilmember Lamb stated he is a current member of the Historical Trust and this agreement is long overdue. He stated the schools will be able to use the historic schoolhouse as a teaching tool showing how schools were in 1889. He noted the reason for requesting Council approval of this contract is that both organizations receive funding from the City. He stated this agreement is a major step forward in getting the schoolhouse into the public domain so that it is accessible on a regular basis. He expressed his appreciation to both organizations for their work in developing this agreement and to the Trust for preserving the schoolhouse.

- 4) **Approval of transfer of appropriations to rebuild the crossing at 33rd Street with funding from the 2000 Capital Improvements Tax Fund - \$45,250**
- 5) **Approval of transfer of appropriations from the 2000 Capital Improvements Sales Tax Fund for the Kelly widening, Danforth to Coffee Creek - \$900,000**
- 6) **Acknowledge receipt of construction permits from the Oklahoma Department of Environmental Quality for Enclave Apartments at Covell Village.**
- 7) **Approval of a Conditional Letter of Map Revision (CLOMR) application to the Federal Emergency Management Agency and a Floodplain Development Permit for Coffee Creek, east of Sooner Road and north of Covell Road.**
- 8) **Acceptance of public improvements and maintenance bonds for the following:**
 - a) 15 inch sanitary sewer line, south of Swan Lake
 - b) 733 Village Parkway
 - c) 600 Enterprise
 - d) 15th Street and Santa Fe
 - e) 3057 Willowood
 - f) Stonecreek Office Park
 - g) Fretz Avenue extension
 - h) 3rd Street and Broadway
 - i) Kimberly Crossing
 - j) 525 N. Jackson

9) **Acceptance of Final Plat, public improvements and maintenance bonds for the following:**

- a) Oakview Professional Pointe
- b) Landings II at Stonebridge

10) **Acceptance of easements from the following:**

- a) BancFirst
- b) TLM Development, LLC

Motion by Miller, seconded by Page, to approve General Consent Items 6.A.(1-10). **Motion carried** as follows:

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

B. Approval of Purchases:

- 1) **Approval of Change Order No. 1 with Young General Constructors, LLC for the Fink Park to Hafer Park trail - Phase I, in the reduced amount of \$60,962.86.**
- 2) **Approval of disposition by the Purchasing Manager for campsite RV pedestals (100) for Arcadia Lake in the amount of \$13,043.**
- 3) **Approval of utility relocation agreement with Oklahoma Natural Gas for a portion of Kelly Avenue, adjacent to Lowe's in the amount of \$125,571.**

Motion by Lamb, seconded by Page, to approve General Consent Items 6.B.(1-3). **Motion carried** as follows:

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

7. Public Hearing and Consideration of Ordinance No. 3133 amending Title 10 of the Edmond Municipal Code to add new Chapter 10.62 - Low-Speed Electrical Vehicles; Section 10.62.010 Definitions; Section 10.62.020 Requirements; Section 10.62.030 Restrictions; and Section 10.62.040 Prohibitions; and providing for Repealer and Severability. Councilmember Miller stated the ordinance prohibits this type of vehicle from being driven on public roads or streets with a speed limit over 30 miles per hour and specifically prohibits driving on Broadway and Boulevard from

15th Street to Danforth Road, on public sidewalks or public trails. He noted this essentially restricts these type of vehicles to residential and side streets. Councilmember Miller stated the vehicles are required to have licenses, tags and insurance.

Motion by Miller, seconded by Waner, to approve Ordinance No. 3133 as read by title by City Attorney. **Motion carried** as follows:

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

Motion by Miller, seconded by Page, 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.

10. PLANNING CONSENT ITEMS:

- A. **Public Hearing and Consideration of request to amend the previously accepted plat of Augusta Farms Addition regarding a deed approval to modify Lots 6 and 7, Block 1 (Paul Iser, applicant).** Planning Commission recommended approval.

Motion by Lamb, seconded by Miller, to approve Planning Consent Item 10.A. **Motion carried** as follows:

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

- B. **Consideration of Final Plat of The Summit II at Oak Tree, located south of Waterloo Road, approximately one-half mile east of Kelly (Oak Tree Partners, LLC, applicant) Case No. PR070048.** The site contains 12.81 acres and is zoned "C-3" Multi-Family Planned Unit Development. The street connection to Waterloo Road is planned for exit only and does not meet the entrance standard because there is not sufficient space to queue four vehicles in front of the gate. The main entrance will remain on Kelly. Planning Commission recommended approval.

Mayor O'Neil stated that Council has proposed rezoning several additions in the City to the use that they are currently being used for and he requested the subject property be rezoned to match the actual use planned of single family usage. He noted that portions of this plat are zoned for commercial and he would like to meet with the developer to discuss rezoning the property to the appropriate usage.

Brian Coon, Coon Engineering, addressed Council representing the applicant and stated he would speak with the developer about pursuing rezoning of the areas of the property that are not zoned for single family use. He stated an addendum can be placed on the final plat that the lots will only be used for single family residential. Mr. Coon stated he was sure the developer would be willing to meet with the Mayor to discuss this matter.

Motion by Miller, seconded by Lamb, to approve Planning Consent Item 10.B. **Motion carried** as follows:

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

11. Public Hearing and Consideration of extension of Commercial Site Plan for the Bridges at Spring Creek Shopping Center, generally located east of Bryant Avenue, North of 15th Street, south of Pelican Bay and Hafer Park (Sooner Development, applicant) Case No. SP070020. The applicant requested this item be continued to April 14, 2008.

Motion by Waner, seconded by Page, to continue this item to April 14, 2008, as requested by the applicant. **Motion carried** as follows:

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

12. Public Hearing and Consideration of Site Plan approval for a fire sprinkled office building at the Shoppes at Central Parke, located on the northwest corner of Kelly and Edmond Road (Aduddell Development, applicant) Case No. SP080001. The site contains 5.5 acres. The building contains 28,815 square feet of retail space on the first floor and 30,561 square feet of office space on the second floor for a total of 59,376 square feet. The parking lot will contain 240 spaces and the lights will be a maximum of 25 feet high. The ground signs on Kelly and Edmond Road are in compliance with City requirements. The mechanical equipment will

be located on the roof of the flat portion of the building and a parapet wall will be needed for screening purposes. There are tower portions of the building where the roof is pitched. No additional fencing is required or planned since there is an eight-foot site proof fence along the west property line. A sensitive border condition exists on the west side of the property due to the single family residential property. The applicant will plant additional trees on the west side of the property in order to qualify for the reduction of yard area for a side yard setback in a sensitive border condition. Two driveways are proposed, one each on Danforth Road and Kelly Avenue. The applicant's plan provides for 60 feet of right-of-way along Edmond Road rather than the required 90 feet of right-of-way. Planning Commission recommended approval.

Mayor O'Neil stated in the past the 90 foot of right-of-way has been required due to the elevation of the property and he noted the elevation of the land is flat.

Steve Manek, City Engineer, addressed Council and stated the property is very flat and the transportation plan cites the grading issues in the study. He noted improvements to this intersection are not in the five-year plan but the transportation plan calls for a four-lane divided street similar to Kelly and 15th Street. He stated the code requires 100 feet of right-of-way but typically developers in the past provided 70 feet of right-of-way on Kelly between 15th and 33rd Streets.

Councilmember Page stated he cannot support a variance from the 90 foot right-of-way requirement. He noted that intersection is becoming more heavily traveled and traffic will continue to increase when the Oklahoma Department of Transportation reconstructs the intersection at Kelly and Memorial Road. He stated the number one issue in the City is traffic flow and he felt additional right-of-way is needed to accommodate the growth of the City. He noted that the next project on Coltrane will cost as much to obtain the right-of-way as it will to construct the street.

Randel Shadid, attorney representing the applicant, addressed Council and stated the application is in compliance with Title 22 requirements and exceeds landscaping requirements. He stated the applicant has provided additional landscaping on the west side of the property and some of the dumpsters have been relocated in order to comply with the sensitive border requirement that does not allow dumpsters to be located within 25 feet of the side or the rear property line. Mr. Shadid stated the issue regarding right-of-way is not a site plan issue and should be discussed when the final plat is reviewed. He stated he felt 60 feet of right-of-way will allow for future intersection improvements. He stated

he felt that this matter should not be before Council because the applicant is not requesting a variance.

Rick Brown, architect for the applicant, addressed Council and stated the height of the building towers is 46 feet but the overall usable roof line of the building is 35 feet.

General discussion was held regarding the amount of right-of-way needed. Mr. Manek stated the last intersection reconstruction required 75 feet in order to construct a center median and additional turn lanes at Kelly and Covell. He noted that since he did not have any designs or surveys for this project that he was unable to determine the amount of right-of-way that would be needed for this intersection. Mr. Manek stated a traffic study has not been conducted at this point but could be required in later phases if restaurants or retail businesses are planned.

Councilmember Miller stated he did not have any issues with the design of the building and the height of the towers but he felt the sensitive border issue should not apply. He stated he cannot support the application because he is opposed to only a 60 foot right-of-way on Edmond Road.

Mayor O'Neil stated he would be willing to exchange the space needed to comply with the sensitive border condition for additional right-of-way.

Councilmember Waner stated she was also opposed to only 60 foot of right-of-way on Edmond Road. She stated she felt it would be a mistake to approve an application that is already recognized as borderline acceptable for future growth, in part because the property on the south is already developed. She noted this is one of only a few pieces of large properties remaining in this area of the City.

Councilmember Lamb stated he agreed that the sensitive border requirement was not designed for this type of application and should not apply. He stated the applicant is correct that the application is in compliance with Title 22 requirements. He noted if the detention facility is allowed then the right-of-way issue should be reviewed during the final plat process. Councilmember Lamb stated a precedent would be set by reducing the right-of-way and he asked how the precedent would be defined so as not to preempt Title 21 requirements in the next application. He noted this application is the second applicant to request a variance from the right-of-way requirements.

Mr. Shadid stated the precedent can be explained due to the flatness of the property as well as an as built environment as opposed to a non-built environment.

Lydia Lee addressed Council and stated she agreed with Council regarding the appropriateness of sensitive border on certain properties, however staff was just following the requirements of the ordinance. She stated Council will have to address the sensitive border issue regarding when the requirements are appropriate or not since they will be setting a precedent if this application is approved. Ms. Lee stated the agenda states the site plan is for an office building and she asked if the retail has been removed from this application. Staff stated the retail was still part of the application.

Councilmember Lamb stated the key for staff and future reference regarding the agenda item is that the title of the item contains the requirement for a fire sprinkled building in order to ensure that the applicant would not change their mind in the future and not fire sprinkle the building.

Mr. Shadid stated the applicant would be willing to provide an additional 10 foot buffer utility easement along Edmond Road and Kelly along with a 70 foot road right-of-way with the understanding that the easement can be landscaped and the landscaping can be counted toward the total landscaping count needed to comply with the landscaping requirements. Mr. Shadid stated the plat will be amended prior to Council review encompassing the changes he stated that the applicant has agreed to regarding the right-of-way and utility easements.

Mr. Manek stated that 70 foot of right-of-way plus the 10 foot utility easement should be adequate due to the flatness of the land.

Both Councilmembers Page and Waner stated they felt a precedent would be set by approving the right-of-way amendments. Councilmember Waner stated she was concerned because the City needs the right-of-way and Title 21 requirements are not adequate for future traffic needs. She noted the applicant is attempting to work with Council regarding this matter and City staff is saying that what has been offered by the applicant is adequate for the future intersection improvements. She stated this is a dilemma for her.

Motion by Lamb, seconded by Miller, to approve Item 12 as submitted subject to the following: due to the site's flat topography along both section line roads and the curb cuts being limited to the main collector street and one additional drive opening on Edmond Road, the Council will agree to a Plat variance on the right-of-way requirements of 90 and 100 feet to allow for a 70 foot right-of-way with an additional 10 foot utility easement for a total of 80 feet along all roadway frontage; the 10 foot utility easement may be used for landscaping in future site plans

and to allow for the detention improvements to exist as they may encroach into the right-of-way in the far corner of the site.

Motion carried as follows:

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

13. Public Hearing and Consideration of Ordinance amending Edmond Plan from Lake Commercial to Suburban Estate, located south of Clipper Crossing, east of I-35, west of Perth Drive (Land Improvement, LLC, applicant) Case No. Z080006. The applicant is requesting that a 3,464.89 square foot tract be rezoned to resolve setback and title issues for the property owners of the adjoining lot to the east, Dick and Jane O'Brien, where a house was constructed too close to the property line. A utility easement was previously closed on the west side of the neighboring property owners lot due to the encroachment of the home over the easement. The additional land will establish the required setback for the home. Planning Commission recommended approval.

Council discussed what the requirements would be for a future commercial or suburban office development next to the O'Brien's property. It was noted that an office project would require a 30 foot buffer with 40 plant units and a commercial project would require a 70 foot buffer due to the sensitive border issue.

Jane O'Brien addressed Council and stated they accepted the developer's proposal reluctantly only because they felt they had no other choice. She stated even with the additional property there would still only be a 10 foot setback from commercially zoned property and she requested an additional greenbelt buffer on the west side of their property be required.

Councilmember Lamb stated he did not feel that her request could be honored other than by using the criteria set forth regarding sensitive border requirements as well as the high standards that apply to the existing zoning category. Councilmember Miller agreed that he did not feel that an additional requirement could be placed on the adjoining property.

Motion by Lamb, seconded by Miller, to approve Ordinance No. 3134 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. 3134. **Motion carried** as follows and Ordinance No. 3134 is in effect immediately:

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

14. Public Hearing and Consideration of Ordinance No. 3135 rezoning from "L-4" General Lake Commercial to "R-2A" Suburban Estate Dwelling District, located south of Clipper Crossing, east of I-35, west of Perth Drive (Land Improvement, LLC, applicant) Case No. Z080007. This is a companion to the above item and was discussed at that time.

Motion by Lamb, seconded by Miller, to approve Ordinance No. 3135 as read by title by City Planner. **Motion carried** as follows:

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

15. Public Hearing and Consideration of Ordinance amending Edmond Plan from Education/Institutional to General Commercial, generally located immediately north of the YMCA building, east of Rankin (T-Mobile, applicant) Case No. Z080004. Mayor O'Neil stated the applicant requested this item be continued to April 28, 2008.

16. Public Hearing and Consideration of Ordinance rezoning from "A" Single Family Dwelling District to "E-1" General Commercial District, generally located immediately north of the YMCA building, east of Rankin (T-Mobile, applicant) Case No. Z080004. This is a companion to the above item and was also requested to be continued.

Motion by Miller, seconded by Page, to continue Items 15 and 16 to April 28, 2008, as requested by the applicant. **Motion carried** as follows:

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

17. Executive Session to discuss the following pending claims (Executive Session authorized pursuant to 25 Okla. State. Sec. 307 (B)(4)):

Assemi vs. City of Edmond
Hatchel vs. City of Edmond

Motion by Miller, seconded by Lamb, to meet in Executive Session to discuss the above items. **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 7:17 p.m. and returned to the City Council Chambers at 7:21 p.m.

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

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

18. Consideration of action with regard to the above claims.

Motion by Miller, seconded by Waner, to authorize City Attorney to proceed with settlement of Assemi claim. **Motion carried** as follows:

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

Motion by Lamb, seconded by Miller, to authorize City Attorney to proceed with settlement of Hatchel claim. **Motion carried** as follows:

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

19. Discussion and Consideration of City of Edmond opposition to pending House Bill 1739 regarding electric utility and franchise rights.

Nancy Nichols, Director of Governmental Relations/City Clerk, addressed Council and stated the bill originated last year but the issue has been discussed for at least three years. Ms. Nichols stated the bill would allow investor owned utility companies, such as OG&E, that served areas that were annexed in the mid 1970s in the northeast portion of Edmond to expand their services into Edmond without a franchise agreement since they were serving those areas prior to the annexation. She stated those opposing the bill feels it is a violation of the citizen's constitutional right to vote on whether they wish to approve a

franchise agreement. She noted the original author of the bill agrees with the opponents and removed his name from the bill. Ms. Nichols stated now there is a different House of Representatives author. She stated she and representatives of the Oklahoma Municipal League (OML) and the Municipal Electric Systems of Oklahoma (MESO) have met with the Speaker of the House and he has agreed not to bring the bill to the floor of the House for a full vote. She noted however, that the Speaker is receiving a lot of pressure from the investor owned utility companies and the rural electric cooperatives for a full vote. Ms. Nichols stated OML and MESO are also working on the bill.

Councilmember Lamb stated this bill effects every city and town in the State, even those municipalities that do not have their own electric utility, by pre-empting the voters authority over rights-of-way in their city limits. He noted that the bill also sets a ceiling on the amount of the franchise percent and pre-empts all prior agreements.

Ms. Nichols stated the opponents offered OG&E compromise language that the franchise agreement would automatically go to a City wide vote without the initiative petition process that current law requires. She noted the investor owned companies and rural cooperatives rejected that compromise. She stated the bill could also allow for duplication of lines because the City has spent millions of dollars expanding the City's infrastructure in that area. Ms. Nichols stated the citizens in the affected area would also have higher electric bills as a result of this legislation since Edmond Electric's costs are lower than OG&E. She noted if franchise or in lieu of franchise fees and infrastructure fees, those residents bills would be considerably higher.

Councilmember Miller encouraged all citizens to contact their legislative representatives and let them know their thoughts regarding this bill if they really want to safeguard the great electric utility that Edmond currently has in Edmond Electric.

Councilmember Lamb stated citizens are prohibited from switching electric utilities due to the anticipated deregulation which has never occurred to the scenario whereby the electric utility could prohibit any citizen from electing to switch to another electric utility. He feels that presents a problem for all municipalities. He noted that the legislation just affects electric utilities at this time but he felt it would be expanded to include all rights-of-way if this legislation is approved.

Mayor O'Neil stated he met last week with various city officials from around the State and they are all opposed to this legislation. He stated the right of municipalities to control

their rights-of-way and easements is a critical issue for all cities and towns.

20. NEW BUSINESS:

Mayor O'Neil invited the public to attend the Arbor Day celebration this coming Saturday from 1:00-4:00 p.m. at the Festival Marketplace.

Councilmember Miller wished his wife happy 24th wedding anniversary.

21. Motion by Miller, seconded by Page, to adjourn meeting.
Motion carried as follows:

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

City Clerk

Mayor