Bentonville City Council
Meeting Minutes
December 8, 2015

The City Council of Bentonville, Arkansas, met in regular session Tuesday, December 8, 2015, at 6:00 p.m., at the Community Development Building, 305 Southwest A Street, Bentonville, Arkansas.

Present were council members Stephanie Orman, John Skaggs, Tim Robinson, Chris Sooter, James Smith, Bill Burckart, Octavio Sanchez and Jim Webb. Also present were Mayor Bob McCaslin, City Attorney George Spence, City Clerk Linda Spence, the press, city staff and the audience.

Prior to calling the meeting to order, Mayor McCaslin inquired of the Council whether or not it wanted to hear additional comments on the subject of the Lake Bella Vista dam from the audience. The Council agreed to hear comments that were not heard during the Committee of the Whole meeting held on Monday, December 7, 2015.

Beth Keck, a resident of Bentonville, addressed the Council. She stated that she understood the uncomfortable position of the City professionals and understood the position of the executive branch of the City that the choices were for dam restoration or removal. She stated that citizens had filled the gaps by obtaining estimates on the dam removal and funding for such a proposal. She also stated that she had worked in business and government both and she encouraged members of the Council to listen to the citizens and take a risk on the long-term benefit. She added she was ready to walk hand in hand with the City to move forward with the transition of the property to a free-flowing stream.

Ken Leonard, a resident of Bentonville, next addressed the Council. He stated that the environmental assessment that had been prepared by CP&Y was filled with misinformation. He suggested the watershed to lake area was relevant and that water quality decreases with an increasing ratio of watershed area to lake area.

He also stated that lakes with a large ratio of watershed area to lake area would result in more nutrient and pollution problems. He stated that the consideration of paying CP&Y $578,000 was not a responsible decision and suggested that there would be liability on the part of the City for doing so. He concluded by saying that building the dam based on misinformation was not right.

Chris Cochran, also of Bentonville, stated he had been an advocate for parks. He also stated he was an environmental professional and he thought that alternatives should be fully explored.

The Mayor asked for additional comments or questions from the Council prior to the meeting being called to order and there was no further response.

Alderman Robinson asked the City Attorney whether the Council's previous vote on electric rates could be rescinded and replaced by a vote to approve the rates a year at a time. City Attorney Spence indicated he was not prepared to answer that question immediately, but would be prepared to do so at the next City Council meeting.

Mayor McCaslin called the meeting to order. The Mayor led everyone present in the pledge of allegiance followed by a moment of silence in support of our armed forces.

Motion was made by Alderman Smith to approve the minutes of the November 24, 2015 meeting as presented, second by Alderman Sanchez. There was no discussion. Motion carried (8-0).

Motion was made by Alderman Sooter to suspend the rules regarding the reading of all ordinances on three separate days and further that all ordinances and resolutions be read by title only, second by Alderman Burckart. There was no discussion. Motion carried (8-0).

1a. Ordinance No. 2015-133: Ordinance changing real estate in the City of Bentonville, Arkansas, from its present classification to RC-2, central residential-moderate density.

[Applicant: CHP, LLC; Location: 502 Southeast D Street]

City Attorney Spence read the ordinance by title only. Motion to pass by Alderman Burckart, second by Alderman Webb. There was no discussion. Motion carried (8-0).

1b. Ordinance No. 2015-134: Ordinance changing real estate in the City of Bentonville, Arkansas from its present classification to D-C, downtown core.

[Applicant: Bike Rack Group LLC;
Location: Southwest 7th Street and Southwest B Street]

City Attorney Spence read the ordinance by title only. Motion to pass by Alderman Sanchez, second by Alderman Smith. There was no discussion. Motion carried (8-0).

2a. Resolution No. 12-8-15 A: Resolution authorizing the Mayor and Clerk to enter into an agreement with Selectron Technologies, Inc.

City Attorney Spence read the resolution by title only. Motion to pass by Alderman Sanchez, second by Alderman Orman. There was no discussion. Motion carried (8-0).

2b. Resolution No. 12-8-15 B: Resolution authorizing the Mayor and Clerk to enter into an agreement with Invoice Cloud.

City Attorney Spence read the resolution by title only.

Alderman Burckart asked about transaction fees. Gary Wilson, Billing and Collection Manager, stated that there was a transaction fee and that those transaction fees went to pay for the web site, which allowed for payments online. Alderman Burckart stated that the transaction fees would be about the same under the new agreement as they had been previously.

Motion to pass by Alderman Sooter, second by Alderman Burckart. There was no further discussion. Motion carried (8-0).

2c. Resolution No. 12-8-15 C: Resolution authorizing the Mayor and Clerk to enter into an agreement with Sage Payment Solutions.

City Attorney Spence read the resolution by title only. Motion to pass by Alderman Sanchez, second by Alderman Orman. There was no discussion. Motion carried (8-0).

3a. Approval to award Bid No. 15-56 to Oelke Construction in the amount of $187,971 for the adaptive renovation of the former AT&T building located at 402 South Main Street for use as a utility drive-thru, meter reader office and IT training room.

3b. Approval of a budget adjustment for the Utility Billing Department in the amount of $355,000 to renovate the former AT&T building located at 402 South Main Street.

Alderman Robinson asked whether there would be any problem with delaying consideration of the bid award and budget adjustment to a future meeting. Gary Wilson, Utility Billing and Collection Manager, stated that there would not be a problem moving the vote off to the first meeting in January but not beyond that, as the bid would be good for sixty days.

Alderman Robinson made a motion to table items 3a and 3b to the first January meeting, second by Alderman Skaggs.

Alderman Smith stated that the value of the building needed to be determined based on the highest and best use and he agreed that the Council should wait until additional information was provided before voting. He suggested that City staff should be looking at other options with regard to the meter readers and IT disaster recovery to be located in the building and raised the question of why those functions needed to be located so close to downtown.

Alderman Smith also stated that only about 10 percent of residents were using the facility and suggested that with other ways to pay becoming more prevalent, the need for the drive-thru would be less important. He also stated that banks do such collections of utility payments, giving the example that the bank that he works for does it for some entities, and inquired whether the City had explored such an option.

Mayor McCaslin stated that based on Alderman Smith's suggestion about highest and best use, the City should move out of all of its operations in the downtown area. He also stated that the current use of the building was an integral part of City operations and would become even more so when exploited to the proposed fuller use.

Alderman Burckart asked about the idea of these payments being made elsewhere. Mr. Wilson stated that the City has had the online system for ten years and that bank drafts were increasing, but that it was his view that the City needed to have a drive-thru. He also stated that other locations had been explored, but that it was necessary to have the meter readers close to the billing operation as they needed to be able to interact with the staff there as they dealt with all aspects of the City utility function, including turning utilities back on after shutoff and just investigating problems that come up with utility billing. He stated that as time goes forward he thought that having multiple kiosks were a possibility.

Alderman Robinson asked whether there had ever been an effort to geo locate where the payments made through the drive-thru came from and Mr. Wilson indicated that no effort had been made to do that to this point, but that he could check with IT about that possibility.

Alderman Skaggs indicated he wanted to hear about other alternatives, such as placing these functions at the library or another City facility. Mr. Wilson stated that this proposal came about because the Utility Department was being moved in connection with the utility campus and that the meter readers needed to be close to utility billing. The former AT&T building was not being fully utilized and because of the situation with the downtown drive-thru and that property, it was thought that this repurposing of the building was an appropriate consideration. He stated that the use of the building in this fashion responded to many needs, and that the building already had the fiber necessary to run the operation and that there had already been a drop box on the building. He added that the building was basically ready, except for needing a little bit of remodeling, and that it was his view that it would maximize the value of the building for the City.

Mayor McCaslin noted it would also provide forty-one overflow parking spaces for the library.

Alderman Smith stated that he desired that all of the other directors of the City give their views as to alternatives to using the building in this way.

Alderman Robinson added that he understood the perception of the building when it was purchased in 2011 may have been something in particular, but that the market in the downtown area had changed substantially since then.

Motion to table Items 3a and 3b carried (7-1), with Alderman Sanchez voting no.

Consent Agenda -- Items 4-13 and 18-20:

4. Approval for reappointment of Aaron Jones to the Bentonville Public Library Advisory Board.

5. Approval to appoint Megan Bolinder, Ph.D. to the Bentonville Public Library Advisory Board.

6. Approval to appoint Mike Power and approval for reappointment of Jonathan Terlouw and Tom Butrynski to the Parks and Recreation Advisory Board.

7. Approval to award Bid No. 15-45, a six-month blanket bid for electric materials, in the total amount of $406,169.56, as follows: Arkansas Electric in the amount of $60,547.89, Stuart Irby in the amount of $100,374.22, Techline in the amount of $72,015.00, Anixter Electrical Supply in the amount $66,083.15, Wesco Supply in the amount of $95,148.20, and Border States in the amount of $12,001.10.

8. Approval to award Bid No. 15-48, a six-month blanket bid for water materials, in the total amount of $284,925.02, as follows: Ferguson Materials in the amount of $212,771.62, NW Arkansas Winwater in the amount of $56,637.90, and HD Supply in the amount of $15,515.50.

9. Approval to award Bid No. 15-46, a six-month blanket bid for switchgears, in the total amount of $52,721, to Stuart Irby.

10. Approval to award Bid No. 15-49, a one year blanket bid for street materials, in the total amount of $178,075, as follows: McClinton Anchor in the amount of $6,375, Benton County Stone in the amount of $130,100, and Hutchenson Construction in the amount of $41,600.

11. Approval to award Bid No. 15-51, a six-month blanket bid for electrical materials - 1-phase double bushing pole mount transformers - in the total amount of $141,847, as follows: AECI in the amount of $14,919, Stuart Irby in the amount of $91,199, and Techline in the amount of $35,729.

12. Approval to award Bid No. 15-50, a six-month blanket bid for electric materials - 1-phase transformers - in the total amount of $189,155, as follows: Stuart Irby in the amount of $86,060 and Techline in the amount of $103,095.

13. Approval to award Bid No. 15-47, a six- month blanket bid for electric materials - 3-phase transformers - in the total amount of $255,002, as follows: Stuart Irby in the amount of $159,424 and Techline in the amount of $95,578.

18. Approval of a budget adjustment in the amount of $2,940.52 to be used to repair a 2013 Chevy Tahoe, unit no. 2010-22, and a 2013 Chevy Tahoe, unit no. 2015-18.

19a. Approval to award Bid No. 15-54 to Fochtman Enterprises, Inc. in the amount of $105,650 for 48-inch water line improvements in association with AHTD Job No. 090373-CA0004, Highway 265 improvements between Highway 264 and Pleasant Grove Road.

19b. Approval of a budget adjustment to front costs for construction of 48-inch water line improvements associated with the Arkansas State Highway Commission for AHTD Project No. 090373-CA0004(45) - Highway 265 improvements between Highway 264 and Pleasant Grove Road.

20. Approval of Change Order No. 3 and Final Reconciliation for Forsgren, Inc. for the South Lift Station renovation and South Force Main Construction project for a decreased amount of $75,589.45.

    Motion to approve consent agenda by Alderman Smith, second by Alderman Webb. There was no discussion. Motion carried (8-0).

Resuming agenda:

14. Ordinance No. 2015-135: Ordinance authorizing the Mayor and the City Clerk to enter into an agreement for the purchase of Sensus water meters for the City of Bentonville from HD Supply Waterworks and waiving the requirement of competitive bidding.

    City Attorney Spence read the ordinance by title only. Motion to pass by Alderman Sanchez, second by Alderman Webb. There was no discussion. Motion carried (8-0).

15. Ordinance No. 2015-136: Ordinance authorizing the Mayor and the City Clerk to enter into an agreement for the purchase of water meters for the City of Bentonville from Mueller Systems and waiving the requirement of competitive bidding.

    City Attorney Spence read the ordinance by title only. Motion to pass by Alderman Sanchez, second by Alderman Webb. There was no discussion. Motion carried (8-0).

16. Ordinance No. 2015-137: Ordinance authorizing the Mayor and the City Clerk to enter into an agreement for the purchase of electric meters for the City of Bentonville from Mueller Systems and waiving the requirement of competitive bidding.

    City Attorney Spence read the ordinance by title only. Motion to pass by Alderman Sanchez, second by Alderman Webb. There was no discussion. Motion carried (8-0).

17. Ordinance No. 2015-138: Ordinance authorizing the Mayor and the City Clerk to enter into an agreement for the purchase of ornamental lighting fixtures for the City of Bentonville and waiving the requirement of competitive bidding.

City Attorney Spence read the ordinance by title only. Motion to pass by Alderman Sanchez, second by Alderman Webb. There was no discussion. Motion carried (8-0).

21. Resolution No. 12-8-15 D: Resolution authorizing the Mayor and City Clerk to enter into an amended professional services agreement with McClelland Consulting Engineers, Inc. for engineering services associated with the South Lift Station renovation and Force Main construction project.

City Attorney Spence read the resolution by title only. Motion to pass by Alderman Burckart, second with Alderman Sanchez. There was no discussion. Motion carried (8-0).

22. Resolution No. 12-8-15 E: Resolution authorizing a professional services agreement with GTS, Inc. for material testing services for the construction of the City Maintenance Facility located on Southwest 28th Street.

City Attorney Spence read the resolution by title only. Motion to pass by Alderman Sanchez, second by Alderman Webb. There was no discussion. Motion carried (8-0).

23. Resolution No. 12-8-15 F: Resolution authorizing the Mayor and City Clerk to enter into an agreement with McGoodwin, Williams & Yates, Inc. for engineering services associated with a comprehensive water system analysis and master plan update study.

City Attorney Spence read the resolution by title only.

Alderman Burckart indicated that he wanted to raise a question about the sequence of the consultant work for the recent rate study, the master plan, the impact fee study, and the current matter before the Council, the water system master plan update.

Mike Bender, Public Works Director, stated that the timing of this particular study was to coordinate with the general plan update and that the water plan looked at various items to coordinate the City's growth. He stated that the water master plan did not tie to the rate study and that there would need to be another rate study for water in 2017. He stated the water master plan looked far into the future, as much as twenty years out. He stated that in the rate study the capital had been considered further out, but had really been focused on the two years that the rate study would be applicable. He stated that there were upcoming considerations about the need for storage tanks in the southwest part of the City and how long the current 48-inch supply line from Beaver Lake would suffice to supply the system. He stated that the water system plan should be done as close to the general plan as possible to coordinate with that.

Preston Newbill, Water Utilities Manager, stated that he wanted to add that the master plan update helped the Water Department determine the current performance of the system and analyze flows and pressures. He stated that this was important to be able to understand and analyze the functionality of the overall system. Mr. Bender stated that about 60 percent of the proposed study would relate to the performance of the system described by Mr. Newbill.

Alderman Smith asked if the various studies being done were a duplication of services and Mr. Bender stated that they were not.

Motion to approve the resolution by Alderman Sanchez, second by Alderman Robinson. There was no further discussion. Motion carried (7-1), with Alderman Burckart voting no.

24. Resolution No. 12-8-15 G: Resolution authorizing the Mayor and Clerk to execute right-of-way and easement documents for the 8th Street Improvement Project.

City Attorney Spence read the resolution by title only. Motion to pass by Alderman Sooter, second by Alderman Webb. There was no discussion. Motion carried (8-0).

25. Resolution No. 12-8-15 H: Resolution expressing the willingness of the City of Bentonville to partner with the Arkansas State Highway and Transportation Department on the following project: Job BB0903, Highway 71B Interchange Improvements (F).

City Attorney Spence read the resolution by title only. Motion to pass by Alderman Smith, second by Alderman Webb. There was no discussion. Motion carried (8-0).

26. Resolution No. 12-8-15 I: Resolution authorizing the Mayor and Clerk to enter into an agreement with CP&Y for engineering services.

City Attorney Spence read the resolution by title only.

Alderman Webb indicated he wanted to hear from Camille Thompson, Staff Attorney, as he understood that there had been some discussion with Cooper about the dam since the Committee of the Whole meeting.

Mayor McCaslin stated that there had been a conference call with Cooper, including the CFO, Kent Burger, and John Cooper, III. The Mayor stated that they expressed that it was always intended that the lake would remain and that they had not considered returning the lake to a stream and did not want to make such a consideration. The Cooper representatives stated that they thought it important to note that the Trailblazers' work at the lake was the beginning of the trail building for Northwest Arkansas and they made it very clear that they want it to remain as a lake.

Alderman Smith asked whether the Mayor thought that Cooper intended to enforce the agreement. The Mayor stated that since the grant was available Cooper expected the City to rebuild the dam.

Alderman Robinson stated his concern that while they had been through the process, there was a question in his mind whether the environmental study was proper.

Alderman Sanchez stated that while he understood that there were a lot of options being proposed, he saw no better one than going forward with rebuilding the dam.

Alderman Skaggs stated that he thought the City should take more time to communicate about the restrictions from Cooper.

City Attorney Spence stated that he thought that the Council should give consideration to this as a matter of risk analysis. He stated that though there were potential defenses with regard to the restriction placed on the City through the contractual agreements with the Trailblazers agreement with Cooper, it would be appropriate for the Council to consider the risk of not going forward and the potential financial impact on the City. He stated that the option of not rebuilding the dam could result in a significant financial impact for the City.

Camille Thompson, City Staff Attorney, stated that the Cooper meeting had emphasized the relationship of the Trailblazers and their establishment of the beginning of the trail system. She stated that the City had done considerable due diligence as to the acceptance of the lake and surrounding property at the time of the acquisition and had determined to accept the generous donation from Cooper and the Trailblazers.

Alderman Sooter stated that he had been present at the time that the City took over the lake and that there was a great deal of work put forth in getting the lake in shape. It was cleaned up before the City received it and that the City had expended considerable time and effort at the lake since the time it was taken into the City's park system.

Alderman Sooter moved to approve the resolution, second by Alderman Sanchez.

Alderman Robinson asked about whether Bella Vista had tried to buy back the lake. Mayor McCaslin stated that Bella Vista had on multiple occasions asked that the City give back the lake, but he wanted to note that Bella Vista had never had the lake. He stated that the Trailblazers had a choice and they came to the City of Bentonville. He also noted that at the time the property was deeded over to the City, Bella Vista had not yet incorporated.

Alderman Skaggs stated that he thought that the old lake is like a white elephant and left an undetermined expense for the future and moved to table the resolution.

Alderman Webb asked how long the City could delay making a decision. Ben Peters, City Engineer, stated that the grant would run for forty-eight months and any extensions beyond that were up to FEMA. He stated that the original 2011 grant was for thirty—six months but it had already been extended to forty-eight months and now it was purely a discretionary extension with FEMA. He thought that FEMA would continue to extend it as long as the City was moving toward a rebuild. He stated it was his opinion that doing a full stream analysis would be longer that FEMA would be willing to wait.

Alderman Smith asked what another flood would do with regard to the dam and Mr. Peters stated it would depend on how big the flood was.

Alderman Orman asked if the CP&Y representative would like to respond to the questions that had been raised about his firm and the environmental study performed by them. The CP&Y representative stated that his firm had been in existence for thirty-five years and that the team assembled to address this particular project had fifteen years of experience. He gave as an example of their past work the dam at Carol Ann Cross Park Lake in Fort Smith.

Alderman Robinson asked about dredging the lake and selling the topsoil and that it had not been discussed. The CP&Y representative indicated such could be discussed as part of the project, but that they had not been directed to look at that to this point.

Alderman Sanchez asked about the vetting of the proposal and the CP&Y representative stated that there had been a stakeholders meeting, which included the EPA, the Corps of Engineers, ADEQ, Fish and Wildlife and other agencies, and all of them had been coordinated with about the proposed project.

Alderman Webb asked what the harm was of extending the resolution to January and the Mayor responded by asking what the benefit was of delay. Alderman Burckart stated that there had been years to study the options.

The motion to table then was determined to have died for lack of a second. Motion to approve the resolution passed (7-1), with Alderman Skaggs voting no.

27. Resolution No. 12-8-15 J: Resolution authorizing the Mayor and Clerk to enter into a memorandum of understanding with Northwest Arkansas Regional Planning for stormwater education.

    City Attorney Spence read the resolution by title only. Motion to pass by Alderman Sanchez, second by Alderman Burckart. There was no discussion. Motion carried (8-0).

Motion to adjourn the meeting by Alderman Robinson, second by Alderman Burckart. Motion carried (8-0).

Linda Spence

Linda Spence, City Clerk

Bob McCaslin

Bob McCaslin, Mayor