



City of Broken Arrow

**Minutes
City Council**

City Hall
220 S 1st Street
Broken Arrow OK
74012

*Mayor Craig Thurmond
Vice-Mayor Scott Eudey
Council Member Mike Lester
Council Member Johnnie Parks
Council Member Debra Wimpee*

Tuesday, February 6, 2018

Time 6:30 p.m.

Council Chambers

1. Call to Order

Mayor Craig Thurmond called the meeting to order at approximately 6:30 p.m.

2. Invocation

Invocation was delivered by Rich Manganero.

3. Roll Call

Present: 4 - Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

Absent: 1 - Debra Wimpee

4. Pledge of Allegiance to the Flag

Scout Troop 903 led the Pledge of Allegiance to the Flag.

5. Consideration of Consent Agenda

Mayor Thurmond stated Item S should be tabled. He asked if there were other items to be removed. Vice Mayor Eudey stated Item A needed to be removed. Council Member Johnnie Parks stated Item O needed to be removed.

MOTION: A motion was made by Mike Lester, seconded by Scott Eudey.

Move to approve Consent Agenda excluding Items A, O and S

The motion carried by the following vote:

Aye: 4 - Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

- A. 18-200** Approval of City Council Meeting Minutes of January 16, 2018
- B. 18-210** Approval of City Council Special Meeting Minutes of January 13, 2018
- C. 18-244** Approval of modified Request to Appear forms and Guidelines for City Council meetings and all other City Boards and Commissions meetings
- D. 18-243** Approval of and authorization to execute the ICMA Retirement Corporation Governmental Money Purchase Plan and Trust Adoption Agreements
- E. 18-220** Approval of and authorization to execute a Second Amendment to Amended and Restated Site Use/Lease Agreement with New Cingular Wireless, PCS, LLC
- F. 17-2795** Approval of and authorization to purchase call queuing and reporting program from Chickasaw Telecom pursuant to the Oklahoma state contract
- G. 18-216** Approval of and authorization to execute a license for Oklahoma Turnpike Authority Right-of-Way Access associated with the Cottages at Cedar Ridge Sanitary Sewer located east of Garnett Road and a half-mile south of Washington Street
- H. 18-217** Approval of and authorization to execute a license for Oklahoma Turnpike Authority Utility Crossing associated with the Cottages at Cedar Ridge Sanitary Sewer located east of Garnett Road and a half-mile south of Washington Street
- I. 18-239** Approval of and authorization to execute an Agreement for Professional Consultant Services with Olsson Associates for Master Plan Design of "Aspen Creek Park" and Valley Ridge Park
- J. 18-228** Approval of and authorization to execute Amendment No. 1 to Computer Aided Drafting Design (CADD) and Related Technical Support Services Professional Services Contract Number: CADD 17-01 with The Schemmer Associates, Inc.
- K. 18-195** Approval of Downtown Residential Overlay Study Pay Request Number 11 in the amount of \$4,000.00 for Phase Four to be paid through the Sales Tax Capital Improvement Program (STCI) in association with the Downtown Residential Overlay District Revitalization Study and authorize payment of \$4,000.00 using Sales Tax Capital Improvement Program Funds
- L. 18-197** Approval of Downtown Residential Overlay Study Pay Request Number 12 in the amount of \$5,500 for Phase Four to be paid through the Sales Tax Capital Improvement Program (STCI) in association with the Downtown Residential Overlay District Revitalization Study and authorize payment of \$5,500.00 using Sales Tax Capital Improvement Program Funds

- M. 18-191 Approval of and authorization to reject the previously awarded Statewide Contract bid from Vance Chevrolet for the purchase of a Chevrolet Tahoe and award the bid to Hudiburg Chevrolet on the Statewide Contract
- N. 18-237 Award the lowest responsible bid to Stronghand, LLC and approve and authorize execution of a construction contract for Central Park Family Aquatic Center Pool Slide and Raindrop Spray Resurfacing (Project No. 186004)
- O. 18-234 Award the lowest responsible bid to Ground Level, LLC., and approve and authorize execution of a construction contract for Veteran's Park Phase II (Project No. 186019-176010)
- P. 18-156 Approval of and authorization to execute Change Order #3 for Construction Contract Bid No. 16.162A; Portland Cement Concrete Repair
- Q. 18-212 Approval and authorization of Final Acceptance for the public improvements at Bentley Square located at South West Corner of Jasper Street and Aspen Avenue
- R. 18-211 Approval and authorization of Final Acceptance for the public improvement at Bixby Northeast Intermediate School located at 11900 East 131st Street
- S. 18-219 Approval of PT16-114A, Conditional Final Plat, Whiskey Ridge, 239 lots, 85.93 acres, A-1 to PUD-256/RS-4, southeast corner of 23rd Street and Rockford Street
- T. 18-192 Approval of PT17-104, Conditional Final Plat, Top Dog Training Facility, 1 lot, 4.14 acres, A-1 to PUD (Planned Unit Development) 264/A-1, northeast corner of Tucson Street and 9th Street
- U. 18-215 Approval of PUD-204A, a request for a major amendment to PUD-204, Creek 51 Business Park, 11.877 acres, A-1 to CG and IL/PUD-204, one-half mile south of Houston Street, west of Highway 51, and west of the Creek Turnpike
- V. 18-233 Approval of and authorization to execute Resolution No. 1083, a Resolution authorizing the acceptance of a General Warranty Deed for Parcel 10, which consists of 0.25 acres of permanent right-of-way for 23rd Street, Houston to Kenosha, in the Northwest Quarter of Section 7, Township 18 North, Range 15 East, at the intersection of 23rd Street and Archdale Street, from Shirley D. Ketcher, and authorize payment in the amount of \$75,000.00, for the 23rd Street Widening from Houston to Kenosha Project (Project No. ST0914)
- W. 18-235 Approval of and authorization to execute Resolution No. 1084, a Resolution authorizing the acceptance of a General Warranty Deed for Parcel 11, which consists of 0.25 acres of permanent right-of-way for 23rd Street, Houston to Kenosha, in the Northwest Quarter of Section 7, Township 18 North, Range 15 East, at the intersection of 23rd Street and Archdale Street, from Donald N. Stacey, and authorize payment in the amount of \$ 100,000.00, for the 23rd Street Widening from Houston to Kenosha Project (Project No. ST0914)
- X. 18-193 Approval of the Amendment of the Plat and Deed of Dedication and Restrictive Covenants of Shadow Trails, PT13-100, one-quarter mile west of Olive Avenue, south of Tucson Street
- Y. 18-86 Acceptance of a Detention Easement from Green Property Management, Inc., on property located one-quarter mile north of Houston Street and one-half mile east of Midway Road, Wagoner County, State of Oklahoma, (Section 11, T18N, R15E)(Kensington Ridge II)
- Z. 18-238 Acceptance of a Utility Easement from Hillside Development, LLC, on property located north of the Broken Arrow Expressway, a quarter mile west of 9th Street, Tracts B-1 and B-2, Lot 4, Block 2, Hillside Crossings, Tulsa County, State of Oklahoma, (Section 2, T18N, R14E)
- AA. 18-10 Approval of the Broken Arrow City Council Claims List for February 06, 2018

6. Consideration of Items Removed from Consent Agenda

- A. 18-200 Approval of City Council Meeting Minutes of January 16, 2018
Item A was tabled.

MOTION: A motion was made by Scott Eudey, seconded by Mike Lester.

Move to table Item A

The motion carried by the following vote:

Aye: 4 - Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

- O. 18-234 Award the lowest responsible bid to Ground Level, LLC., and approve and authorize execution of a construction contract for Veteran's Park Phase II (Project No. 186019-176010)
Council Member Parks stated he did not have a question regarding Item O. He explained Item O was the Veterans Park Phase II contract to move the Memorial into Veteran's Park about which he was greatly excited.

MOTION: A motion was made by Johnnie Parks, seconded by Mike Lester.

Move to award the lowest responsible base bid to Ground Level, LLC, and approve and authorize execution of the construction contract for Veteran's Park Phase II

The motion carried by the following vote:

Aye: 4 - Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

Mayor Thurmond left the room at approximately 6:33 p.m.

S. 18-219 Approval of PT16-114A, Conditional Final Plat, Whiskey Ridge, 239 lots, 85.93 acres, A-1 to PUD-256/RS-4, southeast corner of 23rd Street and Rockford Street

Vice Mayor Eudey asked if there were any questions regarding Item S. There were none.

MOTION: A motion was made by Mike Lester, seconded by Johnny Parks.

Move to approve Item S

The motion carried by the following vote:

Aye: 3 - Johnnie Parks, Mike Lester, Scott Eudey

Recuse: 1 - Craig Thurmond

Mayor Thurmond returned to the room at approximately 6:34 p.m.

7. Public Hearings, Appeals, Presentations, Recognitions, Awards

A. 18-250 A public hearing regarding the annexation of property located on approximately 38.73 acres of land located in the East Half (E/2) of the Southwest Quarter (SW/4) of Section Eleven (11), Township Eighteen (18) North, Range Fifteen (15) East of the Indian Base and Meridian (I.B.&M.), Wagoner County, State of Oklahoma

City Attorney Beth Anne Childs reported City Council approved the notification involving this particular request for annexation at the previous meeting. She stated this Item pertained to the Public Hearing. She explained notice had been accomplished both through publication and mail in accordance with State Statute. She stated Legal requested City Council hold the Public Hearing.

Mayor Thurmond stated there were two citizens registered to speak.

Citizen Salvatore Bertolino stated his address was 25992 Willow Street, Broken Arrow, OK. He stated he received a drawing and some information in the mail about the tract and he hoped for clarification. He stated he lived in Oakridge 1. He stated the drawing of the tract he received displayed dashed lines outside of the tract that ran right through his property and he asked what the lines meant. Mayor Thurmond responded the lighter dash lines running through his property possibly indicated which properties required notification while the dark dash lines outlined the subject tract. Vice Mayor Eudey explained whenever a property was to be annexed the city was required to notify all property owners within a 300 foot radius of the subject tract; the dash line which ran through his property simply indicated the notification area. Mr. Bertolino stated he just wanted to be certain there was no change intended for his property. Mayor Thurmond stated there was not. Mr. Bertolino asked when the Annexation would take place. Mr. Larry Curtis replied the rezoning and preliminary plat process was forecasted to be accomplished within the next couple of months. Mr. Bertolino thanked the Council for its time and wished the Council a wonderful evening.

Citizen Alycia Kauble stated her address was 26031 East 81st Street, the 5 acre tract west of the property in question. She explained she had livestock and wanted to know how this would affect her property as she was outside Broken Arrow city limits. Mayor Thurmond stated she would still be under County jurisdiction. He stated the property in question would be developed according to Broken Arrow standards; however, the annexation of the property to Broken Arrow would not affect the surrounding properties in any way. She asked if the process could possibly grandfather her property into the annexation. Mayor Thurmond responded in the negative. Ms. Kauble asked what type homes, what size, and what price range of homes would be developed in the annexed area. Mr. Curtis replied a zoning case had not been submitted; however, the northern tract indicated RS3 zoning, properties of 8000 sq. feet and homes measured at 1800 sq. feet or larger. Ms. Kauble stated her questions had been answered and she thanked Mr. Curtis and City Council.

Mayor Thurmond asked if there were any additional questions or discussion. There were none. Mayor Thurmond asked if any other citizens wished to speak.

Citizen Larry Luce stated his address was 7925 Lariat Circle, on the west end of the subject tract. He stated the subject tract was currently elevated higher than his property which caused erosion of his land. He asked if there would be an opportunity to know what the grading plans were for the subject tract. Mayor Thurmond responded once the engineering plans were submitted Mr. Luce would have an opportunity to request them; however, State Statute did not allow an increase of off-site flow. Therefore, he stated, most likely the offsite flow would be reduced and redirected to a detention pond. Mr. Luce stated he was concerned about how the development would affect his water pressure and the sewer line. Mayor Thurmond stated Mr. Luce's questions could not be answered until the engineering plans were created and submitted.

Mr. Luce stated he understood and asked if the entrance for the proposed housing development would be off 81st. Vice Mayor Eudey stated he believed there would be two entrances off of 81st. Mayor Thurmond stated fire code required two entrances for a development of this size.

Mayor Thurmond asked if there were any additional questions from citizens or Council Members. There were none. He closed the Public Hearing.

8. Citizens' Opportunity to Address the Council on General Topics Related to City Business or Services (No action may be taken on matters under this item)

Mayor Thurmond stated no citizen had signed up to address the Council.

9. General Council Business

A. 18-246

Presentation of Financial Results Presentation for the six months ending December 31, 2017 for the General Fund, Police Sales Tax Fund, Fire Sales Tax Fund, Sales Tax Capital Improvements Fund and the Broken Arrow Municipal Authority

Mr. Tom Cook reported the General Fund year-to-date net results were up \$684,000 and Sales Tax was down \$330,000 for the year as compared with budget; however, other taxes were up \$944,000. He reported Salaries were under budget by \$164,000 and Benefits were under by \$227,000. He reported Broken Arrow was currently at 46.89% of the annual budget. He reported the current General Fund balance was \$7.8 million dollars and the Required Reserve Fund balance was \$5.5 million dollars which was 144% of the required amount. He reported while currently sales taxes and other taxes were positive, current revenues overall were flat compared to budget at 48.59% of the year, but the expenditures were \$620,000 less than budgeted. He asked if there were questions.

City Manager Michael Spurgeon commented if Council utilized the unencumbered fund balance for an ongoing expense eventually the unencumbered fund balance would be depleted. Mr. Cook agreed. Vice Mayor Eudey asked if being under budget in salaries and benefits reflected job openings. City Manager Spurgeon responded in the affirmative. Mr. Cook responded it was also a matter of timing; for example, if a position was budgeted for a full year, but had only been filled for part of the year, there would be a savings. Council Member Lester asked if this budget reflected the Federal Funding for Fire Fighters. Mr. Cook responded in the negative. Mr. Cook reported the Police Sales Tax Fund year-to-date was positive \$1.1 million dollars. He reported personnel services/salaries were \$89,000 under budget and benefits were \$122,000 under budget. He reported other operating expenditures were under budget at \$262,000. He reported revenues were currently \$34,000 over budget, personnel services combined were \$212,000 below budget, other services and charges \$151,000 below budget, materials and supplies \$111,000 below budget, current expenditures \$474,000 below budget, and capital outlay was \$337,000 below budget, resulting in the \$1.1 million dollars total under budget. Mr. Cook reported the Fire Sales Tax Fund year-to-date was positive \$357,000. He reported Fire was over budget in benefits, but under budget in salaries and wages bringing Fire to 51% of total budget. He reported currently the intergovernmental revenue was \$120,000, but today there was a draw down for \$600,000 of federal money on the Safer Grant. He reported the Fire Department overall was \$309,000 under budget for the year with a net income of \$1.065 million dollars, but upcoming intended purchases reduced this savings to \$700,000 in capital outlay. Mr. Cook reported STCI was at \$4.6 million in revenue for the year and capital expenditures through the end of December were just under \$3 million dollars with a fund balance of \$7.5 million. Mr. Cook reported Broken Arrow Municipal Authority current revenues were \$1.6 million below budget, but current expenditures were \$2.7 million under budget. He reported charges for service revenues (water, sewer, sanitation) were running approximately 93% to 95% of expected. He reported personnel services were \$1.1 million under budget and other operating expenditures were \$1.5 million under budget; therefore the fund was currently at 41% of its annual budget. He reported overall current revenues were \$1.6 million below budget, but current expenditures for personnel were \$1.1 million below budget, other services and charges were \$1.04 million below budget, materials and supplies were \$500,000 below budget and the ending revenues over expenditures were \$4.7 million dollars. Mr. Cook asked if there were any questions regarding BAMA.

Vice Mayor Eudey asked if Mr. Cook was happy overall with BAMA's current budgetary circumstances. Mr. Cook responded in the affirmative. City Manager Spurgeon stated if a situation arose where revenues did not meet projections certain actions would be taken, for example the pay-as-you-go capital would be reviewed and any open positions would be kept open for a period of time. He understood the goal was to rebuild the BAMA fund balance.

B. 18-225

Consideration, discussion, and possible acceptance of the Oklahoma Department of Environmental Quality issued Consent Order with the tasks outlined penalties listed and authorization of the Mayor to approve and execute the Consent Order

Mr. Anthony Daniel stated this Item was a consent order received from DEQ for sanitary overflows on October 4 and October 16 of 2017. He reported a 36 inch concrete sewer pipe, approximately 5 miles long, had been installed in 1985. He explained it was unlined; therefore, over the years the pipe crown had corroded which resulted in pipe collapse when a rainfall event saturated the overbearing soil. He reported when this happened the sewer would overflow through a manhole near the creek past the Turnpike. He reported a citizen had called in a complaint to DEQ following the pipe collapse events in October 2017, DEQ contacted its representative in the Tulsa office who investigated. He reported on December 21, 2017 DEQ issued a Notice of Violation and asked what

would be done to correct the problem. He reported a response was sent on January 9, 2018 which indicated Broken Arrow was proactive regarding this problem and an engineer had already been hired and the design was approximately 67% complete. He reported in response DEQ issued a Consent Order with three task dates: design completion submitted to DEQ by November 1, 2018, bid and begin construction by May 1, 2019, with completion by September 1, 2020. He stated there was a cash penalty assessment of \$30,000 with the first payment of \$18,750 due soon. He reported if the task dates were met then the penalty would be waived. He asked if there were questions.

Council Member Parks asked if the September 1, 2020 completion date was reasonable and if Mr. Daniel would be able to meet this date. Mr. Daniel responded in the affirmative. He stated DEQ was willing to work with Broken Arrow's complete date as long as progress was evident. Vice Mayor Eudey stated he did not see the DEQ's flexibility expressed in the Consent Order. To clarify Mayor Thurmond stated that the 5 miles of pipe was to be laid in 18 months, to which Mr. Daniels responded in the affirmative. He stated a new fiberglass pipe which was less prone to corrosion would be laid within 18 months. Vice Mayor Eudey stated for clarification the pipe installation was due to be completed on September 1, 2020; however, the DEQ was willing to work with Broken Arrow regarding this date. Mr. Daniel confirmed this was correct. Mr. Daniel stated while this was not specified within the Order, Broken Arrow could file an appeal.

City Manager Spurgeon stated if the city was not under construction before September 1, 2020 the DEQ would certainly fine Broken Arrow; however, if the city were under construction and circumstances beyond the city's control caused a delay the DEQ would be reasonable as the DEQ recognized this was a huge investment by the city. He stated he was confident the DEQ would allow an extension if needed.

Mayor Thurmond asked if Mr. Kenny Schwab felt it was aggressive to believe five miles of 42 inch pipe could be laid within 18 months. Mr. Schwab replied in the affirmative; however, he explained the north mile of the project, a 24 inch pipe from New Orleans to Washington was being laid by Broken Arrow, while the south 4 miles was being laid with two separate, but simultaneous, construction contracts which would enable the project to be expedited. City Manager Spurgeon stated City Attorney, Beth Anne Childs, had a good relationship with the State Attorney which also was helpful.

Council Member Parks asked if this line would lie beside the existing line. Mr. Daniels replied this line would be laid over the existing line which would be collapsed during construction to prevent possible sink holes. Council Member Parks asked where the sewage would go while this was being completed. Mr. Daniels stated it would be pumped around during construction. Mr. Schwab stated the other option was to lay the new pipe parallel to the old pipe, which would allow continued use of the old pipe; however, this would require purchase of four miles of new easement. Vice Mayor Eudey asked how this project was being funded. City Manager Spurgeon replied funding would come from an Oklahoma Water Resources Board loan. Mr. Schwab stated the loan application had been prepared; however, it was not yet submitted, but would be submitted soon. City Manager Spurgeon stated the Oklahoma Water Resources Board has given preliminary indication that the loan would be approved. Mayor Thurmond asked if there were any more questions. There were none.

MOTION: A motion was made by Mike Lester, seconded by Johnnie Parks.

Move to accept the Oklahoma Department of Environmental Quality issued Consent Order with the tasks outlined penalties listed and authorize the Mayor to approve and execute the Consent Order

The motion carried by the following vote:

Aye: 4 - Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

C. 18-218 Consideration, discussion, and possible approval of Resolution No. 1064, a Resolution of Necessity to Condemn Property located in the NW/4 of Section 7, T-18-N, R-15-E of the Indian Meridian, Wagoner County, State of Oklahoma, for the 23rd Street, Houston to Kenosha, Widening Project (Project No. ST0914)

Engineering Director, Mr. Alex Mills, stated this was a request for condemnation of three parcels needed for the 23rd Street Kenosha to Houston roadway project that involved federal funding. He reported negotiation of a purchase price by Universal Field Services with B-Z Properties was unsuccessful. He stated in accordance with the Oklahoma Department of Transportation (ODOT) agreement regarding right of way, the City purchased the right of way, and then would be reimbursed 80% by ODOT. He stated funding was available in the 2014 GO Bond project.

City Manager Spurgeon asked about the construction schedule. Mr. Mills responded he hoped to have right of way completed in spring with utility relocation during summer and fall. He stated ODOT was pushing to let the contract this fall. City Manager Spurgeon asked how long the Lynn Lane project, up for consideration at this meeting, would take to complete. Mr. Mills responded approximately 9 months. City Manager Spurgeon asked if the Lynn Lane project would be completed prior to the start of this project. Mr. Mills responded in the affirmative. Council Member Lester asked if the funding for the County Line widening, including the bridge, was in place. Mr. Mills responded in the affirmative. Vice Mayor Eudey asked if the ODOT 80/20 reimbursement

contract included legal costs for condemnation procedures. Mr. Schwab replied in the affirmative.

Mr. Roger Broach stated his address was 7667 East 46th Place, Tulsa, OK. He stated he was a representative for B-Z Properties. He reported B-Z had been working for the past two years with Universal Field Services in an attempt to negotiate in good faith. He reported B-Z Properties owned 220 acres which surrounded Angus Acres and owned approximately 8 lots within Angus Acres. He stated Universal was attempting to acquire the property which was along 23rd Street. He explained there were three properties and a billboard involved in this negotiation. He stated B-Z obtained many appraisals for these properties and had been told the purchase price B-Z offered was not only reasonable, but low considering the rezoning of this property to NO, neighborhood office. He explained the goal of B-Z Properties, in purchase of this property, was to resell or develop it, and of course, make a profit. He stated he felt that B-Z Properties had negotiated in fairness with Universal, but Universal had continually returned with unreasonable counter offers. He stated the offers were currently only \$56,000 apart, but Universal would not budge, and he did not understand why this was so, especially considering the legal costs involved if an agreement could not be made. He explained if he were required to hire an attorney for this condemnation suit, the price of the property would raise in turn. He stated he would ask the attorney to pursue the maximum purchase price which was more than what he was currently asking for. He stated he was asking a reasonable price, which the City could verify, and he felt it was unreasonable to pursue condemnation over a \$56,000 difference in a project of this size.

Mayor Thurmond asked if ODOT was doing the negotiations for this project. City Attorney Childs responded Universal Field Services was the contractor selected to complete the right of way acquisition. Mayor Thurmond asked if all three properties were to be rezoned NO. Mr. Broach responded one of the three properties was to be rezoned. Mayor Thurmond asked if Mr. Broach was aware when the property was rezoned, B-Z would be required to give the City right of way for free. Mr. Broach replied in the negative. Mayor Thurmond explained when a piece of property was platted, the right of way was expanded and the right of way land was given to the City for free, per law. Mr. Broach stated the law indicated he should be given a fair price for the property. He reported B-Z had not filed for the rezoning in this area, other land owners had; however, he was for the rezoning as it increased the value of the property.

City Attorney Childs explained the condemnation process was designed to limit the costs in attorney's fees in advance of trial; an initial retainer was required, but after this the process was designed to benefit of the land owner. She stated three commissioners would be appointed to determine the value of the property which would then be presented before Council for approval. Mr. Broach stated he felt B-Z and Universal should have been able to come to an agreement in this situation, but he felt Universal was being unreasonable. He stated he did not want to go to condemnation court, but he would. He stated he and many others felt B-Z Properties had an excellent case. Vice Mayor Eudey stated the purpose of condemnation was to get a fair price and it could work in benefit of B-Z Properties. Mr. Broach indicated the condemnation process would cost a lot of time and money. Vice Mayor Eudey stated the process was designed to not be costly. Mr. Broach argued it would be expensive. Council Member Lester explained the process was designed to be affordable and to ensure a fair purchase price for all parties involved.

Mayor Thurmond asked if there was more discussion. There was none.

MOTION: A motion was made by Mike Lester, seconded by Johnnie Parks.

Move to approve and authorize execution Resolution of Necessity No. 1064

The motion carried by the following vote:

Aye: 4 - Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

D. 18-256 Consideration, discussion, and possible approval of Resolution No. 1082, a Resolution authorizing the City Council of The City of Broken Arrow to initiate an action for Declaratory Relief against Henry and Vestina Hanewinkel and Brown and Perkins, LLC to determine what zoning classification should be applied to a tract of land consisting of 19.64 acres of land located east of North Elm Avenue, and One-Quarter mile south of Omaha Street in Broken Arrow, Tulsa County, State of Oklahoma

Mayor Thurmond stated this item should be tabled until February 20, 2018.

MOTION: A motion was made by Johnnie Parks, seconded by Mike Lester.

Move to table Item D until February 20, 2018

The motion carried by the following vote:

Aye: 4 - Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

E. 18-89 Consideration, discussion, and possible approval of Resolution No. 1085, a Resolution of the Broken Arrow Mayor and City Council Adopting the City of Broken Arrow Multi-Hazard Mitigation Plan for the City of Broken Arrow, Oklahoma

Emergency Manager Jamie Ott stated this was a Resolution pending adoption for a Hazard Mitigation Plan. He reported he and the Broken Arrow Hazard Mitigation Committee had worked over the past 13 months to update the Broken Arrow Multi-Hazard Mitigation Plan which was first implemented in 2004. He explained the Plan was required to be updated every 5 years for FEMA Hazard Mitigation Grant eligibility which provided citizens relief from various natural hazards.

This plan update had been forwarded to the Public School Systems (Union and Broken Arrow) for adoption in the event that any future school improvements were eligible for Hazard Mitigation Grants. He explained that FEMA required adoption by resolution of the Community Multi-Hazard Mitigation Plan update.

MOTION: A motion was made by Scott Eudey, seconded by Mike Lester.

Move to approve Resolution No. 1085 and authorize its execution

The motion carried by the following vote:

Aye: 4 - Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

- F. 18-257** **Consideration, discussion, and possible approval of Resolution No. 1087, a Resolution of the Broken Arrow City Council declaring approximately 5.2225 acres of city-owned property identified as Tracts 1A, 1B, and 2B Combined of Lot 2, Block 1, Tiger Hill Plaza, a Platted Subdivision within The City of Broken Arrow, Tulsa County, State of Oklahoma, and generally located on the southwest corner of Lynn Lane (9th Street) and Kenosha Street (71st Street) Surplus and authorizing transfer to the Broken Arrow Economic Development Authority, an Oklahoma public trust of which The City of Broken Arrow is the sole beneficiary for good and valuable consideration and specifically for the public purpose of furthering the City's economic development goals; and approving and authorizing the execution of certain documents necessary to accomplish the declaration of surplus and transfer of Title, including a General Warranty Deed; Repealing Resolution No. 866 of the City of Broken Arrow declaring approximately 6.84 acres of city-owned property located on the southwest corner of Lynne Lane (9th Street) and Kenosha Street (71st Street) surplus and authorizing transfer to The Broken Arrow Economic Development Authority; and containing other provisions relating thereto**

Mayor Thurmond stated this was requested to be tabled until a future meeting.

MOTION: A motion was made by Mike Lester, seconded by Scott Eudey.

Move to table Item F until a future meeting

The motion carried by the following vote:

Aye: 4 - Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

- G. 18-229** **Consideration, discussion, and possible award of the lowest responsible bid to Ellsworth Construction, L.L.C., and approve and authorize execution of a construction contract for 9th Street Widening, Elgin to El Paso (Project No. ST1210)**

Mr. Alex Mills stated this was a request to approve award of a construction contract for the 9th Street widening from Elgin to El Paso. He reported this was a 2011 and 2014 GO Bond project to widen 9th Street into 5 lanes. He explained a new traffic signal at the intersection of 9th Street and Dallas, as well as street parking in front of the Patio Condominiums and an adjacent parking lot south of the Condominiums, was included in the project. He reported the project had advertised for bids on November 2nd and 9th, bids were opened January 9th, four bids were received and all were responsive. He reported the bid tabulation was attached and the lowest responsible bidder was Ellsworth Construction with a base bid of \$3,240,755.94 and an alternate bid of \$151,289.25 (for the south parking lot adjacent to the Patio Condos). He stated the engineer's estimate was \$3,702,899.10 for the base bid and \$175,003 for the alternate. He recommended award of the base bid and alternate for this project to Ellsworth Construction in the total amount of \$3,392,045.19. He asked if there were questions.

Council Member Parks asked what type of parking was to be constructed in front of the condominiums; would cars be backing into the street. Mr. Mills responded in the negative. He explained Patio Condominiums was in negotiation to donate right of way land to Broken Arrow for the construction 54 off-street diagonal parking space with a median barrier between the parking and the street. Vice Mayor Eudey stated he approved of the proposed parking lot and commended Mr. Mills for his work on the project. Mr. Mills stated the President of the Patio Condo Association believed he had the support of the property owners for the agreement which would be brought before Council at the next Council Meeting. Vice Mayor Eudey stated this project was a long time in development and he was pleased to see it begin.

MOTION: A motion was made by Scott Eudey, seconded by Mike Lester.

Move to award the lowest responsible bid to Ellsworth Construction, L.L.C., and approve and authorize execution of a construction contract for 9th Street Widening, Elgin to El Paso (Project No. ST1210)

The motion carried by the following vote:

Aye: 4 - Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

10. Preview Ordinances

- A. 18-251** **Consideration, discussion and possible preview of an Ordinance annexing property located in the East Half (E/2) of the Southwest Quarter (SW/4) of Section Eleven (11), Township Eighteen (18) North, Range Fifteen (15) East of the Indian Base and Meridian (I.B.&M.), Wagoner County, State of Oklahoma, repealing all ordinances to the contrary; and declaring an emergency**

City Attorney Childs stated a Public Hearing had been held previously regarding this annexation, and Legal recommended Council preview the Ordinance and set it for adoption at the next meeting.

MOTION: A motion was made by Mike Lester, seconded by Johnnie Parks.

Move to preview the ordinance and set it for adoption

The motion carried by the following vote:

Aye: 4 - Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

11. Ordinances

A. 18-242

Consideration, discussion, and possible adoption of Ordinance No. 3513, an ordinance repealing Chapter 2 of the Broken Arrow Code, Article XVI, Broken Arrow Downtown Advisory Board, Sections 2-230, 2-231, 2-232, 2-233 and 2-234; repealing all ordinances to the contrary; and declaring an emergency

City Attorney Childs stated this Ordinance had been previewed at the previous Meeting. She stated it was in the same form as presented previously and requested Council adopt Ordinance No. 3513 and approve the emergency clause.

MOTION: A motion was made by Johnnie Parks, seconded by Mike Lester.

Move to adopt Ordinance No. 3513

The motion carried by the following vote:

Aye: 4 - Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

MOTION: A motion was made by Scott Eudey, seconded by Mike Lester.

Move to approve the emergency clause

The motion carried by the following vote:

Aye: 4 - Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

12. Remarks and Inquiries by Governing Body Members

Mayor Thurmond stated he recently had the opportunity to go to Washington DC and had been invited to the White House to hear the President and Vice President speak. He stated he was privileged to visit the Executive Office of the White House and spent an hour speaking with Staff Members from the Department of Education, Department of Energy, Department of Commerce, Department of Transportation, Environmental Protection Agency, and discussed happenings in Broken Arrow, such as the Innovation District, in an attempt to receive feedback. He reported he passed on the contacts he made to the City Manager to follow-up in an effort to procure support from White House Staff to aid in possible project funding. Council Member Lester commended Mayor Thurmond for representing Broken Arrow favorably and for his efforts to bring in grants to benefit Broken Arrow. Vice Mayor Eudey echoed Council Member Lester's sentiments.

13. Remarks and updates by City Manager, including Recognition of Recent Accomplishments by Employees and Elected Officials

City Manager Michael Spurgeon stated Council Member Wimpee sent regrets for her inability to attend the Meeting as she had a previous work engagement. He reported the Comprehensive Plan Update had begun and he was greatly encouraged that this would be a positive process with extensive input from citizens and staff. He stated last week four interviews with consultants for the proposed Innovation District had been concluded; approximately 90 minutes were spent with each consultant group and he felt the proposals were excellent. He stated this week staff would be interviewing consultants for the redevelopment of 101st and Elm Place. He reported the Public Facilities Assessment authorized by City Council was underway and he felt confident there would be preliminary recommendations to bring before Council in March or April.

Mr. Spurgeon stated the 2018 GO Bond Package Public Forums were scheduled for February 22nd, 26th, and the 27th, at three different locations. He reported the slogan to accompany these Forums was "Build Our Future BA GO Bond August 28th." He reported a meeting would be held with the Build a Better Broken Arrow Committee on February 15th to review the tentative projects prior to the Forum and practice how the Public Forums would be conducted. He discussed the Public Forums, how the Forums would be conducted, and the importance of Council's presence at the Forums. He discussed his new show Broken Arrow in Motion Take 5, who had been interviewed on the show, who he proposed to interview next, as well as what would be discussed at the interviews. He stated the purpose of Broken Arrow Take 5 was to engage and inform the public regarding Broken Arrow affairs. He stated if there were topics Council would like addressed on the show to please let him know and he would accommodate Council to the best of his ability. Mr. Spurgeon reported the Oklahoma Municipality League Dues were \$54,502 this year. He stated he considered voting against continued membership in the League as he felt the dues were more than the representation was worth. Council Member Lester stated Broken Arrow had withdrawn membership in the past for the same reason. Mayor Thurmond stated in other states a city the size of Broken Arrow would only be paying around \$20,000. He reported he and Council Member Lester had held discussions with the NLC in an effort to achieve NLC membership without the prerequisite membership with OML, but the NLC denied the request. Vice Mayor Eudey asked if that was an increase over last year's dues. City Manager Spurgeon responded it was a decrease of \$107. He stated he felt Broken Arrow did a good job with self-representation and self-advocacy and maybe membership in the OML and NLC were unnecessary.

At approximately 7:39 p.m. Mayor Thurmond stated he would entertain a brief recess to enter into Broken Arrow Municipal Authority and Broken Arrow Economic Development Authority.

MOTION: A motion was made by Scott Eudey, seconded by Mike Lester.

Move for brief recess to meet for Broken Arrow Municipal Authority and Broken Arrow Economic Development Authority

The motion carried by the following vote:

Aye: 4 - Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

At approximately 7:44 p.m. Mayor Thurmond reconvened the regular session of the City Council Meeting. He stated there was an Executive Session and he called for a motion for a brief recess to clear the room for the Executive Session.

MOTION: A motion was made by Scott Eudey, seconded by Mike Lester.

Move for a brief recess to clear the room for the Executive Session

The motion carried by the following vote:

Aye: 4 - Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

MOTION: A motion was made by Scott Eudey, seconded by Mike Lester.

Move to enter into the Executive Session

The motion carried by the following vote:

Aye: 4 - Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

14. Executive Session

Executive Session for the purpose of confidential communications between the City Council, the City Manager, the City Attorney and any other pertinent staff members discussing and conferring on matters pertaining to:

- 1. Litigation, including potential resolution, of a matter involving litigation titled Premier Site Development, LLC v. City of Broken Arrow et al, Tulsa County District Court Case No. CJ-2013-00473, and taking appropriate action in open session, including possible authorization to settle this litigation and withdrawal of Motion for Fees and Costs, under 25 O.S. §307(B)(4).**
- 2. Litigation, including potential resolution, of a matter involving titled Henry and Vestina Hanewinkel v. City of Broken Arrow, et al, Case No. CJ-2018-00012, in the District Court of Tulsa County, State of Oklahoma, and taking appropriate action in open session, including possible authorization to settle this litigation, under 25 O.S. §307(B)(4).**
- 3. Pending litigation of a matter titled Patrick Dwayne Murphy v. Terry Royal Warden, Oklahoma State Penitentiary, Case No. Tenth Circuit Court of Appeals, and taking appropriate action in open session, under 25 O.S. §307(B)(4).**
- 4. Discussing the purchase and appraisal of real property located at the Southwest corner of the intersection of South 23rd Street and East 115th Street South, and taking appropriate action in open session, including making an offer of purchase, under 25 O.S. § 307(B)(3);**

In the opinion of the City Attorney, the Council is advised that the Executive Session is necessary to process the pending claims, litigation and possible litigation in the public interest and he purchase and appraisal of real property in accordance with State Statute. After the conclusion of the confidential portion of executive session, the Council will reconvene in open meeting, and the final decision, if any, will be put to a vote.

At approximately 8:15 p.m. Mayor Thurmond reconvened the regular session of the City Council Meeting and the room was opened to the public.

MOTION: A motion was made by Scott Eudey, seconded by Mike Lester.

Move to find the Executive Session was necessary to process the pending litigation in the public interest

The motion carried by the following vote:

Aye: 4 - Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

MOTION: A motion was made by Scott Eudey, seconded by Mike Lester.

Move to authorize the City Attorney to resolve the Premier Site Development lawsuit by waiving fees and costs in an exchange for an agreement not to file an appeal

The motion carried by the following vote:

Aye: 4 - Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

MOTION: A motion was made by Scott Eudey, seconded by Johnnie Parks.

Move to authorize the City Attorney to investigate the possibility of retaining outside counsel to file an amicus petition for writ of certiorari in Murphy versus Royal

The motion carried by the following vote:

Aye: 4 - Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

MOTION: A motion was made by Mike Lester, seconded by Johnnie Parks.
Move to authorize the City Manager to move forward with purchase of the land located at the southwest corner of the intersection of South 23rd Street and East 115th Street South

The motion carried by the following vote:

Aye: 3 - Johnnie Parks, Mike Lester, Craig Thurmond
Abstain: 1 - Scott Eudey

15. Adjournment

The meeting adjourned at approximately 8:17 p.m.

MOTION: A motion was made by Johnnie Parks, seconded by Mike Lester.

Move to adjourn

The motion carried by the following vote:

Aye: 4 - Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

Attest:

Mayor

City Clerk