



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, July 3, 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

Pastor Anita Manganero performed the Invocation.

3. Roll Call

Present: 4 - Debra Wimpee, Mike Lester, Scott Eudey, Craig Thurmond
Absent: 1 - Johnnie Parks

4. Pledge of Allegiance to the Flag

Council Member Mike Lester led the Pledge of Allegiance to the Flag.

5. Consideration of Consent Agenda

Mayor Thurmond asked if there were any items to be removed from the Consent Agenda. There were none.

MOTION: A motion was made by Mike Lester, seconded by Debra Wimpee.

Move to approve the Consent Agenda

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Mike Lester, Scott Eudey, Craig Thurmond

- A. 18 506 Approval of Broken Arrow City Council Meeting Minutes of June 18, 2018**
- B. 18 771 Authorization for the Mayor to execute a letter supporting the City of Broken Arrow application for Better Utilizing Investments to Leverage Development (BUILD) Transportation Discretionary Grant funds for 23rd Street (Project ST0914)**
- C. 18 760 Approval of and authorization to execute Resolution No. 1112 for the City of Broken Arrow requesting programing of Tulsa Urbanized Area Transportation Alternative Funds for the Broken Arrow Creek Trail Phase 2 project**
- D. 18 722 Approval of and authorization to execute renewal of agreement for automatic aid in fire protection and first response and mutual aid in fire protection and first response between the City of Tulsa and the City of Broken Arrow**
- E. 18 688 Approval of and authorization to execute renewal of an annual Commercial Services Agreement with Cox Communications for data and telephone services for fiscal year 2018 19**
- F. 18 766 Approval of and authorization to execute the Amendment No. 1 to Agreement for Professional Consulting Services for Tiger Hill Soldier Pile Retaining Wall (Project No. 171703)**
- G. 18 764 Approval of and authorization to execute a Professional Services Agreement with Doerner, Saunders, Daniel & Anderson, L.L.P., for providing counsel and legal advice regarding employment, labor issues and to review daily court filings**
- H. 18 762 Approval of and authorization to execute a Professional Services Agreement with Doerner, Saunders, Daniel & Anderson, L.L.P., for providing counsel and legal advice regarding zoning litigation and conflict of interest issues**
- I. 18 769 Approval of and authorization to execute a Professional Services Agreement with Kivell, Rayment & Francis, P.C., for providing counsel and legal advice regarding right of way acquisitions, title opinions and property law**
- J. 18 753 Approval of and authorization to execute a Professional Services Agreement with McDonald & Metcalf, L.L.P., for providing counsel and legal advice regarding Tiger Hill Retaining Wall Design and Construction Defect Dispute with Contech, Inc., O.J.C., Co., and Heartstone**
- K. 18 765 Approval of and authorization to execute a Professional Services Agreement with McAfee & Taft, P.C., for providing counsel and legal advice regarding sovereignty law, employment law and labor law**

- L. 18 768 **Approval of and authorization to execute Professional Consultant Contract with Traffic Engineering Consultants, Inc., for New Traffic Signal at the Intersection of Hillside Drive and 23rd Street (193rd East Avenue) (TS1901)**
- M. 18 761 **Approval of and authorization to execute a Gas Facilities Relocation Agreement between Oklahoma Natural Gas Company (ONG) and the City of Broken Arrow for Omaha Street Culvert Project (Project No. SW1604)**
- N. 18 776 **Approval of and authorization to execute the City of Broken Arrow Annual Services Contract with Broken Arrow Seniors, Inc.**
- O. 18 775 **Approval of and authorization to execute a City of Broken Arrow Parks and Recreation Use Agreement between the City of Broken Arrow and the Broken Arrow Seniors, Inc.**
- P. 18 773 **Approval of and authorization to execute a City of Broken Arrow Parks and Recreation Use Agreement between the City of Broken Arrow and the Broken Arrow Rugby Football Club**
- Q. 18 777 **Approval of and authorization to execute a City of Broken Arrow Parks and Recreation Use Agreement between the City of Broken Arrow and the Broken Arrow Volleyball Club for the use of Nienhuis Park Community Center**
- R. 18 758 **Approval of and authorization to execute Change Order CO2 for the Construction Contract #176041; Events Park Security Lighting**
- S. 18 754 **Notification of Change Orders or Work Orders with a value of less than \$25,000 on Public Contracts**
- T. 18 757 **Approval of and authorization of Final Acceptance for the public improvement at Emerson Orthodontics located at 800 West Mission Street**
- U. 18 745 **Approval of BAZ 2002, Margaret H. Page Revocable Trust, 2.58 acres, A R 1 to RS 1, one quarter mile west of Elm Place, one third mile north of Jasper Street**
- V. 18 40 **Approval of the Broken Arrow City Council Claims for July 03, 2018**

6. Consideration of Items Removed from Consent Agenda

There were no items removed from the Consent Agenda. No action was required or taken.

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

- A. 18 749 **Consideration, discussion, and possible action regarding the Public Nuisance Officer's decision on June 7, 2018 to declare 2701 East Norman Place, Broken Arrow, Oklahoma 74014; Arrow Village Mobile City Lot 274 1.00 Lots, Wagoner County as a dilapidated structure, a public nuisance and authorization to demolish the property; Case No. 18 10029764**

Development Services Director Michael Skates reported his department had received a complaint concerning the above property, investigated the matter, and determined the property to be dilapidated. He stated the property was owned by Mr. John Straton, was unoccupied with no water service since 2009, and the city had received multiple complaints in regard to the property since 2013 including unsecured structure, high weeds, trash, and general nuisance. He stated a Notice of Abatement Nuisance Public Hearing Notice was posted on the property on February 12, 2018 and a copy was mailed certified to Mr. John Straton who lived across the street at 2702 East Norman Place giving a Public Hearing date of April 5, 2018; however, the certified mailing was returned unclaimed. He stated Mr. Straton attended the Public Hearing on April 5, 2018 during which Mr. Straton indicated the mobile home was used for storage, was unoccupied and he (Mr. Straton) needed more time to complete the required repairs. Mr. Skates stated the Hearing Officer gave Mr. Straton a 60 day extension and tabled the case until June 7th, 2018. Mr. Skates stated the Hearing Officer advised Mr. Straton that code enforcement would re-inspect the property prior to June 7th, 2018 and if repairs had not been completed the city would proceed with Declaration for Demolition, to which Mr. Straton agreed.

Mr. Skates reported when code enforcement re-inspected the property on June 6th, 2018, some improvements had been made; however, the overall condition of the trailer was still very poor. He stated the Hearing Officer reviewed the photos of the property from June 6th and declared the mobile home a dilapidated structure and signed the Order for Demolition. He stated the Order of Demolition was posted on the property on June 8th, 2018, to which Mr. Straton filed an appeal. He stated on June 18th, 2018 a certified letter and email was sent to Mr. Straton advising him the appeal would be heard by City Council on July 3rd, 2018; staff had not received a return receipt from the certified letter to Mr. Straton. He reported code enforcement inspected the property June 22, 2018 prior to preparing the fact sheet and no additional improvements had been made to the structure or property. He stated city staff recommended Mr. Straton's appeal be denied and Staff be authorized to move forward with demolition as previously approved by the Hearing Officer.

Mr. John Straton stated his address was 2702 East Norman Place. He stated last year he had a heart attack and quadruple bypass surgery which limited his ability and his work time frame. He stated he was employed as a teacher and was required to perform maintenance

himself due to financial restrictions. He stated he had made repairs, fixed holes, fixed soffit on the back side, painted and was working as fast as his health and finances would allow. He stated he had intently purchased property not located within the City of Broken Arrow; however, Broken Arrow annexed the land. He explained the different stages of the work, the labor it required, the progress he had made and the work he still intended to complete. He stated he was disabled and the Americans with Disabilities Act should allow a reasonable amount of time, as a disabled person, to complete the repairs.

Mayor Thurmond asked if it was true the structure had not had water since 2009. Mr. Straton responded in the affirmative; no water service was needed for the structure. Mayor Thurmond asked if the property was habitable. Mr. Straton responded in the negative, but it would be habitable when he completed the repairs. Council Member Lester asked if it was his residence. Mr. Straton responded in the negative; it was his parking and storage building and was located across the street from his residence. Council Member Wimpee asked what Mr. Straton intended to do with his property if an extension was granted. Mr. Straton responded he intended to sell the property after the building was repaired. He stated he was using the repairs as a tool to increase his stamina and health as opposed to going to a gym. Mayor Thurmond asked how long Mr. Straton had owned the property. Mr. Straton responded 40 years. Mayor Thurmond stated the County also had code enforcement. Mr. Straton stated County code was different; nonetheless he was making repairs.

Pictures of the property were displayed. Vice Mayor Eudey asked if the pictures were an accurate depiction of the property. Mr. Straton responded in the negative; additional repairs had been made to the property. Mayor Thurmond asked how long Mr. Straton had been working on the property making repairs. Mr. Straton responded he started making repairs six months prior to his heart attack. Council Member Lester stated the property had been receiving complaints for 5 years and City Council had an obligation to the Citizens of Broken Arrow who all were required to abide by the same property codes. Mr. Straton stated he was doing as much as he could as fast as he could. Vice Mayor Eudey asked why Mr. Straton had not received the certified mailings. Mr. Straton responded he did not go to the Post Office, but he received the email notification. Vice Mayor Eudey asked how long Mr. Straton would take to complete repairs. Mr. Straton responded he intended to have the roof, soffit and skirting repair done prior to the start of the new school year.

Mayor Thurmond asked about the exposed pipes and waterlines. Mr. Skates responded there were exposed electrical wires and water pipes. Vice Mayor Eudey asked if there was electrical service to the property. Mr. Straton responded in the affirmative. Discussion ensued regarding the exposed electrical, missing skirting, safety issues, the possibility of child crawling under the home, being injured, and possible fire hazards. Mr. Straton stated he was unaware of the importance of covering that hole in the skirting, but would close it immediately.

Vice Mayor Eudey stated his concern was this matter had been an issue pending since 2013 and while he applauded Mr. Straton's recent efforts and understood Mr. Straton's repairs had been interrupted by health concerns, he worried Mr. Straton would be unable to complete the necessary repairs in a timely manner and/or keep up with code requirements. Mr. Straton responded he had the supplies on hand and was working on the repairs as quickly as his disability would allow. He stated the American Disability Act protected him from loss of his property if he could not work as fast as someone without a disability. Council Member Lester stated the property was not his primary residence and had not been a residence for years. Mayor Thurmond stated while the repairs were required to be completed in a timely manner, Mr. Straton was not required to do the labor himself, nor did he see how any one person alone would be able to complete all the needed repairs in a timely manner, especially considering the property had been growing in disrepair for many years without attention from Mr. Straton. Council Member Lester stated he was under the same requirements to maintain his property as Mr. Straton and would be required to make the same repairs. Mr. Straton reiterated he was making the repairs. Vice Mayor Eudey stated the repairs should have been fixed when the problems first arose, not all at once only after years of complaints. Mr. Straton stated he understood, but he was working on it daily and progressing daily.

Vice Mayor Eudey stated the Council had an obligation to uphold the safety and well-being of the Citizens of Broken Arrow, and Mr. Straton's property was unsafe, needed to be made safe as soon as possible, and he worried the required repairs to make the property safe could not be completed in the next two months. Mr. Straton stated he intended to complete the repairs prior to school beginning. Council Member Lester stated Mr. Straton had indicated he could not work in summer temperatures. Mr. Straton stated he was working the expected temperatures into his schedule and he was only asking for reasonable accommodation. Council Member Lester stated the city had been accommodating Mr. Straton for years.

Mayor Thurmond asked if Mr. Straton had anything more to add. Mr. Straton responded Federal Law required he be given reasonable accommodation, and he believed the City regulations were ex post facto and prohibited by State and Federal Constitution because he had purchased the property prior to the City's annexation. He stated City Ordinances should

not apply to the property because it was purchased prior to annexation. He stated he fully intended to complete the required repairs and repairs were currently in progress.

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

Move to deny Mr. Straton's appeal and authorize Staff to move forward with the demolition as previously approved by the Hearing Officer

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Mike Lester, Scott Eudey, Craig Thurmond

B. 18 741 Consideration, discussion, and possible action regarding Planning Commission's decision on May 24, 2018, to deny BAZ 2000, Angus Acres Perimeter Rezoning, approximately 15 acres, A R 1 to ON, south and east of the southeast corner of Kenosha Street and 23rd Street

Plan Development Manager Larry Curtis reported on May 24, 2018 the Planning Commission held a Public Hearing regarding the application submitted to change the zoning on approximately 15 acres located south and east of the southeast corner of Kenosha and 23rd Street from AR1 to ON. He reported the Planning Commission conducted a thorough investigation of the request and listened intently to the information presented. He stated four property owners, who were part of the application, spoke in favor while six property owners, who were not part of the application, spoke in opposition. He stated, in addition, a petition expressing opposition to the rezoning request which contained 21 signatures was presented at the Planning Commission Meeting. He stated the Planning Commission, with a vote of 3 to 2, voted to deny the application and on June 1st, 2018 the applicant for BAZ-2000, who represented 11 property owners, submitted an appeal. He stated a letter which provided notice of the appeal of the Planning Commission decision was mailed on June 6th, 2018 to the same property owners who received the notice of the Planning Commission hearing. He reported the Angus Acres subdivision was annexed into the City of Broken Arrow on June 2nd, 1980 with Ordinance No. 283 and was given the zoning designation of AR1 – annexed single family residential. He stated the plat for the property Angus Acres was recorded in Wagoner County on December 31st, 1957 and 10 of the 11 lots included in the rezoning request had existing single family homes while the other lot was currently vacant. He reported, during the Planning Commission meeting, several residents, both in support and opposition to the rezoning request, acknowledged long term residency in the area. He read through the restrictive covenants for Angus Acres which he stated Broken Arrow could not enforce; however, modification of the covenant for office use was required if rezoning was approved. He reported 25 feet of right of way along 23rd Street was currently dedicated and plans were in process widening 23rd Street from two lanes to five lanes, and an additional 35 feet of right of way would be obtained. He reported two property owners associated with the application lived adjacent to 23rd Street. He stated these two property owners had initiated submission of the rezoning request due to current traffic noise and automobile accidents which caused property damage. He stated residents who spoke in opposition expressed concern that the value of property would decrease with a zoning change, expressed the rezoning was in conflict with the restrictive covenant of Angus Acres, was concerned about the change of view from neighborhood views to office building views, and expressed concern regarding traffic through the neighborhood.

Mr. Curtis reported the property was designated as level 2 in the Comprehensive Plan. He stated ON zoning was identified as a "possible" within the Comprehensive Plan in level 2; ON was considered in accordance with the Comprehensive Plan when the proposed ON was located adjacent to an arterial street or as part of an expansion of an existing ON area located adjacent to an arterial street. He reported the ON requested by BAZ-2000 was located adjacent to Kenosha and 23rd Street and could serve as a buffer between the commercial use to the north and to the west and the remaining single family homes in Angus Acres neighborhood. He stated access to the office use would need to be directly from Kenosha and 23rd Street. He stated as a result BAZ-2000 was considered to be in compliance to the Comprehensive Plan and staff expressed to the applicant that the re-platting process and infrastructure requirements associated with re-platting would be required. He stated the Planning Commission Staff had initially recommended approval of BAZ-2000 subject to the property being re-platted in accordance with the subdivision regulations and all future access to the property being from Kenosha Street or 23rd Street. He stated the recommendation was based upon the Comprehensive Plan; however, decisions to change rezoning classification also needed to be based upon whether or not the change would be in agreement with the policies of the city and appropriate for the property. He stated the Planning Commission conducted a thorough investigation of the rezoning request and denied the request with a vote of 3 to 2. He stated it was the recommendation of Staff that BAZ-2000 be denied in accordance with the recommendation of the Planning Commission.

Mayor Thurmond asked what the primary reason for denial was. Mr. Curtis responded the Comprehensive Plan provided for "possible," not necessarily "allowed" ON zoning in level 2; single family was the "allowed" use. He reported after Staff had weighed the implications from start to finish and all aspects, including public input, Staff was in agreement with the Planning Commission that this particular rezoning request would not be the best fit for the area. Vice Mayor Eudey asked if the restricted covenant which had to be amended played

into the decision. Mr. Curtis responded in the negative; it was only noted there was a need to amend the covenant if the rezoning had been approved. Discussion ensued regarding restrictive covenants, the need for regular updating or not, expiration of covenants, the possibility of commercial rezoning across the city at sites where streets were designated to be widened, the desire to preserve residential areas, and zoning prior to developing an area rather than after.

Mr. Don Stacy stated his address was 2002 Archdale Street. He thanked Council for the opportunity to speak in favor of the appeal of BAZ-2000. He reported he was the coordinator and representative for the eleven property owners who approved of the rezoning. He stated he was surprised at the vote to deny the rezoning request considering the previously recommended approval which stated BAZ-2000 complied with all requirements for Office Neighborhood zoning. He stated he felt the Planning Commission members were influenced by several unfounded and erroneous complaints from persons objecting to the application which included residents not living in Angus Acres 1 Edition and who would not be affected by the zoning request. He stated the three complaints were safety, noise and traffic, and property value, and he would address each individually.

Mr. Stacy stated the safety complaint was invalid as access to the office area was only via arterial streets not neighborhood streets; therefore there would be no increase of risk to children who walked through the neighborhood. He reported he had constructed a barrier along his side yard following two car accidents which damaged his property, including an incident where a car had driven through the wall of his home into his daughter's bedroom (who thankfully was not home at the time). He stated when the road was widened, this barrier, which had prevented multiple vehicles from crashing into his yard and home since its construction, would be removed and a request for guard rail installation had been denied. He stated his neighbor had also suffered damage due to automobile accidents. He stated it was unsafe to mow his side yard due to heavy traffic, but he felt installation of a guard rail along his and his neighbor's property line would reduce the safety risks. He stated he would have sold his home to the city and moved from the area; however, ODOT (Oklahoma Department of Transportation) had not offered an amount equal to comparable homes in the area and the relocation program had only offered substandard homes on tiny lots in undesirable neighborhoods. He explained the approval of the rezoning would not cause a safety issue for children walking through the neighborhood, but would allow the residents along 23rd to sell to the business developers for much more reasonable prices, thereby avoiding future dangers to persons and property.

Mr. Stacy stated there was a concern that there would be increased traffic and noise once the office buildings were built. He stated residents along 23rd and Kenosha already had maximum traffic and noise both, and this would obviously become worse after the widening. He stated the residents complaining about an increase in noise and traffic lived not along 23rd and Kenosha, but in the interior neighborhood, and the noise and traffic would not affect that area. He stated another complaint had been an office building in the area would increase traffic, which was invalid, the road widening would alleviate the traffic problems. He stated, in addition, commercial development would be taking place in the surrounding area following the road widening, and the addition of an office building in this location would not significantly affect the traffic pattern. He explained increased traffic and noise should not have been a factor in denying the zoning request as near maximum traffic and noise already existed in the area.

Mr. Stacy stated in regard to the investment complaint, homes along 23rd Street would be virtually unmarketable at acceptable rates following the widening. He stated in addition to the road being closer to his home, a trail for jogging and bicycling was planned a mere few feet from his home. He stated in the right of way settlement, ODOT and Broken Arrow refused to fence the neighborhood off from the trail, which would further devalue the homes. He stated he felt this would prohibit the sale of his property and other's properties along 23rd Street. He stated a large number of homes in Angus Acres 1 Edition were rental properties and he feared only more properties would become rentals in the future as the homes in the area were older and some in disrepair. He explained he felt the age and disrepair of the homes would cause devaluation, not the construction of office buildings in the area. He stated the Planning Commission had indicated it was in sympathy with those facing financial loss, but could not use it as a consideration in a ruling. He stated he hoped City Council would consider financial loss in its decision as it was the driving force behind this application. He explained financial loss to the residents along 23rd Street far outweighed any loss the residents in the interior neighborhood might incur. He stated he felt if any of the interior residents lived along 23rd Street, feelings would quickly change in favor of the rezoning. He thanked Council for its consideration.

Council Member Lester stated the commercial properties alongside residential properties to which Mr. Stacy was referring were platted as such prior to development. He stated he owned a property along Aspen which, when the road was widened from 2 lanes to 5 lanes, did not lose value and the noise had actually decreased following the widening. He stated the problem of cars veering into Mr. Stacy's yard would be rectified as the curve in the road

currently alongside his property line would be straightened during the lane widening. He stated in his 40 years in real estate he had never known a road improvement/widening to lower any property value; often it would increase a property's value. He stated he also did not believe the office buildings would reduce property value.

Council Member Wimpee asked about the request for barriers to be installed. Mr. Alex Mills, Engineering and Construction Director, responded this was the first he had heard of the request for barrier installation as this was an STP (Surface Transportation Program) project and ODOT (Oklahoma Department of Transportation) handled the right of way acquisition; however, this was a matter he would investigate and he felt reasonable accommodations could be made. Vice Mayor Eudey stated he felt the new road was sure to be better designed than the current roadway which had been built in the 1950s. He asked if the developer was reviewing topography and was developing a road which would ensure the safety of residents. Mr. Mills responded in the affirmative and stated the trail between the road and the properties along 23rd would also provide a wide buffer, but again he would look into the possibility of a guardrail. Mayor Thurmond asked if a barrier curb was planned. Mr. Mills responded in the affirmative. Mayor Thurmond stated this would significantly improve safety.

Mr. Clark Frayser stated his address was 802 Kilby Drive. He stated he agreed with the Planning Commission that this rezoning was not a good idea. He explained, his was an established neighborhood, he had no desire to live near a commercial property, and neither did the majority of his neighbors. He stated the safety of school children walking was indeed a concern as people driving in and out of business parking lots were not as aware of children walking home from school as neighborhood residents would be. He stated he believed the addition of office buildings would lower property values and would certainly not improve the traffic congestion and noise, but would only make it worse. He stated he hoped City Council would deny the appeal for BAZ-2000.

Council Member Lester asked if any meetings had been held with Mr. Stacy and all the neighborhood residents. Mr. Frayser responded in the negative.

Mr. Clarence Smith stated his address was 716 Kilby Drive and he had lived at this address for approximately 41 years. He stated he had filed a written submission with the City Clerk along with a petition containing 35 signatures of property owners. He stated there were two subdivisions with approximately 59 property owners which made up one small neighborhood. He stated he respected Council Member Lester's comments regarding the fact that property values would not decrease as a result of the road widening. He explained he had been a Tulsa Police Officer for 20 years, worked at the City Attorney's office for 6 years with another 10 years managing neighborhood inspections in the City of Tulsa, and it was his opinion the changeover to an office neighborhood would bring in undesirable activity and crime to the area. He stated he did an open records request on the acquisition files for Mr. Stacy's property and an independent appraisal done on the property stated the highest and best use of the property was residential, not commercial. He stated he agreed with Mr. Frayser's statements and concerns.

Mr. Mark Burlison stated his address was 2033 Hycrest Drive. He thanked City Council for its service to the City. He stated he was unable to make the Planning Commission Meeting as he was traveling to see some family, and along the way he stopped at a hotel. He stated when he woke up in the morning and looked out the window of his hotel he noted the hotel was backed up against a neighborhood. He stated it was uncomfortable looking down into the area, into people's homes as the residents got ready to start the day. He stated it was a poor fit and he felt any business backed up against his neighborhood would feel the same way, a poor fit. He reported in the last 15 years he had invested \$15,000 in his home, his neighbor to the north had completely renovated his home, his neighbor to the south had spent tens of thousands completely gutting and renovating his home. He reported there was an investment trend in the neighborhood whether through rentals or property owners. He stated he was married with two children and this was where he wanted to raise his children. He stated he had a definite concern that traffic would increase through the neighborhood with the addition of office buildings. He asked Council to deny the appeal.

Mr. James Niessen stated his address was 715 Kilby Drive and he was retired military. He stated he was against the rezoning. He stated he felt if the rezoning was approved scalpers and speculators would begin targeting his neighborhood purchasing more neighborhood properties for commercial development until the neighborhood was ruined.

Ms. Shirley Ketcher stated her address was 201 Archdale Drive. She stated there were three accidents in her yard last year. She stated she understood the curve caused a lot of the accidents, but there was also the hill to attend with and drivers, especially in the rain, ended up on her property. She stated she was concerned about this safety issue. She stated she and her husband thought this was to be their final home. She stated her home was one of the nicest in the neighborhood as it had been completely renovated from top to bottom. She stated her husband passed away 16 years ago and she was left a widow. She stated what ODOT (Oklahoma Department of Transportation) offered her, and the places ODOT offered

to move her to, were unacceptable. She explained she would have been scared to live in the areas which ODOT (Oklahoma Department of Transportation) had proposed, nor could she have afforded to fix any of those homes up to match her home. She stated her neighborhood was a nice neighborhood and ODOT did not offer her enough money to purchase a home in another nice neighborhood. She stated she hoped the rezoning was approved so she could sell her home for enough money to move into a nice area. She stated she was on a fixed income and could not afford to hire a lawyer to deal with ODOT. She stated she wished for the appeal to be approved so she could afford to purchase a comparable home in a comparable neighborhood.

Ms. Jessica Parks stated her address was 2010 Archdale Drive. She stated she bought her property in 2014 and built what she thought would be her forever home in 2016. She stated her biggest concern was the possible crime and trash influx as a result of an office building being built in her neighborhood. She stated she and her husband had a combined 35 years working for QuikTrip stores and had firsthand experience with the types of crime and trash a business could generate: drugs, needles, glass bottles, and such. She was worried about this type of trash blowing into her yard, or her child being able to reach and grab through the fence line, as her home would be backed up against the rezoned area. She thanked Council for its time and attention.

Mr. Brian Homberger stated his address was 2414 East Sidney Avenue. He stated he had lived in his home for 18 years and had invested \$75,000 dollars in his home over the last year. He stated his home was his family's forever home. He stated he had no desire to live next door to a business of any sort. He stated he may not have invested in his home this past year if a zoning change had been a possibility. He stated he loved his home and his neighbors. He stated he felt sorry for the position Mr. Stacy and Ms. Ketcher were in and understood the expressed concerns. He explained this was not a personal issue between him and Mr. Stacy and Ms. Ketcher. He stated he would be two doors down from the commercial property if it was approved and he really did not like the idea. He reiterated he was against this rezoning. He stated there was a huge amount of property available around Lowe's and Wendy's and Atwood's; there was no need for property acquisition in his neighborhood.

Vice Mayor Eudey asked if Mr. Stacy or Ms. Ketcher had attempted to put their homes on the market recently. Mr. Stacy responded in the negative. Discussion ensued regarding the possibility of selling the homes residentially right now, the desire of Mr. Stacy and Ms. Ketcher to sell commercially. Mr. Stacy reiterated the road widening effects on his property, the safety issues, and the jogging trail being too close to his home. He stated he had not attempted to sell his home yet as he was waiting to see what happened.

Vice Mayor Eudey stated this decision was a challenge as he understood the differing positions of the residents and sympathized with each. He stated his concern with the proposed rezoning was there would be increased traffic through the neighborhood as drivers often tried to find short cuts or back routes into any business in order to avoid busy main roads. He stated it was important to consider every home in the neighborhood and how this would affect each property. He stated another foreseeable problem were the restrictive covenants. He explained the city could not enforce restrictive covenants, nor was it a role the city should play; however, it was important to consider during a rezoning application. He explained in order to amend a restrictive covenant, a neighborhood vote was required, and if City Council were to grant a zoning change which was inconsistent with a restrictive covenant which the neighborhood did not agree to amend, the neighborhood could potentially sue the individual to stop the building because it violated the covenant. He stated as the majority of the neighborhood did not approve he was hesitant to approve the appeal. He stated if the neighborhood came together and voted that the covenant could be amended to allow the rezoning, the residents could come back to Council with another appeal.

Council Member Lester stated at one point in his career he developed a commercial area which abutted a residential area, zoned for residential, and abutted a major arterial street. He explained he spent two years meeting with the neighbors, gaining the neighbors approval, prior to developing the commercial property. He stated he felt Mr. Stacy needed to hold meetings with his entire neighborhood to review plans, benefits and potential problems, and gain approval prior to rezoning.

Ms. Shirley Ketcher stated she felt the covenant was broken when she and other property owners were forced to sell land to ODOT. She stated she was upset she had no choice but to sell her property. Council Member Lester stated that latitude was granted whenever Municipalities and Government Entities were working toward the public good. Mayor Thurmond stated the city could not review private covenants prior to city decisions.

MOTION: A motion was made by Mike Lester, seconded by Debra Wimpee.

Move to deny BAZ-2000 based on the Planning Commission's findings and Staff recommendations

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Mike Lester, Scott Eudey, Craig Thurmond

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. 18 704 Approval of and authorization to execute a Project Agreement between The Oklahoma Department of Transportation (ODOT) and the City of Broken Arrow for the Broken Arrow: Main Street Bicycle Facilities (Project No. 166026)

Construction and Engineering Director Alex Mills reported this was a re-approval, as Council had previously approved this Item at the May 1st Council Meeting; however, ODOT (Oklahoma Department of Transportation) had discovered discrepancies. He explained there were items left off of the construction estimate by the ODOT design team, and ODOT had changed the requested construction inspection fees: up to a maximum of 20% of the construction project, rather than 6%. He stated ODOT was utilizing outside contractors more regularly and as a result 6% was no longer covering costs. He reported the total construction cost was changed to \$660,708 dollars versus the previous cost of \$529,495 dollars; in addition, there was a discrepancy in the ODOT funding report and the agreement was incorrect. He explained ODOT had showed \$362,902 dollars for ODOT funding, but the correct ODOT funding amount was \$340,221 dollars. He reported the resultant changes equaled an out of pocket cost for the City of Broken Arrow of \$320,487 dollars versus the originally agreed upon \$166,593 dollars. He stated, however, even with this cost increase, with ODOT funding this project would still cost less than if funded solely by the City of Broken Arrow. He stated Staff's recommendation was to approve the new agreement with ODOT. He asked if there were questions.

Mayor Thurmond stated that discussion on the State and Federal level regarding the increase to 20% generally felt it was hard to justify. Mr. Mills stated the ODOT 20% rate was a maximum; ODOT would only charge what was actually spent.

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

Move to approve and authorize execution of Project Agreement between ODOT and the City of Broken Arrow for the Broken Arrow: Main Street Bicycle Facilities (Project No. 166026)

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Mike Lester, Scott Eudey, Craig Thurmond

B. 18 746 Consideration, discussion and possible approval of PUD 253A (Planned Unit Development Major Amendment), North Rose Business Park (A.K.A. Kenosha Elm Business Park), 13.20 acres, R 2,RM, CM, and CH to ON,CN, and IL (BAZ 1965)/PUD 253A, north of Kenosha Street, one quarter mile east of Elm Place

Mayor Thurmond stated he had a conflict with this item and turned the item over to Vice Mayor Scott Eudey. Mayor Thurmond left the room at approximately 7:57 p.m.

Plan Development Manager Larry Curtis reported PUD 253A involved 13.2 acres located north of Kenosha Street and one quarter mile east of Elm Place. He reported a portion of the property to the south was retail business; the rest was undeveloped. He stated the applicant proposed a mixed-use development which consisted of existing retail shops fronting Kenosha Street, warehouse office space, medical office space and mini storage to the north, and three office buildings to the east. He stated a public street, North Birch Avenue, would divide the property from Kenosha Street to the City of Broken Arrow stormwater retention facility on the north side. He stated PUD 253A described dividing the property into areas A, B and C with a public street being constructed to divide the properties. He described the various specific approved uses of each area. He stated the Planning Commission recommended approval by a vote of 3 to 0 for PUD 235A per Staff recommendation and Staff recommended PUD 235A be approved subject to the property being platted. He stated four citizens spoke at the Planning Commission Meeting with concerns about drainage, crime, traffic onto Kenosha, access, dumping, property values, lighting, proposed uses near the Rose District and concern that an environmental study had not been done. He reported PUD 235 had already been approved, and this specific amendment only added additional uses associated with the property in the mini storage area. He stated Staff recommended PUD 235A be approved per Planning Commission and Staff recommendation. He asked if there were questions.

Council Member Lester asked if there were office building height restrictions. Mr. Curtis responded in the affirmative; the buildings were limited to two stories up to 45 feet in height. He stated a 30 foot landscaped buffer was also proposed between the residential and the office area. Council Member Lester expressed concern regarding the size and screening height of the buffer between two story office buildings and the residential area. He asked if there was a specific tree size requirement in the buffer zone. Mr. Curtis responded larger caliper was required, as well as a standard 8 foot fence. Vice Mayor Eudey asked if the hydroflow studies had been completed. Mr. Curtis responded in the negative; this would be conducted during the engineering portion of the plat.

Mr. Mark Capron with Sisemore, Weisz and Associates stated his working address was 6111 East

32nd Place in Tulsa. He stated he represented the owner of the property and the applicant. He stated PUD 235 had been approved two years ago and a preliminary plat had been obtained. He explained following purchase and evaluation of the property the owner determined mini storage only might not be the best purpose for that specific portion of the property; otherwise the PUD remained the same. He displayed and reviewed the proposed plans. He stated he wanted to clarify the only change was to add medical office space and warehouse space to the area which was previously deemed mini storage only. Mr. Capron stated in regard to hydrology, a retention determination had been acquired, and he displayed a map and reviewed which areas needed detention and which did not; he discussed how certain areas might be piped/detained/drained, etc.

Council Member Lester asked if there was a City detention pond nearby. Mr. Capron responded in the affirmative; to the north of the property.

Citizen Dr. George Ballew thanked City Council for its service. He stated his address was 1040 Circle Drive. He reported he had lived in his home, which was located next door to the proposed development, for 60 years. He stated he had suffered water damage to his property on three separate occasions, water poured into his yard regularly, and he wanted to be certain this would not continue following development. He explained he was concerned water drainage would become a larger problem once the development was completed and he was concerned about the possibility of a mosquito problem with a new retention pond. He thanked Council for its consideration.

Council Member Lester asked how the land would be graded. Mr. Curtis responded the land would be graded to not cause any additional water flow problems, but he could not specifically answer this question without seeing the full engineering plan. He stated the area in which Dr. Ballew lived was to be designed to flow into the detention facility. Council Member Lester stated, in conjunction with the Bond Issue, and the widening of Kenosha, stormwater was to be addressed to better move water in this area which would also help Dr. Ballew's situation. Vice Mayor Eudey asked if, while the full hydrology test had not been completed, it would be designed to shunt water away from Dr. Ballew's area. Mr. Curtis responded in the affirmative. Council Member Lester asked Mr. Curtis to pay close attention to this portion of the engineering plans. Mr. Curtis stated this would be done, and the conditional final plat would be brought before Council for review and approval. Discussion ensued regarding the possibility that the development, along with the stormwater improvement projects, would much improve the flood area in which Dr. Ballew lived, and the need for continued close monitoring of the plans.

Council Member Lester stated, as a note to Dr. Ballew, City Council considered the stormwater runoff problems in his area an important issue which would be addressed.

MOTION: A motion was made by Debra Wimpee, seconded by Mike Lester.

Move to approve PUD 253A per Planning Commission and Staff recommendation

The motion carried by the following vote:

Aye: 3 - Debra Wimpee, Mike Lester, Scott Eudey,
Recused: 1 - Craig Thurmond

Mayor Thurmond returned at approximately 8:15 p.m.

C. 18 756 Consideration, discussion and possible approval to execute an agreement between the City of Broken Arrow and Rushbrooke South Homeowners' Association, Inc. concerning the construction of certain specific drainage improvements to the east branch of Haikey Creek

Construction and Engineering Director Alex Mills reported Haikey Creek which ran through Rushbrooke was in a platted drainage easement, and was therefore the Rushbrooke South Homeowner's Association responsibility to maintain; however, the creek meandered widely with resultant erosion at the turns and was becoming extremely problematic. He stated the HOA (Homeowners' Association) reached out to the City a few years ago and requested assistance, and on two separate occasions the HOA submitted a flow prone property transfer application in which the HOA desired to donate the flood plain to the City for ownership and maintenance. He reported the first request was denied and the second was withdrawn because during discussions an innovative solution to the problem, hopefully, was determined. He explained it was thought, if a pilot channel was cut between the switchbacks, the channel would encourage the water to flow directly through the neighborhood and reduce continued erosion and potential home damage. He stated he had met with the core of engineers who supported the initiative. He stated the HOA (Home Owners' Association) had contacted multiple contractors regarding digging this pilot channel, but were unable to find an affordable option. He stated the project required cutting of the pilot channel and construction of a retaining wall, which would be completed by Broken Arrow staff and the HOA would pay for materials. He stated he felt this was a good public-private partnership which would hopefully arrest the erosion with no cost to Broken Arrow, other than time and labor. He stated materials would cost \$23,000, and the HOA (Homeowners' Association) would reimburse the City this cost. He asked if there were questions.

Council Member Lester reported he had walked this channel, had spoken to the HOA and attended HOA meetings, and he applauded the HOA's efforts to not only ask for help, but work with the City in an effort to solve this problem. Vice Mayor Eudey stated he fully approved of public-private partnerships.

MOTION: A motion was made by Scott Eudey, seconded by Mike Lester
Move to approve and authorize execution of the agreement between the City of Broken Arrow and the Rushbrooke South Home Owners Association to construct certain specific drainage improvements to the east branch of Haikey Creek

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Mike Lester, Scott Eudey, Craig Thurmond

D. 18 646 Acceptance of a Temporary Construction Easement conveyed to the City of Broken Arrow, Oklahoma, a municipal corporation, a tract of land located in part of the SW ¼ of Section 21, Township 18 North, Range 14 East, Tulsa County, State of Oklahoma for the Rushbrooke Drainage and Erosion Control Project

Mr. Alex Mills stated this item would normally have been on the Consent Agenda; however, as the prior item required passing in order for this item to be valid, it was placed on General Council Business. He stated this was a Temporary Construction Easement which would give the City the right to access across the McReynolds' property as the most direct route to access the construction area. He explained this would be donated at no cost if the City would restore the right of way upon completion.

MOTION: A motion was made by Mike Lester, seconded by Debra Wimpee.

Move to accept the Temporary Construction Easement conveyed to the City of Broken Arrow

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Mike Lester, Scott Eudey, Craig Thurmond

10. Preview Ordinances

A. 18-627 Consideration, discussion, and possible preview of an ordinance amending Chapter 14, Municipal Court, Article 1, In General, Section 14-32, by adding a breakdown of court costs collected, along with a provision authorizing the clerk of the municipal court to charge and collect a technology and administrative fee; providing for severability; repealing all ordinances to the contrary; and declaring an emergency

Acting City Attorney, Trevor Dennis, reported this preview ordinance revised Ordinance No. 14-32 and added a \$10 administrative technological fee which allowed for acquisition and maintenance of desktop, laptop, and video equipment, maintenance and licensing of court software, listed the State Statutes for each fee collected and updated local statutes to reflect the current State Statutes. He stated he recommended the ordinance be previewed and set for adoption.

MOTION: A motion was made by Mike Lester, seconded by Debra Wimpee.

Move to preview the ordinance and set it for adoption

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Mike Lester, Scott Eudey, Craig Thurmond

B. 18-744 Consideration, discussion, and possible preview of an Ordinance for a Temporary Turnaround Easement Closure from David and Misty Yonce, on property located one-quarter mile south of Jasper Street, one-quarter mile east of Olive Avenue, Tulsa County, State of Oklahoma, (Section 09, T17N, R14E); repealing all ordinances to the contrary; and declaring an emergency

Acting City Attorney Dennis reported this preview ordinance was an application by homeowners which requested closure of a 0.15 temporary turnaround easement which was required by subdivision regulations when Bentley Village III was platted. He reported on February 09, 2018 City Council amended the subdivision regulations to require temporary turnarounds be constructed. He stated Staff reviewed the documents and recommended acceptance of the utility easement closure. He stated the City reserved the right to reopen the temporary turnaround easement if it was needed in the future. He recommended the ordinance be previewed and set for adoption.

Citizen Jim Rusher stated his address was 1242 East 30th Place and he represented the Yonce's. He stated the Yonce family desired to build a fence to enclose the property as the turnaround area was no longer in use.

MOTION: A motion was made by Scott Eudey, seconded by Debra Wimpee.

Move to preview the ordinance and set it for adoption

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Mike Lester, Scott Eudey, Craig Thurmond

11. Ordinances

There were no Ordinances.

12. Remarks and Inquiries by Governing Body Members

There were no Remarks or Inquiries by Governing Body Members.

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

Assistant City Manager Russell Gale introduced Mr. Curtis Green, the new City Clerk. He stated Mr. Green had 30 years' experience as an educator and had been a teacher, administrator and principal. He stated he was excited to have Mr. Green on staff and looked forward to working with him in the future.

At approximately 8:26 p.m. Mayor Thurmond stated he would entertain a motion for a brief recess to enter into Broken Arrow Municipal Authority and Broken Arrow Economic Development Authority.

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

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

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Mike Lester, Scott Eudey, Craig Thurmond

At approximately 8:31 p.m. Mayor Thurmond reconvened the regular session of the City Council Meeting. He stated there was an Executive Session and he would entertain a motion for a brief recess to clear the room for the Executive Session.

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

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

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Mike Lester, Scott Eudey, Craig Thurmond

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

Move to enter into the Executive Session

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, 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 in the matter of Francis Patrick Charon v. City of Broken Arrow et. Al., CJ 2016 0834, Tulsa County District Court, Case No. 5:17 CV 01221 R, and taking appropriate action in open session, including possible authorization to settle this litigation, under 25 O.S. §307(B)(4); and

2.Litigation, including potential resolution, of a matter involving the tort claim of Kristy Blevins Wolfe vs. City of Broken Arrow, TRT577.2018, and taking appropriate action in open session, including possible authorization to settle this tort claim, under 25 O.S. §307(B)(4); and

3.Litigation, including potential resolution, of a matter involving the tort claim of Jason Blevins vs. City of Broken Arrow, TRT576.2018, and taking appropriate action in open session, including possible authorization to settle this tort claim, under 25 O.S. §307(B)(4).

In the opinion of the City Attorney, the Council is advised that the Executive Session is necessary to process the pending claim, litigation and possible litigation and that disclosure will seriously impair the ability of the public body to process the claim or conduct a pending investigation, litigation or proceeding in the public interest. 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 9:09 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 that the Executive Session was necessary

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, 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 negotiate settlement with Frank Charon as directed in Executive Session

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Mike Lester, Scott Eudey, Craig Thurmond

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

Move to deny the tort claim of Kristy-Blevins Wolfe

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Mike Lester, Scott Eudey, Craig Thurmond

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

Move to deny the tort claim of Jason Blevins

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Mike Lester, Scott Eudey, Craig Thurmond

15. Adjournment

The meeting adjourned at approximately 9:11 p.m.

MOTION: A motion was made by Debra Wimpee, seconded by Mike Lester.

Move to adjourn

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Mike Lester, Scott Eudey, Craig Thurmond

Attest:

s/Craig Thurmond _____
Mayor

s/Curtis Green _____
City Clerk