



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 Johnnie Parks
Council Member Debra Wimpee
Council Member Christi Gillespie

Tuesday, August 6, 2019

Time 6:30 p.m.

Council Chambers

1. Call to Order

Vice Mayor Scott Eudey called the meeting to order at approximately 6:30 p.m.

2. Invocation

Pastor Chris Symes performed the invocation.

3. Roll Call

Present: 4 - Christi Gillespie, Debra Wimpee, Johnnie Parks, Scott Eudey
Absent: 1 - Craig Thurmond

4. Pledge of Allegiance to the Flag

Council Member Johnnie Parks led the Pledge of Allegiance to the Flag.

5. Consideration of Consent Agenda

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

MOTION: A motion was made by Johnnie Parks, seconded by Debra Wimpee.

Move to approve the Consent Agenda

The motion carried by the following vote:

Aye: 4 - Christi Gillespie, Debra Wimpee, Johnnie Parks, Scott Eudey

- A. 19-949** Acknowledgement of upcoming out-of-state travel by City Council members
- B. 19-15** Approval of the City Council Meeting Minutes of July 16, 2019
- C. 19-911** Accept Planning Commission meeting minutes of June 13, 2019
- D. 19-912** Accept Planning Commission meeting minutes of June 27, 2019
- E. 19-967** Approval of and authorization to execute Budget Amendment Number 9 for Fiscal Year 2019
- F. 19-965** Approval of Program Year (PY) 2019 Community Development Block Grant (CDBG) Social Services Funding Recommendations and authorization to execute Social Services Contracts
- G. 19-938** Notification of City Manager's, Assistant City Manager's and Department Director's execution of Professional Consultant Agreements with a value less than \$25,000
- H. 19-937** Ratification of Professional Consultant Agreement with Tulsa Engineering & Planning Associates Inc. for The Park on Florence 2nd Detention Facility Rehabilitation (SW1922)
- I. 19-454** Approval of and authorization to execute Agreement For Gas Installation, between Oklahoma Natural Gas (ONG) and the City of Broken Arrow (COBA), for the Lynn Lane Wastewater Treatment Plant Headworks Improvements Project (Project Numbers 165420 and 165423)
- J. 19-495** Approval of and authorization to execute Gas Facilities Relocation Agreement between Oklahoma Natural Gas (ONG) and the City of Broken Arrow for Kenosha Street from Date Avenue to Main Street (Project Number ST1409)
- K. 19-934** Approval of and authorization to execute Professional Services Agreement with Olsson, Inc. for providing design services for the Southwest Broken Arrow Park (Project Number 196031)
- L. 19-951** Approval of and authorization to execute an Expert Witness Consultant Agreement with Joseph W. Kowalski, P.E., for providing independent professional advice as a consultant regarding the City of Broken Arrow v. Contech et al CJ-2017-295
- M. 19-961** Approval of and authorization to execute Amendment No. 4 to Professional Consulting Services Agreement with Garver, LLC for Washington Street - Garnett Rd to Olive Ave (ST1616)
- N. 19-952** Approval of and authorization to execute Professional Services Agreement with McDonald & Metcalf LLP., 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
- O. 19-970** Approval of and authorization to execute Professional Consultant Agreement with R.L.

- P. 19-985** Shears Company, P.C. for Tiger Creek Corridor Master Plan (Project No. SW1912)
Approval of and authorization to execute a Medical Director Services Agreement between David Gearhart, D.O. and the City of Broken Arrow for services as the Physician Medical Director for the Fire Department
- Q. 19-947** Approval of and authorization to execute a Use Agreement with the Broken Arrow Genealogical Society for Fiscal Year 2019-2020
- R. 19-946** Approval of and authorization to execute a Use Agreement with the Broken Arrow Historical Society for Fiscal Year 2019-2020
- S. 19-948** Approval of and authorization to execute a Use Agreement with the Broken Arrow Military History Center for Fiscal Year 2019-2020
- T. 19-996** Approval of and authorization to execute a Promotional License on City Property allowing ScotFest, Inc. to host the 2019 ScotFest event
- U. 19-917** Approval of and authorization to execute the purchase of Taser X2s with accessories from Axon, formerly Taser International, a sole source vendor
- V. 19-994** Approval of and authorization to purchase annual software maintenance services from Superion, L.L.C.
- W. 19-959** Award of the most advantageous bid to Baysinger's Uniforms's and equipment for the purchase of 5.11 Tactical police uniforms and equipment, and approval of and authorization to execute the purchase contract
- X. 19-958** Award of the most advantageous bid to Southern Uniform & Equipment for the purchase of Police uniforms and equipment, and approval of and authorization to execute the purchase contract
- Y. 19-898** Approval of and authorization to execute Change Order CO-2 for construction contract ST1806; Wolf Creek Subdivision Rehabilitation
- Z. 19-975** Approval of and authorization to execute Change Order CO-5 for Construction Contract ST1507; 37th Street: Omaha to Albany and Rural Water District #4 Waterline
- AA. 19-953** Approval of BAZ-2032, Sommer Rezoning, 32.753 acres, A-1 (Agricultural) to CG (Commercial General), west of 23rd Street (193rd East Avenue/County Line Road), and north of the Creek Turnpike
- AB. 19-924** Ratification of filed recorded Corrected Deed of Dedication from Bill Parker and Margie Parker regarding a 35-foot right-of-way on property generally located at 9702 S. 193rd East Avenue in the Northeast Quarter of the Southeast Quarter of Section 24, Township 18 North, Range 14 East, of the Indian Base and Meridian, Tulsa County, State of Oklahoma
- AC. 19-880** Acceptance of a Deed of Dedication from Kenneth Barbee on an approximately 5.0-acre unplatted property located approximately one-quarter mile south of Kenosha Street (71st Street), west of 51st Street (Evans Road) as shown in Exhibit A, Wagoner County, State of Oklahoma (Section 08, T18N, R15E)
- AD. 19-939** Acceptance of a Drainage Easement and Temporary Construction Easement from B-Z Properties, LLC, for Parcel 12a consisting of 0.48 acres of Temporary Construction Easement and Parcel 12b consisting of 0.20 acres of Drainage Easement for 37th Street Improvements, Albany to Houston, located in the Northeast Quarter of Section 7, Township 18 North, Range 15 East, Wagoner County, State of Oklahoma (Project No. ST1413)
- AE. 19-941** Acceptance of Sidewalk Easement consisting of 0.0011 acres from 222 Investments, LLC, on property located at the Northwest corner of Ash and Commercial located in part of the Southwest Quarter of Section 11, Township 18 North, Range 14 East, Tulsa County, State of Oklahoma (Project No. ST1711)
- AF. 19-881** Acceptance of a Utility Easement from Kenneth Barbee on an approximately 5.0-acre unplatted property located approximately one-quarter mile south of Kenosha Street (71st Street), west of 51st Street (Evans Road) as shown in Exhibit A, Wagoner County, State of Oklahoma (Section 08, T18N, R15E)
- AG. 19-910** Acceptance of a Utility Easement from Clint Emerson of Concord Land Holdings, LLC on Tract B of Lot 1, Block 2, Stone Ridge Towne Center, located approximately one-quarter mile north of Albany Street (61st Street), west of Elm Place (161st East Avenue), Tulsa County, State of Oklahoma (Section 34, T19N, R14E)
- AH. 19-919** Acceptance of a Utility Easement from Richard Saint of RBS Enterprises, LLC on Tract C of Lot 1, Block 2, Stone Ridge Towne Center, located approximately one-quarter mile north of Albany Street (61st Street), west of Elm Place (161st East Avenue), Tulsa County, State of Oklahoma (Section 34, T19N, R14E)
- AI. 19-930** Acceptance of a Deed of Dedication from HomeChurch, Inc. on property located west of the northwest corner of Elm Place (161st East Avenue) and New Orleans (101st Street) as shown in Exhibit A-1 & A-3, Tulsa County, State of Oklahoma (Section 22, T18N, R14E)
- AJ. 19-933** Acceptance of a Deed of Dedication from HomeChurch, Inc., on property located north of the northwest corner of Elm Place (161st East Avenue) and New Orleans (101st Street) as shown in Exhibit A-2 & A-3, Tulsa County, State of Oklahoma (Section 22, T18N, R14E)
- AK. 19-932** Acceptance of a Utility Easement from HomeChurch, Inc. on property located north of the northwest corner of Elm Place (161st East Avenue) and New Orleans (101st Street) as shown in Exhibit B-2 & B-3, Tulsa County, State of Oklahoma (Section 22, T18N, R14E)

- AL. 19-931** **Acceptance of a Utility Easement from HomeChurch, Inc. on property located west of the northwest corner of Elm Place (161st East Avenue) and New Orleans (101st Street) as shown in Exhibit B-1 & B-3, Tulsa County, State of Oklahoma (Section 22, T18N, R14E)**
- AM. 18-1450** **Approval of the Broken Arrow City Council Claims List for August 06, 2019**

6. Consideration of Items Removed from Consent Agenda

There were no Items removed from the Consent Agenda. No action was needed or taken.

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

A. 19-974 Conduct a public hearing regarding the proposed Creek 51 Business Park Economic Development Project Plan

Mr. Nate Ellis with Public Finance Law Group reported this was the second of two required public hearings in connection with the potential establishment of a tax increment district in Broken Arrow. He explained a tax increment district was an economic development tool used to incentivize capital investment in undeveloped or underdeveloped property in order to enhance the tax base and create employment opportunities within the City. He reported this particular TIF District was proposed to consider a business park near the Interchange of Highway 51 and the Creek Turnpike. He explained it would capture the incremental increase in ad valorem taxes generated from development in the TIF District area. He reported Broken Arrow in 2010 created a TIF District in connection with the Broken Arrow FlightSafety and Downtown District. He noted this would be the second TIF District created in Broken Arrow. He reported the Project Plan indicated the TIF District would have an 11 and a half year term (maximum allowed was 25 years), would capture 100% of the ad valorem tax increase; and the existing tax base of \$192 dollars would continue to be allocated as usual. He stated the last TIF Committee Meeting was held on July 23, 2019 during which the Committee voted 8 to 1 in favor of recommending creation of the Tax Increment District. He reported the Planning Commission met July 25, 2019 and voted 3 to 0 in favor of recommending creation of the TIF District and adoption of the Project Plan. He noted the taxing jurisdictions which would be impacted by the TIF District included Broken Arrow Schools, Tulsa Technology Center, Wagoner County, Wagoner County Health Department, and the City of Broken Arrow. He displayed and discussed a map which illustrated the TIF boundaries including Increment District boundaries and Project Area boundaries.

Mr. Ellis reported the developer was Creek 51 Business Park, LLC who proposed to develop 97.2 acres with a projected taxable investment of \$73.1 million dollars and construction of an estimated 812,700 square feet of business and industrial space for lease and/or sale to interested businesses. He reported the developer projected an expenditure of \$5.4 million dollars for site acquisition and development costs, including industrial boulevard and utility/drainage improvements. He indicated the preliminary site plan illustrated 90.39 acres would be divided into 8 lots ranging from 2.35 acres to 37.29 acres; this was preliminary and would change as needed according to prospective tenant needs. He noted site improvements would include site grading, construction of an industrial boulevard, water, sewer, and drainage utility improvements, erosion control, as well as an emergency fire access road.

Mr. Ellis explained the TIF Revenues would be allocated as follows: 50% would go to the Developer as an "Investment Incentive" subject to maximum incentive of \$5 million dollars; \$355,000 dollars would reimburse Broken Arrow for traffic improvements and organizational costs, payable at \$60,000 per year; and 50% would be allocated to the taxing jurisdictions less the City reimbursement amount. He noted the City intended to make efforts to spend less than \$355,000 dollars if possible for the traffic improvements and organizational costs. He displayed and discussed a chart which illustrated the estimated potential impact on certain ad valorem taxes. He reported total Tax Increment Financing (TIF) revenues were estimated to be \$8,615,628.09 and would be divided as follows: \$355,000 dollars to the City for reimbursement of traffic improvements and organization, \$4,307,814.04 to the developer as incentive, \$3,952,814.05 to Taxing Jurisdictions (allocated pro rata excluding sinking fund levies), with \$797,856.23 to Wagoner County, \$142,552.26 to Wagoner County Health Department, \$729,894.79 to Tulsa Technology Center and \$2,282,509.76 to Broken Arrow Schools. He reviewed the completed steps in the TIF District creation process and noted today's Agenda included consideration of the Ordinance related to the TIF District; if adopted the TIF District Economic Development Agreement would come before City Council in September 2019 for review. He stated the developer was present for questions.

Council Member Parks, who served as TIF Committee Chair, noted the Committee Meetings went smoothly. He reported the taxes currently collected for this property were negligible and the potential tax collection was excellent. He stated everyone present at the Committee Meeting was in favor of and could see the benefit of creation of the TIF District for Creek 51 Business Park.

Vice Mayor Eudey opened the Public Hearing and asked once if there were any public comments.

Broken Arrow Public School Superintendent Dr. Janet Dunlop stated this was an excellent opportunity for the Broken Arrow Public Schools. She explained any additional income created in this Tax Increment Financing (TIF) would not charge against the School District fund and as such the School District would highly benefit. She stated she believed the Creek 51 Business Park would attract families and provide job opportunities for the residents of Broken Arrow.

Vice Mayor Eudey asked again if there were any public comments. He asked for a third time if there were any public comments; hearing none, he closed the public hearing.

B. 19-943 Presentation regarding update on the City Street Maintenance Program funded through Street Sales Tax

Director of Street and Stormwater Rocky Henkel reported in November 2015, the residents of Broken Arrow voted to create a Special Revenue Fund for the purpose of improving, constructing and maintaining City streets, sidewalks and related stormwater improvements including the acquisition and replacement of machinery, equipment and materials, as well as the installation of traffic control devices and signalization. He explained funding for this Special Revenue Fund was generated from a twenty-five hundredths of one percent (0.25%) tax that became effective January 1, 2017. He reviewed the work which was completed in Fiscal Year 2019 and the work which was currently underway related to the City Street Maintenance Program. He outlined the Fiscal Year 2020 Program for Street Signal Projects including: Elm Place and Highway 51 traffic signal system, North 23rd Street and East Albany video detection project, South Main Street and West Pittsburg Place video detection project, South Aspen and West New Orleans video detection project, South Aspen and West Jasper video detection project, and East Kenosha Street from Lynn Lane to County Line pedestrian signal project.

Mr. Henkel reported the Broken Arrow roadways were rated at an average of 70 on the PCI index which meant, on average, Broken Arrow roadways were categorized between good and very good. He noted the roadway network system was composed of 509 center lane miles which equaled approximately 12,045 lane miles; 75% of Broken Arrow roads were asphalt and 25% were concrete; and it cost approximately \$1.3 million dollars to construct one lane mile of roadway. He explained how lane miles were calculated. He listed several of the street maintenance projects which would be undertaken in FY-2020 and the cost of each. He indicated all resurfacing projects would be completed in-house in FY-2020. He read through Title 2 of the American Disability Act (ADA) which discussed when curb ramps were required to be installed and when sidewalks were required to be updated through maintenance. He listed the neighborhoods in which street maintenance would be conducted and indicated when sidewalk repair was required. He reviewed various miscellaneous projects such as street markings, annual street maintenance, annual sidewalk maintenance and the high density mineral bond (preventive maintenance project). He reported 9.32 total lane miles in concrete panel repairs and 21.98 total lane miles in resurfacing would be improved through the Street Sales Tax Fund.

Vice Mayor Eudey asked who residents should contact with questions regarding the street repair schedule. Mr. Henkel responded residents could contact him. Council Member Wimpee asked if the list and schedule of street maintenance would be posted on the website. Mr. Henkel responded in the affirmative.

Council Member Parks asked about American Disability Act (ADA) standards for the yellow detectable warning panels located on handicap curb ramps. Mr. Henkel responded there was only one standard permitted; no changes could be made to these warning panels. Vice Mayor Eudey indicated the ADA was Federal Law; sidewalk repairs were required through the ADA any time street improvements were performed. Mr. Henkel concurred.

City Manager Michael Spurgeon reported Mr. Henkel would make quarterly presentations regarding Street Maintenance project progress.

Council Member Gillespie commented she participated in a ride along with Mr. Henkel during her on-boarding process. She commended Mr. Henkel and his team.

C. 19-963 Presentation regarding the Riverview Apartments Site and Landscape Plan

Acting Director of Community Development Larry Curtis reported when this PUD was originally approved by City Council a stipulation was set into place: the Site Plan must come before City Council for cursory review. He reported the applicant submitted the site plan, along with a minor amendment to the Planning Commission.

Patrick Rooney Applicant displayed a copy of the Site Plan and noted additional landscaping was placed along the western boundary on Aspen Ave., as well as a rod iron fence, in an effort to adhere to Council's requests. Vice Mayor Eudey thanked the applicant for being responsive to City Council's concerns.

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)**
There were no Citizens who wished to address the Council on General Topics related to City Business or Services.

9. **General Council Business**

- A. **19-964 Consideration, discussion, and possible approval of and authorization to execute Resolution No. 1255, a Resolution authorizing the acceptance of the Broken Arrow NEXT Comprehensive Plan and the Broken Arrow Parks Master Plan**
Special Projects Manager Farhad Daroga reported Resolution No. 1255 was the final approval of the NEXT Comprehensive Plan and the Broken Arrow Parks Master Plan. He noted this completely updated the 1997 Comprehensive Plan. He stated the Steering Committee, the City Manager’s Office, and Staff recommended approval. He stated on July 26, 2019 the Planning Commission held a public hearing and unanimously recommended approval of the NEXT Comprehensive Plan. He explained the Plan had a 20 year horizon and projected a 20% to 25% growth over the next 20 years. He reported Broken Arrow had a population of approximately 110,000 total residents and projected approximately 140,000 total residents within 20 years. He commended the Technical Advisory Committee for its tremendous input and assistance. He thanked the Broken Arrow and Union Public Schools for participating. He thanked the Chamber of Commerce, Economic Development Incorporation, and the Greater Tulsa Home Builders Association for assisting.
- Mr. Jim Carrillo with Halff Associates indicated he felt Broken Arrow NEXT was an appropriate name for the forward thinking Comprehensive Plan. He stated the Comprehensive Plan set an ambitious goal for the Community to be the “premier Community in this region.” He noted the Comprehensive Plan had a companion plan: the Parks Master Plan. He stated the Broken Arrow NEXT Comprehensive Plan planned for the next 20 to 25 years and would serve as an excellent guide for the future of Broken Arrow. He thanked Farhad Daroga, Larry Curtis, Brent Murphy and many others, the City Council, Citizens of Broken Arrow, as well as Broken Arrow Department Heads and Staff Members who participated in the process. He noted a minor amendment was recommended for the Land Use Plan.
- Council Member Parks commended Halff Associates for its efforts. He noted the Comprehensive Plan was an extremely important legal document which was utilized by City Staff daily. Council Member Wimpee commented the development of the Comprehensive Plan was an interesting process.
- Vice Mayor Eudey stated the Comprehensive Plan helped residents and future residents to understand the City’s plan for the entire Community. He asked if the recommended minor amendment was incorporated into the current Resolution. City Attorney Trevor Dennis responded the amendment should be incorporated into the motion.
- MOTION: A motion was made by Johnnie Parks, seconded by Debra Wimpee
Move to approve Resolution No. 1255 and authorize its execution, including the amendment recommended by Staff
The motion carried by the following vote:
Aye: 4 - Christi Gillespie, Debra Wimpee, Johnnie Parks, Scott Eudey
- B. **19-995 Consideration, discussion, and possible appointment of members of the Elm Place and New Orleans Advisory Committee**
City Manager Michael Spurgeon reported many discussions had been held over the last month or so regarding the logistics associated with assembling an Advisory Committee. He reported on February 20, 2018, the council contracted with Catalyst Commercial to prepare a Market Study and Small Area Plan for the Elm and New Orleans commercial area. He reported in August 2018, voters approved \$2.6 million dollars in General Obligation Bonds for this intersection. He noted another half of a million dollars had been added to this number; therefore, there was approximately \$3.1 million dollars available for public infrastructure and improvements. He reported it was recommended an Elm Place and New Orleans Advisory Committee be created; this committee would be composed of twelve members who would thoroughly review Catalyst’s report and assist the City Council’s decision-making on what priorities and what public improvements should be completed to revitalize the intersection, as well as what approaches should be taken to stimulate additional and new private investment in the area. He stated it was anticipated the Committee would meet twice per month for approximately nine months. He noted Vice Mayor Scott Eudey, Ward 4, and Council Member Christi Gillespie, Ward 3, were willing to be representatives of the City Council. He explained as the City Council would ultimately review and accept the recommendations from the Advisory Committee, the Administration recommended that a City Council Member not serve as Chairperson of the Committee. He reported each City Council Member nominated one person to the Committee and the City Manager nominated

two individuals. He noted one representative was nominated from the following entities: Planning Commission, Economic Development Corporation and Broken Arrow Public Schools; all nominations were subject to the approval of the entire City Council. He listed the nominees: Mayor Craig Thurmond nominated Mindy Payne, Vice Mayor Scott Eudey nominated James Ring, Council Member Johnnie Parks nominated Danny Miller, Council Member Debra Wimpee nominated Tatum Adams, Council Member Christi Gillespie nominated Chase Elkins, City Manager Spurgeon nominated Lee Whelpley and Roy Wood, Economic Development Corp. nominated Jim Beavers, Planning Commission nominated Fred Dorrell, and Broken Arrow Public Schools nominated Karla Dress.

Council Member Gillespie noted three Broken Arrow Citizens sent letters expressing an interest in joining the Committee and she wished to consider adding said Citizens to the twelve Committee Members. Vice Mayor Eudey noted he also received letters from Citizens expressing interest in joining the Committee. Discussion ensued regarding the appropriate number of Committee Members, the importance of keeping the interested parties informed as to when Committee Meetings would take place to encouraged participation, too many committee members becoming problematic, adding committee members causing a delay, interested residents attending meetings to participate in discussion and feedback, creation of an advisory committee for the new park in the southwest part of the City, keeping the interested parties on file for possible participation on other advisory committees, and encouraging Citizen involvement.

MOTION: A motion was made by Christi Gillespie, seconded by Debra Wimpee.
Move to approve the nominees as submitted and request for action by City Manager
The motion carried by the following vote:

Aye: 4 - Christi Gillespie, Debra Wimpee, Johnnie Parks, Scott Eudey

City Manager Spurgeon noted all Committee Meetings would be posted and minutes would be kept. He noted meetings would be held at the Broken Arrow Church of the Nazarene close to the Elm Place and New Orleans intersection. He thanked the Church of the Nazarene. He stated he hoped to hold the first Committee Meeting in August and hoped to have a recommendation to bring before City Council by Memorial Day 2020. He explained why he believed it would take this much time to make a recommendation. He discussed the responsibilities of the Committee.

Council Member Parks thanked Council Member Gillespie and Vice Mayor Eudey for serving on the Advisory Committee.

C. 19-927 **Consideration, discussion, and possible approval of the Professional Consultant Agreement with Wallace Engineering - Structural Consultants, Inc. for the Hillside Drive Retaining Wall Replacement**

Director of Engineering and Construction Alex Mills reported on July 16, 2019 the City Council authorized the Engineering and Construction Department to negotiate a design contract to replace the damaged upper retaining wall along Hillside Drive which was located on the north side of the road between Albany Street and 9th Street. He stated the current retaining wall was a segmental block wall which experienced damage caused by hydrostatic pressure behind the wall from the historic storm events in May 2019; Hillside Drive, in the vicinity of the damaged wall, had been closed due to safety concerns. He reported the Engineering and Construction Department negotiated with Wallace Engineering to design a new cantilevered, concrete retaining wall and drainage system, to replace the damaged wall as directed by City Council. He noted the contract reflected 126 days of design time, but he believed this could be done in 90 days, followed by a couple of months to advertise and bid the project, and approximately four months to build the wall. He noted the Engineering and Construction Department was working to get this project completed as soon as possible and he discussed the recommendations being made and methods being employed in this regard. Discussion ensued regarding installing straight segments versus curved segments to save time, the possibility of safely opening the road during construction, and the small amount of right-of-way along this portion of the road.

MOTION: A motion was made by Christi Gillespie, seconded by Debra Wimpee.
Move to approve the Professional Consultant Agreement with Wallace Engineering - Structural Consultants, Inc. for the Hillside Drive Retaining Wall Replacement

The motion carried by the following vote:
Aye: 4 - Christi Gillespie, Debra Wimpee, Johnnie Parks, Scott Eudey

D. 19-905 **Consideration, discussion, and possible approval of an Amended Application #1 to the Tulsa County Vision Authority for Vision 2025 Surplus Funds for Streetscapes V**

Director of Engineering and Construction Alex Mills reported this Amended Application was for Streetscapes V. He reported in December 2017 the City Council approved an application to the Tulsa County Vision Authority for \$1.5 million dollars of Vision 2025 Surplus funding for design and construction of streetscape between Detroit and Elgin Street. He stated at the

time of the original application, based on previous projects, it was felt \$1.5 million dollars was adequate funding. Alex Mills stated the project was advertised for bid in May 2019 and the bids came in higher than expected. He explained why prices have risen. He reported City Council voted to award the construction contract to Diversified Civil Contractors, LLC in the amount of \$1,866,093.53. He indicated, as a result, an additional \$400,000 dollars was required to cover the cost of additional design work necessary to complete the project, provide for construction contingency, and pay for the construction of the project. Staff recommended amending the application to the Tulsa County Vision Authority to add the required \$400,000 dollars.

MOTION: A motion was made by Johnnie Parks, seconded by Debra Wimpee.

Move to approve and authorize execution of Amended Application #1 to the Tulsa County Vision Authority for Vision 2025 Surplus Funds for Streetscapes V

The motion carried by the following vote:

Aye: 4 - Christi Gillespie, Debra Wimpee, Johnnie Parks, Scott Eudey

E. 19-968 Consideration, discussion, and possible approval of Amended Application #1 to the Tulsa County Vision Authority for Vision 2025 Surplus Funds for Center for Arts, Innovation and Creativity

Director of Engineering and Construction Alex Mills reported this was a similar situation: in February 2016 the City Council approved an application to the Tulsa County Vision Authority for \$650,000 dollars of Vision 2025 Surplus funding for schematic design of the Creative Arts Center in the Rose District. He stated at the time of the original application, schematic design was the extent of the contract with the consultant, Selser Schaefer Architects, until operation funds could be raised for the center. He noted the Arts Committee raised the funds for operation of the center and the City contracted with the consultant to continue design and produce construction documents. He explained an additional \$1.95 million dollars was required to cover the cost of additional design work and construction. He stated this would bring the total Vision funding to \$2.6 million dollars. He reminded Council there was \$1.4 million dollars of the 2014 GO Bond available for this project, bringing total funding to \$4 million dollars. He noted City Council approved the use of the “construction manager at risk” delivery method for this project. He stated the Engineering and Construction Department reviewed RFPs and selected Manhattan Construction. He stated Staff was negotiating a contract with Manhattan Construction and he hoped to bring this contract before City Council at the next Meeting for approval. He stated Staff recommended amending the application to the Tulsa County Vision Authority adding the required \$1.95 million dollars.

City Manager Spurgeon reported he and Mark Fry would meet after Labor Day to discuss the Use Agreement. He noted the ABB was in the renovation process of an operation center building and once completed demolition of structures would begin followed by deeding the property to the City. He stated in the fall, the layout and design of Phase 1 would come before City Council. He recommended a work session regarding Phase 1. He stated he hoped the project would go out to bid in the first quarter of 2020.

MOTION: A motion was made by Christi Gillespie, seconded by Debra Wimpee.

Move to approve and authorize execution of Amended Application #1 to the Tulsa County Vision Authority for Vision 2025 Surplus Funds for the Center for Arts, Innovation and Creativity

The motion carried by the following vote:

Aye: 4 - Christi Gillespie, Debra Wimpee, Johnnie Parks, Scott Eudey

F. 19-969 Consideration, discussion, and possible approval to reject all bids for the construction of new Fire Station No. 3 (Project No. 163511) and find that the best interests of the Citizens of Broken Arrow City will be served by the rejection

Director of Engineering and Construction Alex Mills reported the City bid the Fire Station No. 3 project (located at 5420 South 23rd Street). He stated the station was designed with two bays (Base Bid) and a third bay was included as Additive Alternate No. 1, Additive Alternate No. 2 included High Speed Bay Doors and Additive Alternate No. 3 upgraded the roofing material to Standing Seam Metal Roofing in lieu of the Base Bid Ribbed Roofing. He stated these were included as add alternates due to budget concerns going into the bidding process. He noted unfortunately this project was bid during a local price spike. He reported the project was advertised on May 28th and June 4th, 2019, four bids were received, and only one bid was responsive. He explained this often happened when bidders were unfamiliar with the Broken Arrow bidding procedure. The only responsive bid was from Magnum Construction, Inc. at \$4,645,000 dollars; however, the project construction budget was \$3,358,413 dollars. He noted Staff was meeting with the architect to determine if there were any opportunities to reduce cost. He explained he believed it was in the best interests of the Citizens of Broken Arrow to reject the bids. He reported Staff would meet with all four bidders to discuss the project in an effort to discover methods to make the project affordable.

Council Member Wimpee asked if all four bidders were above budget. Mr. Mills responded

in the affirmative. He explained all unit prices were higher than expected currently. Council Member Wimpee asked if the project would go back out for bid. Mr. Mills responded in the affirmative.

City Manager Spurgeon stated he had discussions with Kenny Schwab, Alex Mills, and Chief Moore regarding the importance of this building and he believed three bays were necessary. He explained this Fire Station would be utilized for decades and the City needed to be certain it was equipped to handle the safety needs of the area. He noted a replacement station, Fire Station No. 7, would also begin construction in 2020. He recommended rejection of all bids.

MOTION: A motion was made by Johnnie Parks, seconded by Debra Wimpee.

Move to reject all bids for the construction of new Fire Station No. 3 and find that the best interests of the Citizens of Broken Arrow City will be served by the rejection

The motion carried by the following vote:

Aye: 4 - Christi Gillespie, Debra Wimpee, Johnnie Parks, Scott Eudey

- G. 19-999 Consideration, discussion, and possible approval of Resolution No. 1252, a Resolution authorizing the City Attorney to enter into a proposed Joint Application for Approval of Settlement and a Journal Entry of Judgment in regard to the Tort Claim filed by Lamont Tharps, and directing the City Attorney to prepare and file the necessary documents to effectuate settlement, including a Journal Entry of Judgment for the court's approval, pursuant to 51 O.S. § 158**

City Attorney Trevor Dennis reported Mr. Lamont Tharps filed a tort claim alleging his civil rights were violated during an arrest in February of 2018. He stated Council previously authorized settlement of up to \$75,000 dollars. He explained Resolution No. 1252 finalized the Journal Entry of Judgment in this matter and authorized the Legal Department to effectuate the terms of the settlement. He recommended City Council approve Resolution No. 1252 and authorize its execution.

MOTION: A motion was made by Debra Wimpee, seconded by Christi Gillespie.

Move to approve Resolution No. 1252 and authorize its execution

The motion carried by the following vote:

Aye: 4 - Christi Gillespie, Debra Wimpee, Johnnie Parks, Scott Eudey

- H. 19-998 Consideration, discussion, and possible approval of Resolution No. 1253, a Resolution authorizing the City Attorney to enter into a proposed Joint Application to Settle Claims in Excess of \$25,000 and a Journal Entry of Judgment in regard to the Tort Claim filed by Angela Abercrombie, and directing the City Attorney to prepare and file the necessary documents to effectuate settlement, including a Journal Entry of Judgment for the court's approval, pursuant to 51 O.S. § 158**

City Attorney Dennis reported Angela Abercrombie filed a tort claim alleging she sustained \$25,211 dollars in property damages and lost wages due to a car accident. He reported City Council previously approved to settle for this amount and Resolution No. 1253 authorized the City Attorney to enter into a Journal Entry of Judgment to finalize the terms of the settlement. He recommended City Council approve Resolution No. 1253 and authorize its execution.

MOTION: A motion was made by Christi Gillespie, seconded by Debra Wimpee.

Move to approve Resolution No. 1253 and authorize its execution

The motion carried by the following vote:

Aye: 4 - Christi Gillespie, Debra Wimpee, Johnnie Parks, Scott Eudey

10. Preview Ordinances

- A. 19-956 Consideration, discussion, and possible preview of an Ordinance closing a utility easement from CRS Sanders Investments, LLC, on property located one-quarter mile south of Washington Street (91st Street), one-half mile east of Elm Place (161st East Avenue), Tulsa County, State of Oklahoma, (Section 23, T18N, R14E); repealing all ordinances to the contrary; and declaring an emergency**

Vice Mayor Eudey left the Council Chambers prior to discussion of Item 10A and returned following the vote.

City Attorney Dennis reported Mr. Sanders had an application to close 0.3 acres of utility easement. He explained the property was being redeveloped and replatted as Boston Heights. He stated previously it was anticipated utilities would in this location; however, this had changed and the easement was unused. He noted a new easement was being replatted for utilities. He reported Staff reviewed the application and there were no objections from the franchise holders. He stated Staff recommended City Council preview the ordinance and set it for adoption.

MOTION: A motion was made by Debra Wimpee, seconded by Christi Gillespie.

Move to preview the ordinance and set it for adoption

The motion carried by the following vote:

Aye: 3 - Christi Gillespie, Debra Wimpee, Johnnie Parks

Recused: 1 - Scott Eudey

B. 19-957 Consideration, discussion and possible preview of an Ordinance amending Section 3.1.F (Table 3.1-1) Table of Allowed Uses, Section 3.2.C, Commercial Uses, Section 3.3.D, Additional Standards for Specific Accessory Uses, Section 5.4.D (Table 5.4.1), Off-Street Parking Schedule A, and Section 10.3.D.11a, Definitions of the City of Broken Arrow Zoning Ordinance; repealing all ordinances or parts of ordinances in conflict herewith; and declaring an emergency

Acting Director of Community Development Larry Curtis reported City Council requested this Item be tabled until the next meeting to enable Staff to gain information from the Greater Tulsa Area Realtors (GTAR). He stated Mr. Gainey of the GTAR provided thoughts to Staff regarding the proposed bed and breakfast ordinance. He indicated GTAR suggested type 2 bed and breakfast be permissible by right and regulated by license; however, Staff looked at other municipalities, and believed the best approach was utilization of a Specific Use Permit. He explained Specific Use Permits would be required in residential zoning districts, not commercial or industrial districts; zoning ordinance indicated the purpose of residential districts were to encourage and promote the construction of single family dwellings and the intent of the residential district further prohibited commercial and industrial uses, or any other uses which would substantially interfere with the development or construction of single family dwellings in the district. He stated having a home unoccupied by the owner and utilized only for commercial purposes seemed to go against zoning ordinance; therefore, approaching this with a Specific Use Permit and allowing notification to be sent would provide a step into the world of bed and breakfasts. He stated in comparison, type 1 bed and breakfasts allowed for the use as long as there was a citizen living on property. He stated businesses such as day care centers and convalescent homes required Specific Use Permits and as such requiring a Specific Use Permit for AirBNB type homes was in line with current Broken Arrow Zoning Ordinance. He stated Staff wished to move forward cautiously and the matter could be reconsidered in a year to determine whether a licensure program would be a better approach.

Council Member Gillespie asked about the \$1,000 dollar fee. Mr. Curtis responded the \$1,000 dollar fee was an estimated fee only; it could be more or less depending upon various factors.

Council Member Parks noted he fully supported protection of the residential areas. He stated he believed residents had a right to know if a short term rental facility was nearby. He asked, in terms of protecting residents and protecting property values, if the Specific Use Permit was best. Mr. Curtis responded in the affirmative.

Mr. Spencer Gainey with GTAR stated his address was 2115 E. 36th Street, Tulsa, OK. He reported GTAR supported a licensure by right as appropriate for AirBNB type homes with a strong licensure fee structure as this would encourage residents to register and enable the City to identify participating properties. He stated the State mandated stringent requirements for a specific use permit which he believed would discourage residents from registering. He stated he believed these homes should be considered as a rental home with a different length of rental time, not as a business. He thanked Mr. Curtis and Mr. Spurgeon for listening to his recommendations and asked City Council to consider his thoughts.

Vice Mayor Eudey thanked GTAR and Mr. Gainey. He stated Larry Curtis and Staff did an excellent job out outlining this ordinance. He asked if this Ordinance was similar to Oklahoma City ordinance. Mr. Curtis responded Oklahoma City chose to issue approval through the Board of Adjustments which in turn went before District Court. He stated Broken Arrow process was more locally monitored. Vice Mayor Eudey asked if the ordinance could be approved with the understanding it would be reviewed in a year hence. He stated he wished to ensure this ordinance stayed a priority and was revisited in a year. City Attorney Dennis responded the ordinance could be revisited at any time. Mr. Curtis stated Staff would put ordinance review on the calendar.

Council Member Gillespie asked about a method of AirBNB home identification. Mr. Curtis responded the Code Enforcement Team would be observant during rounds and if there was activity which indicated the possibility of an AirBNB, Code Enforcement would be proactive and provide a notice of compliance letter. He stated Staff would monitor AirBNB and other similar web sites to gather information.

Council Member Wimpee asked about AirBNB parking requirements. Mr. Curtis explained parking places were required per room, not per person.

MOTION: A motion was made by Johnnie Parks, seconded by Debra Wimpee.

Move to preview the ordinance and set it for adoption as recommended by Staff to be reviewed in one year from time of adoption

The motion carried by the following vote:

Aye: 4 - Christi Gillespie, Debra Wimpee, Johnnie Parks, Scott Eudey

11. Ordinances

A. 19-993

Consideration, discussion and possible adoption of Ordinance No. 3588 an ordinance, to be codified, creating Article XVII, Broken Arrow Drainage Advisory Committee, section 2-235, created, section 2-236, appointments, section 2-237, removal of office, section 2-238, organization, section 2-239, duties, specifically establishing the Broken Arrow Drainage Advisory Committee, repealing all ordinances to the contrary; and declaring an emergency

City Attorney Dennis reported as part of the General Obligation (GO) Bond package from 2018, Provision 6 provided funds for improving Stormwater throughout the City. He stated typically Bond projects were required to take place on property owned by the City; however, Proposition 6 granted flexibility to allocate funds for improvements on property the City did not own. He stated the City Manager recommended a Drainage Advisory Committee to make recommendations on how the potential projects should move forward and advise City Council regarding public benefits for the various public projects funded through Proposition 6. He stated the Drainage Advisory Board would anticipate project costs and prioritize drainage projects. He stated the Committee would serve a four year term and consist of seven members, one nominated by each Member of City Council and two being City Council Members.

City Manager Spurgeon stated Mr. Kenny Schwab had recommended the Drainage Advisory Committee. He stated he fully supported the concept and believed this would be one of the most important Committees the City would have long term.

MOTION: A motion was made by Christi Gillespie, seconded by Johnnie Parks.

Move to adopt Ordinance No. 3588

The motion carried by the following vote:

Aye: 4 - Christi Gillespie, Debra Wimpee, Johnnie Parks, Scott Eudey

MOTION: A motion was made by Johnnie Parks, seconded by Debra Wimpee.

Move for the emergency clause

The motion carried by the following vote:

Aye: 4 - Christi Gillespie, Debra Wimpee, Johnnie Parks, Scott Eudey

B. 19-988

Consideration, discussion and possible adoption of Ordinance No. 3597, an ordinance of the City of Broken Arrow, Oklahoma (the “City”) approving utilization of apportioned tax revenues authorized by statewide vote adopting Article 10, Section 6C of the Oklahoma Constitution and implemented by the Local Development Act, 62 O.S. §850, et seq.; approving and adopting the Creek 51 Business Park Economic Development Project Plan and expressing intent to carry out the project plan; ratifying and confirming the actions, recommendations and findings of the review committee and the Planning Commission; creating and establishing Increment District No. 2, City of Broken Arrow; designating and adopting the increment district boundaries and the project area boundaries; adopting certain findings; reserving to the City the authority to make minor amendments to the project plan; authorizing the City Council of the City to carry out and administer the project plan; establishing a tax apportionment fund; authorizing directions for prospective apportionment of tax increments; establishing an allocation of use for tax increments; declaring apportionment funds to be funds of the City and limiting the pledge of apportioned increments to increments actually apportioned by the City; authorizing the City Council of the City, or a public trust designated thereby, to implement the project plan utilizing apportioned tax increments to pay or reimburse project costs directly and/or to issue bonds or notes, if feasible and desirable, to pay project costs and to retire said bonds or notes from apportioned tax increments; providing for severability; declaring an emergency; and containing other provisions related thereto

Nate Ellis Public Finance Law Group reported this was the Ordinance which would create Tax Increment District #2 for the Creek 51 Business Park. He stated if approved the Ordinance would establish the legal district; the next step would be negotiation of a development agreement with the developer. He noted there was a typo in Section 5: “South 32 Street” should be “South 23 Street.”

MOTION: A motion was made by Johnnie Parks, seconded by Christi Gillespie.

Move to adopt Ordinance No. 3597 with correction of the typo in Section 5

The motion carried by the following vote:

Aye: 4 - Christi Gillespie, Debra Wimpee, Johnnie Parks, Scott Eudey

MOTION: A motion was made by Johnnie Parks, seconded by Debra Wimpee.

Move for the emergency clause

The motion carried by the following vote:

Aye: 4 - Christi Gillespie, Debra Wimpee, Johnnie Parks, Scott Eudey

12. Remarks and Inquiries by Governing Body Members

Vice Mayor Eudey mentioned a week from tomorrow would be the V Day Celebration at 7 p.m. at Veteran's Park. He reported the applications for Youth City Council were available and open for submission until September 3, 2019. He reviewed the accomplishments of various Youth City Council graduates: Swatansu Das was named a semi-finalist for the 2019 National Merit Scholarship, Kelsey Schwab served as a Page for a Representative in February 2019, was a participant in the Jump Start TU program in Panama city in July 2019, and was chosen to present to the public regarding her participation.

Council Member Parks noted Mr. Das was a graduate of Booker T. Washington and commented Youth City Council Members were not required to attend Broken Arrow Public Schools, only to reside within the borders of the City of Broken Arrow. He noted Mr. Nathan Hubbard served as a Page for Representative Ford in the month of April, and Ms. Mi Lee was featured on the cover of Tulsa People Magazine as a top graduate in the Broken Arrow School System. He encouraged Broken Arrow youth to apply to the Youth City Council program.

Council Member Gillespie announced Rumble in the Rose District would be on August 23, 2019.

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

City Manager Spurgeon announced there was a new Broken Arrow Deputy Chief of Police, Mr. Scott Bennett, who would begin September 1, 2019. He congratulated Mr. Bennett.

He announced Mr. James Koch, Broken Arrow Police Department PIO, would be replaced by Mr. Chris Walker. He commended Mr. Cook for his service and congratulated Mr. Walker.

He announced Captain Jeremy Roberts would be promoted to the position of Battalion Chief. He noted there were 14 total promotions in the Fire Department: seven lieutenants were promoted to captain and six individuals were promoted to the lieutenant position.

He stated in an effort to ensure there was adequate parking for VIPs and Showtime for the Rumble in the Rose District, he would close City Hall at approximately 3 p.m. on Friday, August 23, 2019 and move the City vehicles out of the parking lot. He stated approximately 700 tickets and 17 VIP tables with 8 seats each had been sold. He noted only 1000 tickets could be sold in advance; however, if on August 21 it was determined the weather would permit the event to be held outdoors, additional tickets would be sold.

He reported the Wolf Creek Street project was almost completed. He stated the first Citizen's Recycling Committee Meeting, post pilot program, was held last night and the next meeting would be held on August 19, 2019. He stated he anticipated a recommendation would be presented in mid-September. Council Member Parks noted last night's Recycling Committee Meeting was excellent.

City Manager Spurgeon noted commercial trash hauling businesses would be reviewed over the next few months in an effort to ensure the businesses and drivers were properly licensed.

He reported he received two grievances for the (Fraternal Order of Police) FOP in the last 45 days, one was a discipline resulting in termination (which he denied) and the second was discipline related to suspension (which he denied). He stated FOP decided to seek arbitration for both grievances. He reported approximately 15 grievances were received from the Internal Order of Fire Fighters (IAFF), all 15 were denied and the IAFF requested arbitration on all 15 grievances. He stated a number of grievances were related to the promotional process, a few were regarding vacation denial, and one or two were health and safety grievances.

At approximately 8:23 p.m. Vice Mayor Eudey stated there was an executive session and he would entertain a motion for a brief recess to enter into BAMA and BAEDA.

MOTION: A motion was made by Johnnie Parks, seconded by Christi Gillespie.

Move for a brief recess to enter into BAMA and BAEDA

The motion carried by the following vote:

Aye: 4 - Christi Gillespie, Debra Wimpee, Johnnie Parks, Scott Eudey

At approximately 8:44 p.m. Vice Mayor Eudey reconvened the Meeting of the City Council and stated he would entertain a motion for a brief recess to clear the room for Executive Session.

MOTION: A motion was made by Debra Wimpee, seconded by Johnnie Parks.

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

The motion carried by the following vote:

Aye: 4 - Christi Gillespie, Debra Wimpee, Johnnie Parks, Scott Eudey

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 the tort claim of Heather Walters vs. City of Broken Arrow, and taking appropriate action in open session, including possible authorization to settle this tort claim, under 25 O.S. §307(B)(4).**
- 2. Litigation, including potential resolution, of a matter involving the tort claim of Randall Quick vs. City of Broken Arrow, 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.

MOTION: A motion was made by Christi Gillespie, seconded by Debra Wimpee.

Move to enter into the Executive Session

The motion carried by the following vote:

Aye: 4 - Christi Gillespie, Debra Wimpee, Johnnie Parks, Scott Eudey

MOTION: A motion was made by Johnnie Parks, seconded by Christi Gillespie.

Move to deny the tort claim of Heather and Drew Walters against the City of Broken Arrow.

The motion carried by the following vote:

Aye: 4 - Christi Gillespie, Debra Wimpee, Johnnie Parks, Scott Eudey

MOTION: A motion was made by Johnnie Parks, seconded by Debra Wimpee.

Move to authorize the City Attorney to settle the tort claim of Randall Quick against the City of Broken Arrow as recommended by the City Attorney.

The motion carried by the following vote:

Aye: 4 - Christi Gillespie, Debra Wimpee, Johnnie Parks, Scott Eudey

MOTION: A motion was made by Johnnie Parks, seconded by Christi Gillespie.

Move to find the Executive Session necessary

The motion carried by the following vote:

Aye: 4 - Christi Gillespie, Debra Wimpee, Johnnie Parks, Scott Eudey

15. Adjournment

The meeting adjourned at approximately 8:55 p.m.

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

Move to adjourn

The motion carried by the following vote:

Aye: 4 - Christi Gillespie, Debra Wimpee, Johnnie Parks, Scott Eudey

Mayor

City Clerk