



City of Broken Arrow

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220 S 1st Street

Broken Arrow OK

74012

Minutes Drainage Advisory Committee

Chairperson Mary Ann Colston
Vice Chairperson Lori Hendricks
Member Johnnie Parks
Member Craig Thurmond
Member Donna Wallace

Monday, September 30, 2019

6:00 PM

**Council Chambers
220 S. 1st St.
Broken Arrow, OK 74012**

1. Call to Order

Committee Member Craig Thurmond called the meeting to order at approximately 6:00 p.m.

2. Roll Call

Present: 5 - Mary Ann Colston, Lori Hendricks (arrived at 6:08 p.m.), Johnnie Parks, Craig Thurmond, Donna Wallace

3. Presentations

There were no Presentations.

4. General Committee Business

A. 19-1231 Discussion regarding the Open Meetings Act and Open Records Act

Assistant City Attorney John Bowling reported the Open Meetings Act and Open Records Act applied to public bodies; public bodies worked at public meetings; and members of public bodies needed to be aware of the Open Meetings Act and Open Records Act requirements. He explained the Open Meetings Act required transparency for government actions and required qualified public body meetings to be held at specified times and places which were communicated to the public. He noted the Open Meetings Act aimed to encourage and facilitate an informed citizenry. He reported the Open Meetings Act could apply to any committee or subcommittee and although the Broken Arrow Legal Department did not believe this Advisory Committee was technically considered a public body the Legal Department recommended compliance with the Open Meetings Act and the Open Records Act. He further explained the definition of a public meeting and the restrictions placed upon the members of the Committee through the Open Meetings Act. He noted communicating between Committee Members regarding Committee business through personal discussion or through electronic means was not permitted outside of publicized Committee Meetings. He discussed the penalties of violating the Open Meetings Act.

Mr. Bowling explained the Open Records Act required the City to disclose records created by, received by, under the authority of, or coming into the custody, control or possession of a City Employee or Public Official with certain exemptions. He stated the definition of a record was any document, electronic document, text message, film recording, etc. He noted the only exception was attorney client privilege, but this only applied when and if legal advice was solicited or given. He discussed the penalties of violating the Open Records Act. He discussed the civil liabilities which applied to the Open Records Act.

Committee Member Thurmond stated he understood the Committee Members were not to

communicate with each other via text, telephone or email regarding Committee business. Assistant City Attorney Mr. Bowling concurred; he noted an email string could become a quorum which would violate the Open Meetings Act. Committee Member Thurmond recommended contacting Mr. Bowling or Mr. Kenny Schwab with any Committee business enquiries. Mr. Schwab indicated he would serve as the point of contact for the Drainage Advisory Committee. He noted as there were two City Council Members serving on this Committee it was important for Committee Members to not discuss Committee matters with the other City Council Members. Mr. Bowling indicated he would distribute copies of his discussion regarding the Open Meetings Act and Open Records Act to the Committee Members.

B. 19-1232 Discussion regarding Meeting procedures basics

Assistant City Attorney Mr. Bowling explained Meeting procedure basics including the Agenda, Staff presentations, discussions, motions, seconds, clarifying discussion, votes, proper behavior, abstaining from a vote, and conflicts of interest,

C. 19-1233 Consideration, discussion, and possible nomination of a Chairperson and Vice Chairperson

Discussion ensued regarding who would serve as Chairperson and Vice Chairperson, as well as the duties of the Chairperson and Vice Chairperson, and the qualifications of the Committee Members.

MOTION: A motion was made by Lori Hendricks, seconded by Craig Thurmond.

Move to nominate Mary Ann Colston as Chairperson

The motion carried by the following vote:

Aye: 5 - Mary Ann Colston, Lori Hendricks, Johnnie Parks, Craig Thurmond, Donna Wallace

MOTION: A motion was made by Craig Thurmond, seconded by Johnnie Parks.

Move to nominate Lori Hendricks as Vice Chairperson

The motion carried by the following vote:

Aye: 5 - Mary Ann Colston, Lori Hendricks, Johnnie Parks, Craig Thurmond, Donna Wallace

D. 19-1234 Discussion about duties of the members of the Drainage Advisory Committee

Assistant City Manager of Operations Kenny Schwab reported on July 16, 2019 there was a presentation to City Council concerning the formation of this Committee and City Council directed Staff to develop an Ordinance (No. 3588) regarding the Drainage Advisory Committee which was adopted on August 6, 2019 by City Council. He stated a Drainage Advisory Committee Guidance Manual was developed and provided to the Drainage Advisory Committee Members.

Mr. Schwab reported the Drainage Advisory Committee was formed in response to the 2018 General Obligation Bond package that was approved by Broken Arrow residents on August 28, 2018. He noted there were six different Propositions included in this General Obligation Bond and Proposition 6 was unique as it fell under the State Statute which allowed for a public entity to spend public funds on private property under special circumstances such as when there would be public benefit for the expenditure. He discussed the reasons for creation of the Drainage Advisory Committee. He discussed Proposition 6 of the 2018 General Obligation Bond. He noted Broken Arrow had five main drainage basins identified in Proposition 6: Haikey Creek, Adams Creek, Broken Arrow Creek, Elm Creek and Aspen Creek. He explained funding was prohibited for any potential project not located within one of these five main drainage basins.

Mr. Schwab noted Committee Members were appointed to serve on the Drainage Advisory Committee for four years and this was an unpaid commitment. He indicated if a Committee Member chose to run for public office in the future said Committee Member might be

required to step down from the Drainage Advisory Committee. He noted the Drainage Advisory Committee had the right to adopt rules for the Committee. He stated the Committee was required to hold one regular scheduled meeting per quarter. He discussed the duties of the Drainage Advisory Committee which included developing or recommending potential drainage projects to City Council for Proposition 6 funds, advising the City Council concerning public benefits of potential projects, advising City Council of probable costs of potential projects (he noted City Staff would assist the Committee in this regard), making a written report to City Council no less than once annually, and performing duties as established by the Ordinance or requested by City Council.

Committee Member Parks stated he understood Proposition 6 indicated funds could be spent on property outside of City limits as long as there was benefit to the City. Mr. Schwab explained the difference between Proposition 5 and Proposition 6; Proposition 5 was related to drainage projects on property owned by the City and proposition 6 was related to potential drainage projects on property not owned by the City, but which would be of benefit to the City. He noted Proposition 6 could include a project located outside of City limits if said project was of benefit to the City. Chairperson Colston asked about drainage projects which involved County property. Mr. Schwab responded an easement would need to be dedicated to the City of Broken Arrow by the County. Chairperson Colston noted there were public safety issues caused by road flooding from the Adams Creek watershed and many of the affected roads were County roads. She asked if the Drainage Advisory Committee was to consider these types of projects. Mr. Schwab responded in the affirmative; the purpose of the Committee was to determine if a project should and could be pursued by the City of Broken Arrow.

E. 19-1235 Discussion regarding the recommendation process for the Drainage Advisory Committee

Assistant City Manager of Operations Mr. Kenny Schwab stated when residents reached out to Committee Members regarding potential drainage projects this information should be forwarded to him (Mr. Schwab) for review. He reported Staff had a spreadsheet containing over ninety potential Proposition 6 projects which had come to the attention of the City over the years. He explained in the past the City had no legal ability to pursue these types of projects due to the projects involving privately owned land. He noted not all projects listed on the spreadsheet would meet approval criteria. He discussed the possibility of an application process for potential projects which Staff would review and present to the Committee if Staff determined the project was viable. He explained if Staff did not feel a project was viable the public still had a right to ask for a project to be discussed by the Committee and the Committee had the right to review a potential project regardless of Staff opinions. He discussed the possibility of a future Consent Agenda and noted Committee Members had the right to pull Consent Agenda items for discussion. Committee Member Thurmond stated he believed at this point it was important for the Committee to discuss all projects; no Consent Agenda should be needed. Mr. Schwab agreed.

Committee Member Thurmond noted Item 5 on the Agenda was the Citizens' opportunity to address the Committee. He stated the Committee had no ability to take action on items unless said items were included on the Agenda; therefore, any item brought to the attention of the Committee during the Citizens' opportunity to address the Committee would inevitably be referred to Staff for review and presentation to the Committee on a future Agenda. Vice Chairperson Hendricks asked if removing Citizens' opportunity to address the Committee prevented Citizens from addressing issues included on the Agenda. Committee Member Thurmond responded in the negative. He stated he felt the Citizens' opportunity to address the Committee could be eliminated, as it would be better to require Citizens to go through the application process and have Staff vet potential projects prior to discussion. Committee Member Parks agreed. He noted the Planning Commission did not have a Citizens' opportunity to address the Commission; Citizens were required to bring potential discussion

items to Staff prior to Planning Commission meetings for possible inclusion on the Agenda. Discussion ensued regarding eliminating the Citizens' opportunity to address the Committee and Staff vetting potential projects prior to discussion.

Committee Member Parks asked what would be required to enable the City to conduct work on private property. Mr. Schwab stated the City would be required to obtain an easement. He read Proposition 6: "Proposition 6 is to provide funds for the purpose of drainage improvements to property owned exclusively or in part by said City..." He explained the City could "own property exclusively or in part" through an easement. He explained Proposition 6 provided the opportunity for funding of projects related to channelization, bank stabilization, detention, and clearing of drainage ways in the five drainage basin areas. He noted all storm sewer pipe projects were related to Proposition 5. He stated the bond was for \$5.5 million dollars and City Council already made the first sale of bonds; there was now \$1 million dollars available for Proposition 6. He indicated the projected future bond sale dates were included in the Committee's information packet for consideration. He noted it was up to the Committee to determine how best to spend these funds and make recommendations to City Council in this regard.

Discussion ensued regarding the provided information spreadsheets, bond funds currently available, bond funds available in the future, whether the Committee had the right to distribute the funds throughout the basins as deemed appropriate, named projects being required, unnamed project funds being flexible to reallocation, and no projected bond sales for drainage projects being included in the next sale of bonds.

Committee Member Parks asked to see the list of named projects for Proposition 6. Mr. Schwab explained there were no specific projects named for Proposition 6; however, a certain amount of funds were named to be spent for each basin.

F. 19-1236 Consideration, discussion, and possible approval of future meeting dates and times

Discussion ensued regarding future meeting dates and times, Ordinance requiring quarterly meetings, monthly meetings the first few quarters, and holding the next meeting in October. Discussion ensued regarding a ranking system for potential projects and exercising consistency. Discussion ensued regarding holding meetings on the last Monday of the month at 6:00 p.m. in the Council Chambers.

Vice Chairperson Hendricks asked when information regarding projects would be provided to Committee Members and how much time Committee Members would have to review said information prior to discussion. Mr. Schwab responded he was unsure, but he would do his best to ensure Committee Members had at least a week to review potential projects prior to discussion.

Chairperson Colston asked if she, Vice Chairperson Hendricks and Committee Member Wallace were permitted to visit potential project sites together. Mr. Bowling indicated three Committee Members could visit a potential project site together if said Committee Members did not discuss opinions regarding the potential project. Mr. Schwab stated quorum was four Committee Members; therefore, four Committee Members could not visit a project site together. Committee Member Thurmond noted regardless, Committee Members should not express opinions or make decisions regarding projects outside of Committee Meetings. Committee Member Parks noted as a Council Member no two Council Members would meet to research an agenda item in order to prevent accidental Open Meetings Act violations and to prevent any perception of violation. He stated the perception of possible violation was just as important as actual violation. Mr. Bowling noted when Committee Members went to visit properties most likely the property owners would wish to discuss the potential project. He stated it was important for Committee Members to encourage the property owners to express concerns in the application process and to inform property owners any discussion of the

project needed to be held during the public meeting. He indicated transparency was vital. Chairperson Colston stated group field trips were canceled; Committee Members could visit potential project sites individually to take notes and pictures.

MOTION: A motion was made by Craig Thurmond, seconded by Lori Hendricks.

Move to hold the next Drainage Advisory Committee Meeting on October 28, 2019 at 6:00 p.m.

The motion carried by the following vote:

Aye: 5 - Mary Ann Colston, Lori Hendricks, Johnnie Parks, Craig Thurmond, Donna Wallace

Committee Member Parks asked if the other two Committee Members would be chosen prior to the next Drainage Advisory Committee Meeting. Mr. Schwab responded in the affirmative. He noted he would review the information presented at today's meeting with the new Committee Members.

5. Citizens' Opportunity to Address the Committee

No Citizens wished to address the Committee.

6. Adjournment

The meeting adjourned at approximately 6:49 p.m.

MOTION: A motion was made by Johnnie Parks, seconded by Craig Thurmond.

Move to adjourn

The motion carried by the following vote:

Aye: 5 - Mary Ann Colston, Lori Hendricks, Johnnie Parks, Craig Thurmond, Donna Wallace

Mary Ann Colston, Chairperson

Lisa Blackford, Deputy City Clerk