

**MINUTES OF A REGULAR MEETING OF THE BOARD OF COMMISSIONERS
CITY OF OAK HILL, TENNESSEE**

March 18, 2010

The Commissioners of the City of Oak Hill, Tennessee met at the Oak Hill City Hall. Those present were Mayor Tommy Alsup, Vice-Mayor Austin McMullen, Commissioner Ray Throckmorton. Also present were City Attorney Bob Notestine, City Manager Kevin Helms, City Engineer Zach Dufour, Administrative Assistant Patrick Steiner, Chief Building Official Bill Burdette, and Assistant City Manager M. C. Sparks. Mr. Alsup acted as chair, and Ms. Sparks served as secretary.

I., II., and III. Meeting Called to Order – Mr. Alsup opened the meeting at 5:01 p.m., with the Pledge of Allegiance.

IV. Approve the Minutes of the Meeting - The minutes of the January 2010 meeting were Approved Unanimously upon a motion by Mr. Throckmorton and Seconded by Mr. McMullen.

The minutes of the February 2010 meeting were Approved Unanimously as amended upon a motion by Mr. Throckmorton and Seconded by Mr. McMullen.

V. Comments from Citizens

Mr. Roy Luckett, 939 Tyne, addressed the issue of a proposed contact with the City Manager, saying similar cities (including Belle Meade and Forrest Hills) in the area do not have contracts with their City Managers. Mr. Luckett said Mr. Helms has done an acceptable job but the citizens were not appreciative of decisions regarding the VanBeco Subdivision, the Otter Creek ½ acre lot recently addressed, and the issue of Collier engineering being awarded the sound wall management contract. Mr. Luckett was also concerned about the possibility of Mr. Helms receiving a car, and had concerns about the City Manager not living in Oak Hill.

Dr. Bill Canak, 929 Forest Acres Court, spoke in favor of early voting for the City election; he urged the Commissioners to take positive action to resolve the ethics complaint.

Mr. Louis Rieke, 5048 Lakeview Drive, presented a letter with lists of items he wished to address, including asking the City to audit the open Building Permit files regarding bonds, do an audit of capital assets, and adopt a resolution to use public meeting space from local churches or schools for City Meetings (his letter is in the file for the Commissioners meeting).

Ms. Mary Wherry, 882 Robertson Academy Road, asked to change the time of the Commissioners meeting to 6:00 pm.; she requested that the City have early voting for the upcoming election. She spoke in favor of the Radnor Lake proposal, of the City helping to fund a purchase of some of the VanBeco and Reserve at Radnor property to give to the Natural Area. She also felt the City Manager had not been here long enough to merit a contract, and having a contract will tie the hands of any new Commissioners elected in June.

Mr. Ray Enochs asked about any meetings with Rob Fielder, owner of a half acre lot on Otter Creek Road, and the City Manager. Mr. Helms said there was only one meeting - it was requested by Mr. Fielder. Mr. Enochs asked if any employee provided information to Mr. Fielder as to what could be done with that lot on Otter Creek Road; the City Attorney said Mr. Fielder was told the lot didn't meet requirements of the City's zoning for that area, and Mr. Fielder elected to appeal the staff decision that it didn't meet building criteria.

Ms. Chris Price, 915 Otter Creek, explained how the meeting came up with Mr. Fielder and the neighbors, echoing statements made by the City Manager.

Mr. Throckmorton spoke to Mr. Brian McKerley's comments, who said a record should have been made of any comments made by staff to Mr. Fielder. Mr. Throckmorton said round table meetings with people who request information regarding permits and subdivisions has over time produced more good than not, but sometimes someone doesn't participate in good faith. He also stated it would be good to have a complete record of any letters, memos and the like given to Mr. Fielder or previous owners in a file.

Mr. Jerry Shelton objected to government employees having contracts in general (his written comments are in the file for the Commissioners meeting). He has talked to other cities regarding contracts, all or most don't have contracts.

VI. Old Business

A. Consideration of Presentation by Steve Ward on Behalf of Radnor Lake – Mr. Steve Ward made the presentation of the Friends of Radnor Lake to help purchase approximately 10 acres; the Land Trust for Tennessee is now partnered in the efforts and has submitted a letter in support. Friends of Radnor Lake will have a survey done to ensure the actual acreage. Mr. Chris Magill, a neighbor present from the Skyknob Homeowners Association, spoke in favor of the proposal.

Mr. Ward and Mr. Helms have met with the Land Trust, and a conservation easement will be placed on the property before final payment is made, and then the property will be transferred to State ownership. This will prevent any development by the State once the property is transferred. The City has \$7.4 million in reserve to use toward the purchase.

Upon a Motion duly made by Mr. McMullen, and Seconded by Mr. Throckmorton, the following was passed Unanimously:

“Moved to approve appropriation of \$750,000 to help purchase approximately 10 acres from the Reserve at Radnor and the VanBeco subdivisions to be donated to Radnor State Natural Area, contingent on final approval of the contract, the conservations easement being drafted and put into place on the property, and arrangement of timing of the payment of the funds over the two fiscal years of 2009/2010 and 2010/2011.”

B. Consideration of Ethics Complaint

Mr. Denis Huffer of MTAS, who drafted the model ethics ordinance used by city governments, gave a written response to all but one of the ethics charges brought against various elected officials and staff members, saying he found no basis to further pursue the charges. Mr. Throckmorton asked if the City Manager should contact TML or MTAS, present the report to them, and ask their attorneys for review to see if we need a panel appointed; if they do not think so, then the issue is concluded, but if they believe it should be investigated, then pull names out of a hat for an attorney to investigate.

Upon a Motion duly made by Mr. McMullen, and Seconded by Mr. Alsop, the following was passed with two (2) votes for, with one (1) abstention by Mr. Throckmorton:

“Moved to declare that pursuant to paragraph 11-2c in the Ethics Ordinance, it has been determined that the complaint does not have merit.”

Mr. McMullen made a statement as part of the discussion indicating why he believed that there was no merit to the complaint. Mr. McMullen disclosed any personal interest that he had in the vote, as pursuant to requirements in the ethics policy. This statement has been included as part of the file for this meeting.

Mr. Brian McKurley said that Mr. McMullen's statement was an admirable exercise of lawyer language. He stated that he had concerns on the services Mr. Ikard performed for the city during his time in 2008.

Mr. Jerry Shelton, 980 Overton Lea Road, of the Oak Hill Citizens for Better Government, commented on Mr. McMullen's response as he must have had plenty of time to write it.

Mr. Throckmorton asked why Mr. McMullen had not read or given this statement before this meeting, to which he responded that this item had been deferred until there was a full board in attendance to vote on the matter.

C. Consideration of Ordinance to Change Commission Meeting Time – A Motion by Mr. Throckmorton to change the meeting time to 6:00 pm failed for lack of a second.

VII. New Business

Mr. Throckmorton requested to take care of all items on the agenda before addressing the City Manager contract; the other Commissioners concurred.

Consideration of Resolution Establishing Applicant Fees for Planning Commission and Board of Zoning Appeals Cases – Mr. Helms has compiled a suggested list of fees with input from Mr. Dufour, and through a review of fees charged by neighboring cities. Mr. Helms reviewed this listing of fees, explaining the types, and saying that the goal is to keep fees reasonable, but to recoup costs for reviews of larger projects.

There was discussion of raising or lowering of certain fees on the list. Mr. Throckmorton Moved to accept the recommendations of the City Manager, City Attorney, and City Engineer on the fee schedule; Mr. McMullen Seconded the Motion. Mr. McMullen Moved to Amend the motion to increase the base fee from \$400 to \$500 on the review of a preliminary and final plat; the Motion to Amend was Seconded by Mr. Throckmorton. Mr. McMullen also Moved to Amend the Not to exceed paragraphs 1a & 1b changing the fee from \$1,200 to \$2,000; Mr. Throckmorton Seconded this Motion also. Mr. McMullen Moved to Amend the motion by adding a new paragraph 1c which stated if a subdivision plat is to combine two or more existing lots, the subdivision preliminary and final plat would both be \$250 each; this would move the current paragraph "1c" to become "1d". Mr. Throckmorton Seconded this Amendment.

After further discussion, Mr. Throckmorton Moved to Amend the Original Motion by setting the fee of \$500 for review of CUP plans if there is not addition to impervious surfaces on a church or school and make the fee \$1,500 if there is a change in impervious surfaces; the Motion to Amend was Seconded by Mr. McMullen.

After further discussion, Mr. Throckmorton Moved and Mr. Alsup Seconded to "Moved that the vote on a new fee schedule be postponed until the subdivision regulations are updated." It was pointed out by Mr. Helms that it might possibly be eight to ten months before the subdivision regulations are completely updated.

After further discussion, Upon a Motion duly made by Mr. Throckmorton, and Seconded by Mr. Alsup, the following was passed Unanimously:

"Moved to postpone for one month, consideration of a fee schedule, with updates to the proposed schedule to include input received at this meeting, and with Mr. Dufour to help as the start of the subdivision regulation update begins."

Consideration of Location for Early Voting in City Election – Mr. Helms said he was provided a spread sheet by Davison County Election Commission, and the cost will be \$11,300 for thirteen days of early voting at the end of May; the day by day cost option would be approximately \$700 a day with fixed cost included of approximately \$1000. This includes a 9.88% requirement tacked on for the Election Commission's expenses. The regular voting site is Brentwood Hills Church of Christ, but some daytime events may interfere with using this location.

Discussion was held with citizens' input, regarding locations, etc. The rental contract is between the election commission and the church where the election would be held. This will be addressed at the April meeting as there is still time for arrangements to be investigated and made.

Consideration of City Office Space Lease – The office has received no information from the leasing company and/or owner's representatives regarding costs for leasing and construction on new office space; this item is deferred to next month.

Consideration of Employment Contract with City Manager – Mr. Throckmorton asked all to be objective, and said he has stumbled on something that gives him pause. He noted that the personnel policy is part of a lawsuit involving the City by a former City Manager. He said procedurally this policy should have been quoted at the initial time of hire for City Managers and quoted from the policy:

- B. **AT-WILL EMPLOYER.** The City of Oak Hill, Tennessee is an at-will employer. Nothing in this resolution may be construed as creating a property right or contract right to any job for any employee.
- C. **COVERAGE.** The following personnel are not covered by this policy, unless otherwise provided:
 - 1. All elected officials.
 - 2. Members of appointed boards and commissions.
 - 3. Consultants, advisers, and legal counsel rendering temporary professional service.
 - 4. The city attorney and city engineer.
 - 5. Independent contractors and/or contract employees.
 - 6. Volunteer personnel.

All other employees of the municipal government are covered by this personnel policy.

SECTION 9 - PERSONNEL POLICY CHANGES

Nothing in this resolution may be construed as creating a property right or contract right to the job for any employee. The provisions of this personnel policy may be unilaterally changed by resolution of the governing body from time to time as the need arises.

Mr. Throckmorton said his concern is he thinks this means a resolution is needed in order to validate any contract. If someone lives in Oak Hill has standing to challenge any changes, it should be added to any litigation.

Mr. Notestine said there is probably a need to revise the whole personnel policy, taking the City Manager out of the policy and making them a contract employee or employee at-will, depending on preference. The State statute protects the position of a City Manager for the first year of employment; after that the city manager becomes either at-will or contract depending on how each city is organized.

In response to questions on job performance, Mr. McMullen and Mr. Alsup said they have done individual evaluations of Mr. Helms' performance, and Mr. Throckmorton said he has not done a review, but thinks Mr. Helms does a good job.

Comments included: Mr. Rieke did not understand going to a contract and felt this will draw criticism during an election time; Ms. Wherry stated that this should wait till the election is over.

Mr. McKerley asked how this is comparable to other cities, and Mr. Notestine said through various sources at cities and at MTAS, most cities of 10,000-15,000 population have a contract; Forest Hills and Belle Meade don't have a contract.

Mr. McMullen has sensed in some candidates they feel a need to get rid of Mr. Helms, and a contract would provide some security for him to perform under. Dr. Canak said Mr. Helms has performed competently, and has been responsive to suggestions. Mr. Lockett said nothing has been talked about concerning Mr. Helms' dismissal by the Oak Hill Citizens for Better Government, but he needs to be "inspired" by working to improve and keep his job.

Mr. Throckmorton questioned the compensations; Mr. McMullen looked into contracts and compensations, and talked to Ron Darden with MTAS. Mr. Darden said most city managers have contracts, as it helps to have them concerned with what is best for community not what will help them keep their job. It was discussed what city managers get in salary; it was questioned whether a city manager could live in Oak Hill on what they are paid. It was noted that most of the previous city managers of Oak Hill have not been a resident of the City.

After further discussion, with direction that advice should be sought from a lawyer who deals with such matters, Upon a Motion duly made by Mr. Alsup, and Seconded by Mr. Throckmorton, the following was passed Unanimously:

"Moved to defer this item for one month."

VIII. Reports –

A. Safety Director - deferred

B. City Attorney – Mr. Notestine reported that Ms. Sharon Monroe has filed a writ of certiorari so time doesn't run out on any appeal on her lawsuit, but Mr. Notestine has talked to her attorney and the case will not be pursued if the purchase part of the Reserve at Radnor and VanBeco subdivisions is accomplished.

On the bond issue on the Reserve at Radnor subdivision, they are negotiating for work to be done, but the Van Becelaere's attorney is holding up proceedings in bankruptcy court.

C. City Engineer – Mr. Dufour discussed some proposed safety measures on Lakeview Drive, and that Kimley-Horn is working with TDOT to obtain turn lanes on Franklin Pike for Forest Hills Drive and Lakemont Drive. Drainage improvement plans for Tyne Boulevard have been outlined.

D. City Manager – Mr. Helms reported that several open meetings are being scheduled, to discuss the possible bike path, locations of sidewalks, and updates to the zoning ordinances. The antique furniture from Glen Leven mansion that was purchased for preservation by the City is to be taken to Glen Leven for display. Kimley-Horn has performed a speed study of traffic on South Curtiswood Lane, and they are reviewing this with Mr. Helms.

Mr. Helms said that on Lakemont Drive not many tickets have been issued by the police, so any speeding problem there may be a "particular day" daily occurrence problem, i.e. if an accident has happened in the area.

Mr. McMullen inquired about rocks having fallen from the small cliffs on Franklin Road, and Mr. Helms said we can contact TDOT about this issue.

IX. Adjournment – Upon Motion duly made and Seconded, the meeting was adjourned at 8:20 pm. in memory of former Commissioner Ken West.

Mayor