

## EDMOND CITY COUNCIL MINUTES

January 10, 2005

Mayor Sandra Naifeh called the regular meeting of the Edmond City Council to order at 5:30 p.m., Monday, January 10, 2005, in the City Council Chambers.

**2. Approval of Minutes.** Motion by Miller, seconded by Sanford, to approve December 27, 2004, Minutes. **Motion carried** as follows:

AYES: Mayor Naifeh, Councilmembers, Sanford,  
Lamb and Miller

NAYS: None

ABSTAIN: Councilmember Page (due to absence from meeting)

### **3. City Council Presentations:**

#### **A. Presentations by the Character Council of Edmond.**

Mayor Naifeh noted the Multi-Purpose Activity Center (MAC) at Mitch Park held a grand opening this past Saturday which was attended by many Edmond citizens. She stated the building is beautiful and will provide much needed space for the seniors and also many activities for all Edmond citizens. Mayor Naifeh commended everyone involved with the planning and opening of the MAC.

Mayor Naifeh also noted the Arts and Humanities Council will hold a round-table discussion breakfast at 7:00 a.m. tomorrow at the MAC and she invited everyone to attend.

**B. City Manager's Monthly Progress Report.** Larry Stevens stated the contractor has begun work on relocating the Oak Tree lift station. A contract was awarded to construct the gravity sewer line across a section of the Oak Tree Golf Course and should be completed by mid-April. He noted the entire project should be complete by the end of the year. The total estimated cost of the project is \$3 million. Mr. Stevens stated all the right-of-way has been acquired the Kelly Parkway project from 15<sup>th</sup> to 33<sup>rd</sup> Streets and the utility relocations are under way. He stated staff is currently waiting for final plan comments from ODOT. The total cost of the project is estimated at \$3.5 million which includes 80% federal funding. Mr. Stevens stated the

7<sup>th</sup> Street and Kelly intersection right-of-way has also been acquired and the utility re-locations are completed. The project is estimated to cost \$600,000 which also includes 80% federal funding. He noted this was the first project to contain the early completion option incentives. The last project discussed was the Safe Routes to School program. Mr. Stevens stated the design contract for Phase II has been awarded. He noted the entire project is funded through the 1996 Capital Improvements Sales Tax at a cost of \$2 million.

**4. Appointments to Boards and Commissions:**

- A. **Appointment to the Social Agency Review Commission.** Mayor Naifeh nominated Brooke Baker as a youth member to serve a one-year term expiring in January, 2006.
- B. **Appointment to the Edmond Fish and Game Commission.** Councilmember Miller nominated Tim Hartman for re-appointment to serve a four-year term expiring in January, 2009.

Motion by Miller, seconded by Lamb, to approve Items 4.A. and 4.B. **Motion carried** as follows:

AYES: Mayor Naifeh, Councilmembers Page,  
Sanford, Lamb and Miller  
NAYS: None

- 5. GENERAL CONSENT ITEMS:** (General Consent Items were voted on collectively except where noted.)

A. **Approval of Administrative Items:**

1) **Acceptance of Final Plat, public improvements and maintenance bonds for Fairfax Estates V, located one-half mile east of Coltrane.** Craig Brown, representing the F.E. Harper Trust, addressed Council in opposition. Mr. Brown stated the Harper Trust has a 20 foot wide easement that runs through the Fairfax Golf Course. He stated the applicant is requesting approval to cross the easement with their improvements. He stated there could be damages to the Fairfax easement in the future if the Harper Trust chose to put other utilities in their easement. Mr. Brown stated there is ongoing litigation regarding the easement and he stated by accepting the easement, the

City will be taking on the liability of the lawsuit for intentional trespassing. He requested the Council either deny the application or continue it to a future meeting.

Steve Murdock, City Attorney, addressed Council and stated an easement was granted in 1985 that runs parallel to an existing sewer line easement. The proposed easement crosses the easement that is needed for the Fairfax V Addition and litigation has ensued. Mr. Murdock stated the improvements have been installed and it is the City's responsibility to insure that the improvements meet all City requirements. He stated there may be some question as to whether the existing easement is a public or private easement. He noted he felt the City was caught in the middle of this situation.

Larry Ball, attorney handling the litigation, addressed Council and stated their easement runs parallel to the golf course. He noted the problem arose when a surveyor for the applicant mis-surveyed the easement and now the applicant has lots shown in the easement. Mr. Ball stated they attempted to get an injunction to keep the applicant from installing the sewer line but before they could get the injunction, the sewer line was installed. He stated an intentional trespassing suit has been filed due to the installation of the sewer line. He stated he felt it would be a problem for the City to accept the easement with the knowledge that a trespassing suit has been filed. Mr. Ball stated they had the right to install a sewer line on this easement to serve the property to the south. He noted the easement is very specific that the applicant does not have the right to build anything on the easement without their consent. He stated as the applicant makes additional improvements such as building more homes, lakes, tee boxes, etc. it will make it more expensive for them to service the property for which they installed the original sewer line to serve.

Randel Shadid, attorney representing the applicant, addressed Council and stated the original sewer easement is a private non-exclusive easement and the Harper Trust has no right to prohibit anyone else from using the easement. Mr. Shadid stated he has

been negotiating with the Harper Trust regarding the easements for two years and he has not been able to resolve the conflicts. He noted the original Harper Trust easement is not shown on the plat but that they would amend the plat to include that easement.

2) **Acceptance of easements and Rights-of-Way associated with the Fairfax Estates V Addition.** This is a companion to the above item and was discussed at that time.

Motion by Lamb, seconded by Sanford, to approve General Consent Items 5.A.(1-2). **Motion carried** as follows:

AYES: Mayor Naifeh, Councilmembers Page, Sanford, Lamb and Miller

NAYS: None

3) **Acknowledge receipt of construction permits from the Oklahoma Department of Environmental Quality for the Belmont Villages II Addition and the Oak Tree area.**

4) **Public Hearing and Consideration of Ordinance No. 2890 amending Sections 15.25.110 and 15.25A.120 to the Edmond Municipal Code, providing for changes in procedures for placement of temporary business signs; Providing for Repealer and Severability.**

5) **Public Hearing and Consideration of Ordinance No. 2891 amending Subsection 10.68.025(A) of the Edmond Municipal Code to change requirements of off-street parking of vehicles; Providing for Repealer and Severability.**

6) **Public Hearing and Consideration of Ordinance No. 2892 addition new Subsections 8.28.020(G), (H) and (I) of the Edmond Municipal Code; Providing for prohibited areas for accumulation of weeds and trash to include adjoining alleyways, street rights-of-way or easements; and amending Subsection 8.28.030(1) providing for changes in abatement procedures; and for Repealer, Severability and Declaring a Emergency.**

7) **Approval of supplemental appropriations for Police Public Safety Tax Fund - \$108,660.**

8) Approval of supplemental appropriations for General Fund provided by the FEMA Safe Room Grant Revenue - \$65,000.

9) Approval of supplemental appropriations from the 2000 Sales Tax Fund to restore funding for the Phase I Pedestrian Linkage Streetscape project - \$191,155

B. Approval of Purchases:

1) Approval of Change Order No. 31 with Timberlake Construction Co., Inc., for the Cross Timbers Municipal Complex in the amount of \$28,091.05.

Motion by Lamb, seconded by Sanford, to approve General Consent Items 5.A.(3-9) and 5.B.(1). **Motion carried** as follows:

AYES: Mayor Naifeh, Councilmembers Page, Sanford, Lamb and Miller  
NAYS: None

Motion by Lamb, seconded by Page, to recess the City Council meeting in order to convene the Edmond Public Works Authority meeting. **Motion carried** as follows:

AYES: Mayor Naifeh, Councilmembers Page, Sanford, Lamb and Miller  
NAYS: None

8. **PLANNING CONSENT ITEMS:**

- A. **Public Hearing and Consideration of extension of Special Use Permit for an assisted living center, located at 530 N. Fretz (Fretz Group Home/Loy Puffinbarger, applicant) Case No. U040001.**
- B. **Public Hearing and Consideration of extension of commercial Site Plan approval for Sam's Auto Wash Express, located south of E. 2<sup>nd</sup> Street on the southwest corner of 2<sup>nd</sup> Street and Katie Michelle (Sam Crosby IV, applicant) Case No. SP040001.**
- C. **Consideration of Final Plat of Olde Edmond III Addition, located north of Danforth Road, east of Coltrane (Paul Iser, applicant) Case No. PR040030.**
- D. **Public Hearing and Consideration of Ordinance No. 2893 rezoning from "G-A" General Agricultural to "R-2" Urban Estate Dwelling District, located north of Covell Road, west of Douglas Boulevard (William Frankfurt, applicant) Case No. Z040033.**
- E. **Consideration of Final Plat for Fairfax Estates VI, located north of Covell Road, east of Coltrane (J.W. Armstrong, applicant) Case No. PR040035.**
- F. **Consideration of Final Plat for Fairfax Gardens III, located north of Covell Road, east of Coltrane (J.W. Armstrong., applicant) Case No. PR040035.**

- G. **Public Hearing and Consideration of commercial Site Plan approval for a new building, located at 1320 Fretz Drive (John Alexander, applicant) Case No. SP040042.**
- H. **Public Hearing and Consideration of Site Plan approval for a new building, located on the northwest corner of Fretz and 18<sup>th</sup> Street (Shawn Thomas representing Jade Properties, applicant) Case No. SP040046.**
- I. **Public Hearing and Consideration of commercial Site Plan approval for a new building, located on Enterprise Drive, east side of Kelly (Red River Roofing, applicant) Case No. SP040045.**
- J. **Public Hearing and Consideration of a Special Use Permit and Site Plan approval for a new church building, located on the southeast corner of Covell Road and Pennsylvania Avenue (Acts 2 United Methodist Church, applicant) Case No. U040012.** Councilmember Lamb noted that the applicant is granting 100 foot of right-of-way from the centerline of Covell Road in lieu of paving or installation of deceleration lanes in order to make room for the development of the Covell Parkway. He pointed out that the memo in the packet needed a little clarification. He noted under Title 21 requirements the applicant is only required to provide 70 feet of right-of-way but they are required to pave or provide a fee in lieu of paving. He noted the applicant is providing the additional right-of-way in lieu of paying a fee in lieu of paving.

Motion by Miller, seconded by Lamb, to approve Planning Consent Items 8.A. through 8.J. **Motion carried** as follows:

AYES: Mayor Naifeh, Councilmembers Page,  
Sanford, Lamb and Miller  
NAYS: None

- K. **Public Hearing and Consideration of Site Plan approval for a Sonic Drive-In Restaurant, located on the southeast corner of Thomas Drive and Covell Road (Thomas Trails, LLC, applicant) Case No. SP040047.** The proposed one-story building will contain 1,674 square feet and 32 parking spaces are provided.

Randel Shadid, attorney representing the applicant, addressed Council and stated the site plan was amended regarding the exterior walls. He stated the walls will be red brick on all four sides and the building cap will be green to match the standing seam roofs of area buildings. Mr. Shadid stated the detention area is located along Covell and berms will be constructed along Covell south of the detention area and will wrap around to include a portion of Thomas Drive.

Councilmember Miller stated the landscaping plan shows berming included.

Barry Lodge, Coon Engineering, addressed Council and stated when the landscaping plan was developed, the location of the detention area had not been determined. He stated they moved the building further south in order to have room to locate the detention facility in the northeast corner of the property and then add the berms along Covell Road.

Motion by Miller, seconded by Page, to approve Planning Consent Item 8.K. **Motion carried** as follows:

AYES: Mayor Naifeh, Councilmembers Page,  
Sanford, Lamb and Miller  
NAYS: None

- 9. **Public Hearing and Consideration of Preliminary Plat for Skyler's Court Addition, located north of Edmond Road just under**

**one-half mile west of Kelly Avenue (Kimberly Crossing, LLC, applicant) Case No. PR040042.** The site contains 7.6448 acres and 76 lots are proposed. The addition is proposed as a private gated community. The property to the north is owned by Robert Cassidy. Mr. Cassidy's property consists of 40 acres and has access to Kelly through the Chateau Addition. The only access to Edmond Road is by using a 20 foot wide easement previously used by his father many years ago but it is not a public access and would not be wide enough for general traffic. At this time the access is unimproved and is a dirt drive. A large portion of Mr. Cassidy's property also lies in a floodplain but it may still be possible to construct as many as 100 single family homes. The Planning Commission recommended denial because they had questions as to whether the addition should have private streets.

Bryan Coon, Coon Engineering, addressed Council on behalf of the applicant. Mr. Coon stated the applicant has offered to deed 50 feet of property on either the east or west side of the development back to the former owner and make public the amount paid and then Mr. Cassidy can purchase the property to construct an access. Mr. Coon stated even though this arrangement would result in the loss of two to four lots for the applicant they would be willing to do that. Mr. Coon stated it was not their responsibility to construct an access for Mr. Cassidy or to give up their property for him to build a street. He stated if Mr. Cassidy wants an additional access then he should have to pay for the property just as they had to do. He noted that when the Creekside Addition was approved in 2002, Mr. Cassidy wanted that developer to build him an additional access and it was not required by Council at that time. Mr. Coon noted that a comment from staff recommended that Mr. Cassidy purchase property from the developers of Dooley Farms for a connection to Dooley Farms Lane. He noted that Mr. Cassidy has had two years to at least start the process of purchasing the property and he has not done anything.

Randel Shadid, attorney representing Mr. Cassidy, addressed Council and stated the applicant is requesting a variance from the maximum number of lots for a private street addition and also for a longer street connection than is allowed. He stated the developers of Dooley Farms have known from the beginning that they need to provide another access. He requested the City require the developer to build public streets and provide a street stub-out to Mr. Cassidy's property. Mr. Shadid stated if the Council approved the project with private streets, he requested they require the applicant to provide a 50 foot right-

of-way on the east side of their property connecting to Dooley Farms in order for Mr. Cassidy to construct a street. He noted that Mr. Cassidy was aware that he would have to construct a street access at his cost.

Mr. Coon stated the applicant is willing to realign the plat in order to sell 50 foot of right-of-way to Mr. Cassidy to construct a street.

Councilmember Lamb stated he was concerned with having only one access which is not even a collector street to Mr. Cassidy's property which could cause problems during an emergency situation. He stated since Mr. Cassidy's property is so large and will allow approximately 100 homes to be constructed, he was concerned about future problems. He commented that approval would not provide any options to future Councils. He noted that he was not sure that a road could be constructed on the west side of the development due to the floodplain and the unusual bubble entry point which would create very unusual geometry for the traffic. Councilmember Lamb stated the City is not required to approve private streets. In this case a private road development would change the service dynamics for a significant land area permanently.

Mayor Naifeh stated she always preferred to support the Planning Commission recommendations and felt they had some valid points for denying the application. She stated she felt Council's decision should be based on what is best for the City as a whole.

Councilmember Miller stated he does not feel that the City should require a private property owner to give property to another property owner. He noted that he understood the concerns regarding additional access for homes and emergency personnel but he felt that if Mr. Cassidy wanted property for a street connection then he should pay for it.

James Eastburn, husband of the former property owner and a retired fire fighter, addressed Council and stated there is a 10 foot utility easement on the east side of the property that would provide adequate room for fire equipment to access Mr. Cassidy's property.

Motion by Lamb, seconded by Miller, to approve Item No. 9.  
**Motion was denied** as follows:

AYES: Councilmembers Page and Miller

NAYS: Mayor Naifeh, Councilmembers Sanford and Lamb

**10. Public Hearing and Consideration of a sign variance for the Dental Depot, located south of 15<sup>th</sup> Street, east of the Burlington Northern and Santa Fe Railroad tracks (Dr. Ashmore, applicant).** The applicant is requesting a 16 foot tall, 125 square foot sign in lieu of additional signs for individual businesses. The sign would provide for three tenant spaces. The property is 950 feet deep and several other non-conforming signs are located in this area. A sign variance for an apartment complex has previously been approved.

Mayor Naifeh stated she rarely approves sign variances but feels the variance would be appropriate due to the location and existing signs. She noted the property is so deep she felt that businesses at the back of the property would not be able to have a sign that could be seen from 15<sup>th</sup> Street.

Phil Fitzgerald, architect for the applicant, addressed Council and stated the property is zoned Light Industrial. He stated the property is long and narrow and he felt it needed a larger sign. He noted there will be two additional signs on either side of the larger sign that will comply with City codes.

Councilmember Lamb stated due to the unique nature of the area and to reduce the number of signs along 15<sup>th</sup> Street as well as the number of non-conforming signs he was not opposed to granting the variance.

Motion by Page, seconded by Lamb, to approve Item No. 10.  
**Motion carried** as follows:

AYES: Mayor Naifeh, Councilmembers Page, Sanford, Lamb and Miller  
NAYS: None

**11. NEW BUSINESS:** None

**12. Motion by Miller, seconded by Page, to adjourn meeting.**  
**Motion carried** as follows:

AYES: Mayor Naifeh, Councilmembers Page, Sanford, Lamb and Miller  
NAYS: None

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City Clerk

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Mayor