

Council Meeting Minutes

June 17, 2013

The regular scheduled meeting of the City Council, City of Audubon Park was held on Monday, June 17, 2013 at 3340 Robin Road with the following present: Mayor Michael Scalise, along with Council Members Joanne Bader, Vince Osbourn, Nancy Zinner, Al Huber and Cary Campbell. Council Member Mark Stevens was absent. Also present were Deputy Police Chief Ron Jones, and City Clerk Stephanie Lee. Assistant City Attorney Jonathan Leachman was present.

Call to Order: Mayor Scalise called the meeting to order at 7:33 P.M. followed by the Pledge of Allegiance.

Approval of the Minutes: Mayor Scalise asked if there were any corrections, additions, or deletions to the minutes from the previous month. Joanne Bader made a motion to accept the minutes as presented. Nancy Zinner seconded and the motion was passed unanimously.

Public Comments: The following is a list of people who spoke and a general summary of what they had to say:

1. Gene Stotz, 3330 Robin Road – mentioned that Audubon Park Garden Club is hosting its Garden Tour this Saturday with 8 gardens to be shown, a plant sale and refreshments.
2. Laura Kelty, 3242 Cross Bill Road – asked several questions about the proposed budget and was informed by Mayor Scalise that the vote on the budget had been delayed for at least a month. She noted that there did not appear to be any major cuts in expenses and she had questions on several specific line items in the budget such as council compensation, retirement spending on employee pensions, the differential between cost of the sanitation contract and fee charged, and whether the sanitation costs are a fee or a tax. Mayor Scalise said that the issue of the sanitation fee and costs is an ongoing issue and being addressed diligently by the council and that the sanitation fee is part of an ordinance passed earlier in the year that included property taxes, sanitation and the motor vehicle tax. Ms. Kelty expressed concern that some of these fees were generating revenue used for general expenses when they had specific focuses. She also brought up the Davis issue, noting the ordinance as written doesn't specifically address fees for estate sales and asked that the city return the \$200 fee to the Davis family which they paid for their sale; she also asked that the City look into its ordinances to make sure there are not conflicts between actual practice and what is listed in the ordinances. Asst. City Attorney Leachman said the ordinance did not preclude a fee and that the permit filled out specifically states there is a \$100/day fee and the Davis family was fully aware of the fee when they signed the permit form. Mayor Scalise said the wording of the ordinance will be on the agenda for next month and Pat McElhone has already drafted an amended ordinance relating to permits. Cary Campbell

questioned Jonathan Leachman about the city's ability to charge the fee; Mr. Leachman argued there was no prohibition against doing so in the ordinance and, under the Home Rule, the City is authorized to have any power that it is not expressly deprived of.

Mayor Scalise then interjected that Pat McElhone has informed him that he is retiring and Jonathan has accepted the position as City Attorney as of the beginning of the fiscal year.

Mayor Scalise then introduced Mr. Charlie Veeneman, who owns an accounting firm and is working with the City and will replace the City Treasurer. Mr. Veeneman will be at council meetings to present financial statements and answer questions relating to them.

3. Nancy Shelton, 919 Audubon Parkway – wanted clarification whether the ordinance said estate sale or public auction. Mayor Scalise thought it said both; Joanne Bader said the permit form does list both types of sales but the ordinance only references public auctions. Nancy Shelton said she and her husband experienced similar differences between permits and ordinance language when they were doing construction work on their home. She also has concerns about maintenance in the Park with trash not picked up, drains not cleaned, and wants more oversight over the maintenance worker.

Mayor Scalise said there will be some public comment period before budget is voted on after comments made by Joanne Bader, that residents should be allowed to have some more input after additional changes are made to the budget.

Financial Report: The information provided in this month's Financial Report showed the figures through the month of May; they reflect the format that the City is accustomed to using, however Mr. Veeneman is proposing a new format that he has used in other cities. The financials from May are based on inputs from the former treasurer. He noted that he still needs more detail on some of the numbers in the budget before he is confident that the numbers he is presenting are accurate. In response to a question about his firm, Mr. Veeneman noted that he currently does accounting work for the cities of St. Regis Park, Northfield, Plantation and Creekside among others. His fee structure is \$65/hour and he charges a flat fee for selected services which includes most services he provides: financial statements, check writing, etc. In discussing the contract with the Mayor, he felt the bulk of the work he would do for the City would fall between \$750-1200/mo but that the hourly fee of \$65 would be for services outside of normal scope e.g. assisting with budget preparation. The Mayor expects that the City will save money compared to costs with the former Treasurer over the coming year, with more expenses incurred early on in the year as the transition is made to the new financial format.

After considerable discussion between Mr. Veeneman and Council members on specific items in the financials and on the financial formats, Al Huber made the motion to accept the Financial Report as presented. Vince Osbourn seconded and the motion was passed unanimously.

Budget Ordinance: The Mayor indicated that the second reading will be deferred on this until further work is done on the budget.

Police Report: Deputy Chief Jones read the Police Report for the month of May. A copy of the report is made a part of these minutes.

Deputy Chief Jones passed out copies of the Report for the Council and Mayor to review.

Forest Board Business: Gil Zinner discussed the Forest Board report distributed to the Mayor and Council. Members of the Forest Board have been working in Curlew Park - trimming trees, installing ooze tubes etc. There has been vandalism in the Rain Garden with loss of plants due to unknown persons pulling out plants. Discussion has been made of installing a critter cam to keep an eye on the garden. Nancy and Darryl Shelton cleaned up the entrance to the City at Preston and did a great job. The Council and Mayor thanked them for their efforts. Nancy asked about the possibility of getting a receptacle for cigarette butts; if not, the City needs to step up efforts to keep area cleaned since it is a gateway to Audubon Park. It was mentioned the area was recently cleaned in April as part of an Operation Brightside cleanup and a second cleanup will be held in October. Vince Osbourn questioned whether the bus stop could be moved and the Mayor said this has happened before but there doesn't appear to be any better solution.

Unfinished Business: There was not any "unfinished business" to report at this time.

New Business: Cary Campbell proposed a resolution in response to the Davis issue which was read and attached to these minutes. Cary made a motion for approval of the resolution which was seconded by Joanne Bader. Before a vote was held, Cary expressed his disappointment in the leadership of the city in their response to this matter so far. He noted that he had done considerable research on his own regarding the rulings cited by Jonathan Leachman and contacted the Kentucky League of Cities to get a further legal clarification on the matter to indicate whether the City can administer the fee. KLC was unable to give him a legal justification for collecting the fee paid by the Davises therefore he believes the City was not legally allowed to collect this fee.

Al Huber noted his belief that Marjorie Davis was on the council for 38 years and may have helped write the ordinance itself. Furthermore, he said the Davis family applied for the permit and "lied" when they filled out the paperwork. Mr. Huber felt that this issue had been already addressed on appeal and shouldn't be brought up again. Mr. Huber felt that Cary had overstepped by "interpreting the laws" which could be viewed as unethical and grounds for potential disbarment. He further noted the Davises knew what the fee was for, signed the permit, making it a legal contract.

Joanne Bader noted that the police acted in good faith, enforcing a law that was presumably based on the city's ordinances. However it was after the code enforcement board hearing when it was determined that the fee was not actually in the ordinances that the council was made aware of the discrepancy. She said when the council finds out that it violated its own ordinances, it should be acknowledged that an honest mistake was made and the fee

returned since the Council has a fiduciary responsibility to uphold the ordinances. The ordinance and permit need to be consistent. Nancy Zinner and Vince Osbourn both concurred that they are in favor of the resolution because it was the right thing to do. Vince Osbourn further suggested that there should be a yearly review of the ordinances by both the Council and all other government employees to familiarize themselves with the specifics of the ordinances, and this should be part of the resolution. The City should admit a mistake was made and the City should learn and go forward.

Cary said that Al's comment about disbarment is a serious charge and asked City Attorney to comment about the ability of Cary to look into this. Jonathan Leachman noted that there could be a question whether Cary could act as a City Council Member *and* a legal advisor to the City Council at the same time. Cary asked whether it wasn't a greater issue to see a problem as an Officer of the Law and *not* say something. Al Huber said he agreed the law needs to be changed but did not agree that the City needed to refund the fee to the Davises because it would set a precedent requiring the City to refund the fee to others who held estate sales. Cary Campbell said that the Davises shouldn't have to go to the expense of taking the city to court over refunding of the fee which would be cost prohibitive for the eventual return to them. The City has had three months to resolve this issue by showing there is any legal justification for their actions and this has not occurred.

Joanne Bader went on record in support of the resolution as proposed and noted that she had contacted KLC on legal questions and opinions so Cary should be able to act in that same role. Mayor Scalise passed out a letter he received several weeks ago from Jonathan Leachman with his legal opinion to the City on the subject; he sympathized with the Council's comments but in his role as Mayor he is responsible for protecting the City so he believes the resolution is a mistake. He agreed that the ordinance needs to be changed and that is in process. Mayor Scalise suggested that Nancy Zinner and Joanne Bader, as members in the Garden Club with Marjorie Davis, both should recuse themselves. Joanne Bader said that the Council has been trying to get the Mayor to respond to this issue for over three months with no response and receiving the legal opinion letter now for the first time is disappointing and inappropriate at such a late date when it was written a month prior. At the Mayor's urging, Jonathan Leachman went on record saying that he has advised the Council against taking any sort of actions that aren't in the best interests of the City such as passing the proposed resolution. He noted that the Davis situation began as a code enforcement issue, was given a code enforcement hearing, Mrs. Davis was allowed to be represented by an attorney and no issues were raised about the permit fee. Furthermore the Code Enforcement Board found her in violation but did not fine her and Mrs. Davis had an opportunity to appeal the Code Enforcement Board result but did not. Mr. Leachman said that to his knowledge Mrs. Davis had never contacted the City to complain about the issue. Nancy Zinner noted that she was personally aware that Mrs. Davis had tried to contact the Mayor. Vince Osbourn asked the city attorney what action the City would take if someone applied for an estate sale permit tomorrow, knowing what the City knows now. Jonathan Leachman said the process would remain the same until the policy had been changed; he agrees the ordinance needs to be amended to be more explicit. Joanne Bader noted that a resolution is not legally binding on the City, rather it expresses the will of the Council thus the Council should allow a vote on the resolution. Regardless of the outcome, Cary

noted that the Council recognizes they have no legal ability or authority to move on with the issue beyond voting on the resolution and the council will move forward as a team to work for the betterment of the City.

A vote was taken on the resolution which passed 4-1 with only Al Huber dissenting. A copy of the resolution was given to the clerk.

Cary Campbell asked that Mayor Scalise recognize a new officer on the police force, Officer Herman Harris.

Mayor's Report: Mayor Scalise said he had received a lot of comments about the flowers in the circle at Oriole and Audubon Parkway by the flagpole and he spoke to members of the Forest Board who will transplant some of the plants to address concerns about excessive height.

Al Huber made a motion to adjourn the meeting. Vince Osbourn seconded, and the meeting was adjourned.

ATTESTED

APPROVED