

MINUTES OF THE MEETING OF THE BOARD OF COMMISSIONERS
PONCA CITY, OKLAHOMA
JULY 24, 2006

Pursuant to notice as required by law, the Ponca City Board of Commissioners met in regular session at 5:30 p.m. in the Commission Room at City Hall, 516 E. Grand, with Mayor Richard Stone presiding:

Present: Richard Stone, Mayor
Wayne Foxworthy, Commissioner
Paul Krueger, Commissioner
Stan Paynter, Commissioner
Diane Anderson, Commissioner
Gary Martin, City Manager
Kevin Murphy, City Attorney
Marc LaBossiere, Finance Director/City Clerk

Others Present: Tana McKinley, Craig Stephenson, Phil Johnston, Terry Brown, Todd Smith, Jim Fairbanks, Mike Chapman, Chris Henderson, Clayton Johnson, Mike Lane, Butch Herring, Earl Watkins, City staff; Don Bouldin, Pat Drake, Sheryl Kline, Steve Peresko, Tammee Peresko, Keith Lawrence, Chuck Greenwood, Guy Clark, Dave White, Jayne Detten, Jim Leach, David Cummings, citizens; Rolf Clements, Ponca City News.

1. Mayor Richard Stone called the meeting to order at 5:32 p.m.
2. Lyle Shipley, Asbury Methodist Church, gave the invocation followed by the pledge of allegiance.

****CEREMONIES AND PROCLAMATIONS****

4. Character Trait for July – Meekness presented by Tana McKinley, Assistant City Manager.

****CONSENT AGENDA****

The Board of Commissioners found items, #5, #6, #7, #8, #9, #10, and #11 non-controversial and routine in nature. Commissioner Paynter made the motion to approve the consent agenda. Anderson seconded.

Roll: Yeas; Foxworthy, Paynter, Stone, Krueger, and Anderson. Nays; None. Motion carried.

5. Consider and vote upon minutes of the Ponca City Board of Commissioners work session held June 19, 2006 and regular meeting held July 10, 2006

6. **RESOLUTION NO. 5550**

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE CITY OF PONCA CITY, OKLAHOMA, APPOINTING MEMBERS TO VARIOUS BOARDS AND COMMISSIONS AND ESTABLISHING THE TERMS OF THE OFFICE THEREOF.

<u>BOARD OR COMMISSION</u>	<u>NAME</u>	<u>TERM</u>	<u>TERM EXPIRATION</u>
Library Board	Judy Jones	Appointed	2008
Senior Advisory Board	Mary Ladd	Appointed	2007

7.

RESOLUTION NO.5551

WHEREAS, THE OKLAHOMA MAIN STREET CENTER HAS BEEN ESTABLISHED IN THE OKLAHOMA DEPARTMENT OF COMMERCE TO ASSIST SMALL TOWNS AND CITIES TO DEVELOP A PUBLIC/PRIVATE EFFORT TO REVITALIZE THEIR "MAIN STREET" AREAS, AND WHEREAS THE CITY OF PONCA CITY DESIRES TO CONTINUE PARTICIPATING IN THE OKLAHOMA MAIN STREET CENTER; NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE CITY OF PONCA CITY, OKLAHOMA: THE CITY OF PONCA CITY SUPPORTS THE PARTICIPATION IN THE 2006 OKLAHOMA MAIN STREET CENTER WITH THE SPECIFIC GOAL OF REVITALIZING THE CENTRAL BUSINESS DISTRICT USING THE MAIN STREET 4-POINT APPROACH™ TO ECONOMIC REVITALIZATION. THE CITY OF PONCA CITY UNDERSTANDS THAT THE MAIN STREET APPROACH IS A LONG-TERM PROCESS THAT RESULTS IN A CONTINUAL EFFORT TO MAINTAIN AND ENHANCE DOWNTOWN.

8. Consider and vote on a renewal agreement between the City of Ponca City and Ponca City Main Street in the amount of \$30,000.00, and authorize the Mayor to sign the agreement on behalf of the City.
9. Consider and vote on a renewal agreement between the City of Ponca City and United Community Action Program, Inc. for transportation services provided by Cimarron Transit in the amount of \$15,000.00.
10. Consider and vote on a renewal agreement between the City of Ponca City and the Northern Oklahoma Youth Services Center & Shelter, Inc. (NOYS) in the amount of \$15,000.00 and authorize the Mayor to sign the agreement on behalf of the City.

11.

RESOLUTION NO. 5552

A RESOLUTION APPROPRIATING MONEY FOR THE PAYMENT OF CLAIMS AGAINST THE CITY OF PONCA CITY, OKLAHOMA.

****ITEMS REMOVED FROM THE CONSENT AGENDA****

12. None

****COMMUNICATIONS FROM MAYOR AND COMMISSIONERS****

13. Commissioner Foxworthy welcomed visitors attending the Moto-cross to Ponca City.

Mayor Stone stated that he regretted that neither he nor Vice-Mayor Krueger were able to attend the Moto-cross this evening to welcome visitors to Ponca City, but due to the importance of items on the agenda of the evening's meeting, they needed to be in attendance.

Stone also stated that being there an item on the agenda which has some controversy, and since there are several citizens who wish to speak on this item, he would allow anyone

who wished to speak an opportunity to do so. Stone stated that he would like for those speaking to limit their talk to three minutes or less.

****REPORTS****

14. CITY MANAGER'S REPORT

City Manager Gary Martin informed the Commission and citizens that the detour of Hwy 60 down Business 60 seemed to be working well so far. Martin stated that staff has worked both with the contractor and the state to make it easy for people to understand the detour routes.

Martin noted that work has begun on the Union Street Bridge, and the underpass is closed. Martin advised that Fire Chief Herring has moved personnel from Station No. 3 to Station No. 2, in case there are trains going through town and Grand Avenue is blocked, there will be sufficient personnel on the west side of the community to respond to fires, while Station No. 1 and No. 4 try to make their way around to the west side of town. Martin added that this was a very good move on Herring's part in trying to protect the citizens.

Martin further noted that several complaints have been received regarding the poor reception on channels 2 through 9 and also the City's channel No. 22. Martin stated that the quality of the signal of Channel 22 is good leaving City Hall and this issue is being addressed with officials from Cable One.

Martin asked Phil Johnston, General Manager of Ponca City Energy, to give a brief update on what happened when the northeast sub-station failed on Friday night.

Johnston advised that the northeast substation remains out of operation for the present time, while testing is conducted to determine the cause of the shutdown. Johnston further advised that power for customers being serviced by this substation had to be re-routed to other substations.

Johnston informed the Commission that during the hot weather last week Ponca City Energy experienced an all time peak usage of 103,500 kilowatt hours. Johnston added that it was a significant week for power sales.

Martin concluded his remarks by expressing his appreciation for the leadership Earl Watkins has shown in the negotiations for the new police contract that is to be signed into effect at this meeting.

****PUBLIC HEARINGS****

None.

****UNFINISHED BUSINESS****

None.

****NEW BUSINESS****

15. Consider and vote to authorize the Mayor to sign the 2006-2007 and 2007-2008 Collective Bargaining Agreement between the City of Ponca City and Fraternal Order of Police, Lodge 103.

Commissioner Paynter made the motion to authorize the Mayor to sign the 2006-2007 and 2007-2008 Collective Bargaining Agreement between the City of Ponca City and the Fraternal Order of Police, Lodge 103. Krueger seconded.

Roll: Yeas; Paynter, Krueger, Stone, Anderson and Foxworthy. Nays; None. Motion carried.

16. Consider and vote on staff recommendation to authorize Smith, Roberts, Baldischwiler to proceed with preparation of intermediate plans for the reconstruction & widening of Lake Road from Pecan to approximately 1,080 feet east of Kygar.

Mike Lane, Traffic Engineering Manager, explained to the Commission that Smith, Roberts, Baldischwiler has looked at existing conditions to see if this project would be feasible, and then develop construction alternatives and recommendations for a path forward. Lane stated that they have determined that the project is feasible, and their recommendations for a path forward are to construct the project with four-lane curb and gutter, and widening and replacing the existing forty year old bridge at the east end. Lane concluded that this item is for the Commission to authorize Smith, Roberts, Baldischwiler, to proceed with their plan preparation.

City Manager Gary Martin stated that for the record he would like to point out that that this road is outside the City limits, but that the Oklahoma Department of Transportation encouraged that the City have plans in hand and ready, in case funding were to be available in the future. Martin added that if that occurs, then the City Commission would be required to annex at least the roadway, fence line to fence line, into the City limits. Martin explained that having the plans in hand would be necessary, if funding were to become available, and if there were no plans, then the City would not be eligible.

Commissioner Anderson made the motion to authorize Smith, Roberts, Baldischwiler to proceed with preparation of intermediate plans for the reconstruction and widening of Lake Road from Pecan to approximately 1080 feet east of Kygar. Foxworthy seconded.

Roll: Yeas; Foxworthy, Stone, Paynter, Anderson, and Krueger. Nays; None. Motion carried.

17. Consider and vote on a final plat for the High Pointe Estates Addition, located in the 3400 to 3700 blocks of (proposed) High Pointe Drive.

Community Development Director Chris Henderson stated that this is the same property comprising 35 acres, which was approved for RA zoning at a meeting in February with a 3-2 vote by the Commission. Henderson stated that there were provisions attached to that recommendation, one of which was that the owner would be required to submit a preliminary plat for the remaining sixty-five acres and that this sub-division would be required to tie to a public sewer or use a lift station. Henderson further advised that the controversial issue regarding this proposed subdivision is the use of or the lack of a public sewer to serve the

area. Henderson went on to say that the nearest sewer line to this property lies west of Pecan near the Pecan Place Apartments. Henderson advised that this sewer is approximately 15 feet deep, and in order to connect to the subdivision, must be extended down Pecan and then easterly to tie to this subdivision. Henderson iterated that problems associated with this include first and foremost having to go over a ridge line, as the subdivision is located in a separate and different natural drainage basin than the sewer line that is located on Pecan. Henderson communicated that in places this sewer line would be 27" deep and would be very expensive to install and maintain, should the City have to maintain this sewer line.

Commissioner Foxworthy questioned Henderson as to what the natural drainage basin is for the plat being looked at tonight. Henderson answered that the natural drainage basin for this area is to the east, and that there has been no expenditure of funds to extend the sewer to the ends of the drainage basin on the part of the City, as there has been no development in this area. Henderson stated that the alternative to overcome the depth would be to add the use of a lift station, at a cost of \$200,000.00 to install, and \$30,000.00 to \$50,000.00 annually to maintain, whether privately or publicly maintained. Henderson explained that the City has at least eleven (11) lift stations at the present time. Commissioner Foxworthy inquired as to how many of the eleven (11) lift stations, did the City fund or were they funded by the developers. Henderson answered that to his understanding five of the lift stations were funded by the City, and six lift stations were funded by the developer and are now maintained by the City.

Henderson further added that this sub-division raises elevation challenges, and again sub-division regulations are made up of two elements that define if the extension of a sewer line will be necessary: (1) distance factor and (2) location within the ridge. Henderson showed the Commission what he called a decision tree on whether or not High Pointe subdivision requires a public sewer. Henderson related that the conclusion by the regulations would be that the developer should be allowed to use a private sewer system.

Henderson stated that City staff, including Environmental Services Director Hong Fu; City Engineer Jim Fairbanks, Assistant City Engineer Mike Chapman and himself; are very concerned about water quality in Lake Ponca. Henderson further informed the Commission that the water shed of Lake Ponca comprises 17,000 acres and the City has very little control over erosion and pollutants of nitrogen, phosphorus, and ammonia that occur in the watershed area. Henderson added that these are the same pollutants that are causing the concern, if the aerobic septic systems should not operate correctly, and that these aerobic systems should have very little impact on the water quality of the lake, if operated and maintained properly.

Commissioner Paynter asked if these aerobic systems were deemed inadequate in the future, would the citizens of Ponca City be responsible for the cost of constructing a sewer system to this sub-division. Mayor Stone commented that it would be incumbent on the home owners in that area to form an assessment district to construct one, if necessary.

Foxworthy posed a question regarding algae blooms in Lake Ponca, how widespread would it be, and could it be traceable back to these systems. Fu replied that she had consulted with a water quality director, and Oklahoma lakes have a lot of nitrates anyway, and a little more may not make a difference in algae growth. Fu further added that she had also consulted with a soil chemistry professor and that most of the phosphates in wastewater tend to settle with the solids into the equalization basin, therefore; the wastewater eliminated by an aerobic system usually does not contain much phosphate if the acreage is sufficient, the system is well designed, maintained, and permitted by ODEQ, leaving little chance for concern. Fu went on

to say that if an algae bloom did occur that it would affect a larger area of the lake and definitely affect the water quality.

Commissioner Krueger voiced concerns regarding the fact that there is not an ordinance for homeowner maintenance, once the two-year DEQ maintenance agreement ends. Krueger stated and would like to have an ordinance approved, with maintenance requirements of these systems in place, prior to any decision being made, since these systems are to be in such proximity of our water supply.

City Attorney Murphy advised that such an ordinance is already being drafted, but there are technical issues that are outstanding, before he can complete it. Murphy explained that this ordinance, once completed, would parallel State law, but would be enforced through our local resources. Murphy stated that inspections will be conducted every six-months, as well as a maintenance contract to be maintained at all times. Murphy further added that this would assure that the City has operation of the system beyond the initial two year warranty.

Paynter inquired as to the difference of the Fieldstone subdivision, which is in the same general area, although not contiguous, and was required to install a sewer system. Henderson explained that this subdivision is in the same drainage basin as the nearest sewer, and did not have to exceed a depth of eight foot, which is a very shallow sewer. Henderson went on to say that this sewer line overall was very inexpensive compared to the plat in question.

Paynter made further inquiry, stating that when this item was voted on by the Commission in February, the Commission asked that the sewer system be included in the plat when brought back before the Commission. Murphy explained that the two criteria the Commission placed on the plat were the filing of the preliminary plat, and the new plat to the present sub-division reflect the sewer. Murphy went on to explain that one was related to zoning issues and one was related to platting issues. Henderson corrected this statement by saying that one was related to the submittal of a plat for all of the land, and the other related to the use of a public sewer, and both were subdivision type elements.

Murphy went on to inform the Commission that one was inappropriate, and was the requirement of the sewer being reflected on the plat, and had to be viewed as advisory. Murphy further added that requiring the preliminary plat be shown for the adjoining subdivision was essentially a binding by the Commission that there was a subterfuge being employed by the splitting of the sub-divisions, and finding was supported by the facts, but that the requirement of a sewer was a policy statement by the Commission, that if he submits a plat, the Planning Commission at some point has to consider the plat.

Paynter stated that this was the first he had heard of this, and should not the Commission have been notified in writing that they had done something improper. Murphy stated that there is a difference between improper, and actually forcing someone to comply.

Krueger questioned whether or not property which lies around the property in question goes into the same ridgeline, and if the east side of this property is approved for an aerobic system, what will keep developers in the future on other land in this area from not tying into the City sewer system, as property is developed. Krueger asked would it not make sense to establish a new sewer basin for all of the entire area, instead of dealing with these aerobic systems that could risk our source of water in the lake. Henderson answered by saying that there is not a great deal of pressure, and there is not the growth that allows for the programming of these improvements.

Anderson inquired of Mr. Peresko whether or not he had considered an E-1 system and what the difference was between the E-1 and an aerobic system. Peresko explained that the aerobic systems are simple and have an alarm to alert you if anything should go wrong. Mayor Stone opened the meeting up to public comment.

Rick Karner, 2613 Fieldstone Trail, co-developer of Fieldstone sub-division, challenged some of the statements that had previously been made. Karner emphasized that he is pro-development and pro having these homes built in Ponca City, but also very pro Lake Ponca. Karner expressed that if the systems are allowed, there is a need for strong testing protocol and periodic testing for water being discharged into Lake Ponca.

Chuck Greenwood, 8 Sherman Lane, spoke in favor of the aerobic system and a belief that approval of the item would be a win for the City in additional tax dollars.

Sheryl Kline, 2617 Fieldstone Trail, explained that she is a member of the Park and Recreation Board, and to approve this item could bring up other issues that would be confronting for the Park and Recreation Board. Kline stated that the Park & Recreation Board, at the present time, is dealing with a change of SOP's regarding the construction of cabins at Lake Ponca, and if aerobic systems are approved there may be issues that have to be dealt with regarding aerobic systems along the lake. Kline stated that toilets and water have been prohibited in the 80+ cabins along the lakefront, and she is not against development in Ponca City, but would like to see the rules followed to keep Lake Ponca safe.

Guy Clark reminded the Commission that RA zoning is relinquishment of the owner to intensely develop the land being unique in specific rural areas that ought not to be intensely developed. Clark related that when using RA zoning it is not cost effective for the City to lay certain types of utilities, and that is the reason why the RA zoning Ordinance provides for other types of sewage disposal. Clark spoke also of the advantages of an aerobic system in RA zoning, recommended the Commission's approval of this project, and commended City staffs expert work on this project.

Keith Lawrence stated that his position on this item was primarily to protect the beauty, sanitation, and safety of Lake Ponca; as it is one of our sources of public drinking water.

Mike Chapman, Assistant City Engineer, described his understanding of alternate wastewater disposal systems, as well as disadvantages. Krueger stated that he was looking at a bigger picture for this area, since there is more land that could be developed into more subdivisions, and at what point are we better off having done a sewer system with a lift station. Commissioner Anderson echoed Krueger's concerns. Anderson further added that development should not be discouraged, but the Commission needs to look at a broader view.

Pat Drake impressed to the Commission that if approved, this could set precedence, and in all things we should look at future development in this area. Drake concluded by saying that even if you can, it doesn't mean that you should.

Ron Smith, 1105 W. Highland, spoke of former DEQ employee Mark Coleman and encourage the Commission to identify who will pay for the clean-up bill when these aerobic systems run off into the lake. Smith stated that if it is the citizens who will bear the cost, then he is against the approval of this item.

Krueger commented that \$200,000 for a lift station is a small percentage of a \$6 million development, when the City bears the cost of maintenance of the lift station after it is constructed. Krueger stated that he wants to support staff's recommendation to install these aerobic systems, but is reluctant to do so, until an ordinance is in place that monitors such systems. Discussion among Commissioners and the City Attorney ensued.

Paynter made the motion to table this item for thirty days, giving time to let the staff work on the recommended ordinance, but also for the staff to do a separate report on the E-1 system. Paynter stated that he would like to see in writing what he is voting for, as far as the aerobic system and the maintenance of this system.

Murphy stated that he would like to clear the record that he did not remember giving an opinion that the item could go before the District Court if not decided upon, and apologized if he had left that impression. Commissioner Krueger seconded the motion to table this item.

Roll: Yeas; Krueger and Paynter. Nays: Anderson, Stone, and Foxworthy. Motion failed.

Mayor Stone stated that they were now back to the original agenda item to approve a final plat for High Pointe Estates Addition, located in the 3400 to 3700 blocks of (proposed) High Pointe Drive.

Krueger questioned Murphy if a motion to approve staff recommendation could be subject to approval of an ordinance on aerobic systems, and that the two be approved at the same time, is appropriate. Murphy commented that he understands the intention, but it would be problematic, and rather suggested a motion to continue this item in two weeks.

Krueger motion to continue to the 14th of August. Anderson seconded.

Roll: Yeas; Anderson, Krueger, and Paynter. Nays; Stone and Foxworthy. Motion carried.

- 18A. Consider and vote on proposed repeal of Code Section 6-7-2(B)(4) which effectively removes the Mayor's power to prohibit carrying of firearms on streets during declared emergencies.

Commissioner Foxworthy made the motion to approve the proposed repeal of Code Section 6-7-2(B)(4) which effectively removes the Mayor's power to prohibit carrying firearms on streets during declared emergencies. Krueger seconded.

Roll: Yeas; Foxworthy, Paynter, Stone, and Krueger; Nays; Anderson (abstain). Motion carried.

- 18B. Consider and vote on the Emergency Clause of the Ordinance.

Commissioner Krueger made the motion to approve the Emergency Clause for the Ordinance. Foxworthy seconded.

Roll: Yeas; Krueger, Stone, Paynter, and Foxworthy. Nays; Anderson (abstain). Motion carried.

19. Consider and vote on contract to supply water with Rural Water District #1.

Commissioner Paynter made the motion to approve the contract to supply water with Rural Water District #1. Krueger seconded.

Roll: Yeas; Paynter, Krueger, Stone, and Foxworthy. Nays; Anderson (abstain) Motion carried.

****CITIZENS COMMENTS****

20. Dwaine Camp, member of the Ponca Nation, expressed dissatisfaction with the City landfill and requested that Commissioners begin to look for solutions.

John Scroggs, 312 N. Sunset and associate pastor at God's Church, expressed a feeling that his church and building of a new facility on N. Pecan is being treated unfairly.

RECESS TO AUTHORITY MEETING

Mayor Stone recessed to the Ponca City Utility Authority meeting at 7:59 p.m. The Commission reconvened at 8:03 p.m.

21. Commissioner Anderson made the motion to enter into Executive Session pursuant to Title 25, Section 307, Oklahoma Statutes for purposes of the considering pending settlement of Continental Carbon Litigation. Krueger seconded.

Roll: Yeas; Krueger, Anderson, Stone, Foxworthy, and Paynter. Nays; None. Motion carried.

22. Return to regular session and take any necessary action, if appropriate, on items discussed in Executive Session. At 8:47 pm

Consider proposed settlement, \$400,000 less attorney fees for \$300,000 net. Motion by Paynter to accept the settlement as proposed. Krueger seconded.

Mayor Stone commented that he had attended the mediation and that the City was well represented by our attorneys. Stone stated he is most happy about non-monetary issues, specifically cessation of the pollution.

Roll: Yeas; Krueger, Anderson, Stone, Foxworthy, and Paynter. Nays; None. Motion carried.

Mayor Stone adjourned the Board of Commissioners meeting at 8:52 p.m.

PASSED IN SESSION AND APPROVED THIS 14TH DAY OF AUGUST 2006.

MAYOR

ATTEST

CITY CLERK