



**CITY OF CENTERTON
VIRTUAL
CITY COUNCIL MEETING
MAY 12, 2020
6:00 PM**

(1) Roll Call - Those Present, via Zoom, and answering Roll Call were Mayor Bill Edwards, Keith Higginbotham, Wayne Low, Darren Warren, Misty Elam, Robin Reed and Josie Reed. Those present and not answering Role Call were City Clerk Todd Wright, City Attorney Brian Rabal, Financial Director Pam Grant, Planning Director Lorene Burns, Police Chief Cody Harper, Fire Chief Matt Thompson, Director of Public Works Rick Hudson, Chief Building Inspector Robert Coffelt, Centerton Utilities Director Frank Holzkamper and Animal Control Director Cody Wilson.

(2) Council Minutes –

Josie Reed made a motion to Approve the Minutes of the April 14, 2020 and April 28, 2020 City Council Meetings, with a 2nd from Robin Reed. All Council Members voted in favor and the motion carried.

Planning Commission, Water & Sewer and Board of Zoning Adjustment Minutes –

Keith Higginbotham made a motion to Acknowledge Receipt of the Minutes of the April 7, 2020 Planning Commission Meeting; April 7, 2020 Board of Zoning Adjustment Meeting; and March 17, 2020 & March 23, 2020 CWSD Meetings, with a 2nd from Wayne Low. All Council Members voted in favor and the motion carried.

(3) City and Court Financials- Mayor Edwards stated that 33 % through the year we have received 31.57 % of our Budgeted Revenue. He stated that our Expenditures were at 31.55 %. Edwards stated that our Revenue should actually be 33%, so we are right on track, for the year. He commended the Department

Heads for watching their spending. Edwards said he did not receive the Court Report from April.

Wayne Low made a motion to Accept the April, 2020 City Financials, with a 2nd from Darren Warren. All Council Members voted in favor and the motion carried.

(4) Department Reports-

The Department Reports were in the Council Packet. There were no questions or comments.

(5) Ordinances -

- **Ordinance 2020-26- AN ORDINANCE ACCEPTING DEDICATION OF FORTY FEET (40') PUBLIC RIGHT-OF-WAY ALONG THE NORTH SIDE OF FISH HATCHERY ROAD AND THE EAST SIDE OF AR HWY 279 S/VAUGHN RD BY 2188 LLC, PER LOT SPLIT PLAT FOR PROPERTY LOCATED IN S6-T16N-R31W, CITY OF CENTERTON, BENTON COUNTY, ARKANSAS.**

Mayor Edwards addressed the Council, stating that this Ordinance is to accept Right-of-Way on Fish Hatchery Road and Hwy 279 South. He said it was approved by the Planning Commission at their 4/21/2020 meeting. He said there were some public comments, asking about Development Plans, but it was pointed out that we were just looking at the Tract Split at this time, and we had no Development Plans

Mayor Edwards asked the Council if there were any questions. There were none.

Darren Warren made a motion to read the Ordinance by title only, with a 2nd from Wayne Low. All Council Members voted in favor and the motion carried. Brian Rabal read the Ordinance by title only. Robin Reed made a motion to suspend the rule requiring the reading of the Ordinance on 3 separate occasions with a 2nd from Josie Reed. All Council Members voted in favor and the motion carried. Wayne Low made a motion to adopt the Ordinance with a 2nd from Misty Elam. All Council Members voted in favor, and the motion carried.

- **Ordinance 2020-27- AN ORDINANCE ACCEPTING PUBLIC DEDICATION OF AN ADDITIONAL 30' OF RIGHT-OF-WAY ALONG GAMBLE ROAD BY CHRISTIAN LIFE CENTER OF**

**CENTERTON INC, PER LOT SPLIT PLAT FOR PROPERTY
LOCATED IN S32-T21N-R31W, CITY OF CENTERTON, BENTON
COUNTY, ARKANSAS.**

Mayor Edwards addressed the Council, stating that this Ordinance is to accept additional Right-of-Way on Gamble Road. He said it was approved by the Planning Commission at their 4/21/2020 meeting. Planning Director Lorene Burns stated that the ROW had not been dedicated previously.

Mayor Edwards asked the Council if there were any questions. There were none.

Josie Reed made a motion to read the Ordinance by title only, with a 2nd from Keith Higginbotham. All Council Members voted in favor and the motion carried. Brian Rabal read the Ordinance by title only. Wayne Low made a motion to suspend the rule requiring the reading of the Ordinance on 3 separate occasions with a 2nd from Keith Higginbotham. All Council Members voted in favor and the motion carried. Keith Higginbotham made a motion to adopt the Ordinance with a 2nd from Josie Reed. All Council Members voted in favor, and the motion carried.

- **Ordinance 2020-28- AN ORDINANCE AMENDING CENTERTON MUNICIPAL CODE, SECTION 12.04.01 HOURS OF OPERATION.**

Mayor Edwards addressed the Council, stating that this Ordinance is to amend the Code for the Hours of the City Park and other Recreational Areas to 6:00am to 11:00pm. Darren Warren asked if there was a conflict with the 10:00pm Noise Ordinance. There was discussion. Director of Public Works Rick Hudson stated that he would like to try these hours for the next 6-12 months. There was discussion. Council agreed that we should review the hours after 6 months.

Mayor Edwards asked the Council if there were any questions. There were none.

Robin Reed made a motion to read the Ordinance by title only, with a 2nd from Josie Reed. All Council Members voted in favor and the motion carried. Brian Rabal read the Ordinance by title only. Keith Higginbotham made a motion to suspend the rule requiring the reading of the Ordinance on 3 separate occasions with a 2nd from Misty Elam. All Council Members voted in favor and the motion carried. Keith Higginbotham made a motion to adopt the Ordinance, with a Review after 6 Months, with a 2nd from Josie Reed. All Council Members voted in favor, and the motion carried.

- **Ordinance 2020-29- AN ORDINANCE AMENDING CENTERTON MUNICIPAL CODE, SECTION 5.04.02 UNSANITARY CONDITIONS ON REAL PROPERTY.**

Mayor Edwards addressed the Council, stating that this Ordinance is to amend the Code for unsanitary conditions of property within the city. He said this is the same Ordinance we have had, adding the 12” grass section. Director of Public Works Rick Hudson said his crew drives the streets once a week, looking for these issues. He said “Unsightly” was not specific enough, so this gives us something we can work with. It was pointed out that Agricultural Zones, being used as such, are exempt in the Code. There was discussion about types of complaints and how Code Enforcement handles them.

Mayor Edwards asked the Council if there were any questions. There were none.

Robin Reed made a motion to read the Ordinance by title only, with a 2nd from Josie Reed. All Council Members voted in favor and the motion carried. Brian Rabal read the Ordinance by title only. Keith Higginbotham made a motion to suspend the rule requiring the reading of the Ordinance on 3 separate occasions with a 2nd from Misty Elam. All Council Members voted in favor and the motion carried. Wayne Low made a motion to adopt the Ordinance with a 2nd from Josie Reed. All Council Members voted in favor, and the motion carried.

- **Ordinance 2020-30- AN ORDINANCE ESTABLISHING CENTERTON MUNICIPAL CODE 8.30 OBJECTS IN THE ROADWAY.**

Mayor Edwards addressed the Council, stating that this Ordinance is to establish a Code to address obstructions in the roadways of our city, such as basketball goals, trash containers, bicycles, Pods, etc. Director of Public Works spoke about effects on the Street Sweeper and Snow Removal Equipment, and such. There was lengthy discussion about what is considered an obstruction and specifics. It was recommended that we add wording to the effect that “exceptions require approval from the Department with Jurisdiction”. Council agreed to Table this Ordinance and allow for changes in the language.

Mayor Edwards asked the Council if there were any questions. There were none.

Misty Elam made a motion to Table the Ordinance, with a 2nd from Robin Reed. All Council Members voted in favor and the motion carried.

(6) Resolutions -

- **Resolution 2020-10- A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE ON BEHALF OF THE CITY AN AGREEMENT WITH HOUSEAL LAVIGNE, CHICAGO,**

**ILLINOIS, FOR ADDITIONAL SERVICES TO COMPLETE THE
2040 COMPREHENSIVE PLAN FOR THE CITY OF
CENTERTON, ARKANSAS.**

Mayor Edwards addressed the Council, stating that this Resolution is for additional funding to our Comprehensive Plan Agreement with Houseal Lavigne. He said there is an \$8500.00 overrun and he attached their memorandum for Council. Planning Director Lorene Burns stated that part of this extra work is in response to Comments from Nicole Gibbs and Donna Wonsower, and will be a benefit to the City. Gibbs said the Planning Staff is excited about the Plan and hopes everyone is happy with it. Keith Higginbotham asked if delays from COVID-19 could cause even more expense. Burns said there wouldn't be, and stated that we have a back-up plan in place, with Virtual Meeting options, if needed. Higginbotham expressed concern with Virtual Meetings for those that may not have that opportunity. He said he would not support Virtual meetings for this. He said he would prefer Open Public Meetings. City Clerk Todd Wright pointed out that we have always allowed the public the option to call or e-mail, when they are unable to attend a meeting, and we share that information in the meeting. Mayor Edwards said we will continue to follow the direction of the Governor, in regard to Public Meetings and Social Distancing. Edwards said we also may be able to use Facebook Live or other avenues, to increase participation. Darren Warren said it wouldn't be any different than the Virtual City Council Meeting we are holding tonight, where we are acting on Ordinances and Resolutions for the City. Burns provided a revised schedule and said it is looking like we may be able to hold limited open meetings in June, so the tentatively scheduled June 9th Open House Meeting could possibly allow for the public to come to City Hall and view the Comprehensive Plan, as well as ask questions via a virtual setup we will provide. She said the Public Hearing is currently scheduled to be done virtually. She said we hope to have the draft of the Plan available to post on our website around June 1st.

Mayor Edwards asked the Council if there were any questions. There were none.

Darren Warren made a motion to read the Resolution by title only, with a 2nd from Josie Reed. All Council Members voted in favor and the motion carried. Brian Rabal read the Resolution by title only. Wayne Low made a motion to adopt the Resolution, with a 2nd from Misty Elam. All Council Members voted in favor and the motion carried.

- **Resolution 2020-11- A RESOLUTION SETTING A PUBLIC HEARING TO DISCUSS THE PARTIAL VACATION OF 5 FT OF A 15 FT UTILITY EASEMENT, LOCATED ON THE NORTH PROPERTY LINE OF LOT 68, FOREST PARK SUBDIVISION, CITY OF CENTERTON, ARKANSAS.**

Mayor Edwards addressed the Council, stating that this Resolution is to set a Public Hearing to discuss the partial vacation of the Utility Easement on Lot 68 of the Forest Park Subdivision for the construction of a swimming pool. He said we have received a petition to vacate part of the easement. He said the homeowner John Sheppard is on the call tonight to answer any questions.

Edwards said Mr. Sheppard has been in communication with our Building Safety Department, and has apparently purchased a fiberglass pool. He said when the request was submitted, it was found to be encroaching into the Utility Easement. Edwards said that he understands that by Code the Bonding wire around the pool would need to be at least 18" away from the pool, placing it about 18" into the easement. He said Sheppard has contacted each of the utilities, which have all given their permission for this to happen. Edwards said he has also spoken to the City Attorney, who recommended that we go through the process to vacate this easement. Darren Warren asked if 1' of the pool was going to be in the easement or just the Bonding Wire. Edwards said the Bonding Wire and 1' of the pool.

Mr. Sheppard addressed the Council, stating that there are 2 ways to install the Bonding Wire for a pool. He said he has talked to 3 Master Electricians that do nothing but and specialize in pools, and understands that the Bonding Wire can be run right beside the pool, as close as you can get it to the fiberglass frame, and then needs to be attached to the re-bar that is in the sidewalk, bonding everything together so that there is not an electrical charge. He said the Bonding Wire needs to be connected to the concrete re-bar in 4 spots, and to the pump and everything else, then you are following Code. He said the Bonding Wire can be run anywhere, as long as it is in a loop. He said "Alternate B" is what Code Enforcement is going with, and that is not the option they want. He said they want to use "Option A" which all of the fiberglass pool builders use.

Chief Building Inspector addressed the Council, stating that we are dealing with Conductive Pools and Non-Conductive Pools. He said "Option A" is for Conductive Pool, which are poured in concrete with re-bar and has 4 points of contact. He said this request is for a Non-Conductive Fiberglass Pool, where the Bonding Wire has to continuously be 18-24" away from the inside edge of the pool, and does not have to be tied to the re-bar in the slab at all. He said whether there is a slab or not, the Bonding Wire has to be around the perimeter surface. He said that is the difference between Conductive and Non-Conductive Pools.

Darren Warren asked if the pool was in the Easement or just the Slab and Bonding Wire, which are temporary. Coffelt said the pool is 1' into the Easement and the Slab and Bonding Wire are considered permanent. Warren asked about Accessory Structures around town, which are right up against the Property Line. Coffelt said that Accessory Structures fall under Planning's Codes (Not Building Safety) and have a 7' Rear Setback and no Side Setbacks. Warren said he would send in a list of 10 examples he has seen around town. Coffelt said we are talking about permanent structures and not portable buildings.

Coffelt said when these requests come in and they encroach into the Easements, we don't proceed any further, until it goes to Planning, for their approval. Coffelt said he has no objection reducing the Easement from 15' to 10', as long as there are no utilities in that area.

City Attorney Brian Rabal said we need to keep this discussion to whether we are setting a Public Hearing for this item. He said any other particulars are not relevant at this time.

Robin Reed asked if we could not send this back to Planning, for their review. Mayor Edwards stated that we are only setting a date for a Public Hearing tonight. He said there is a procedure where the Planning Commission will hear this request on 6/02/2020, where they will make a recommendation to Council. He said City Council will then make a decision whether to vacate the easement. Reed asked Mr. Sheppard if he could move the pool at all. Sheppard said he could not legally move it, as it could compromise the foundation of his house.

Mr. Sheppard asked if he could get approval with a ruling from a State Inspector to install this pool with the concrete. Mayor Edwards said it is still in the Easement. Coffelt added that it is still his jurisdiction. Coffelt said it is still a Non-Conductive Pool, and Mr. Sheppard still wants to put concrete into an Easement.

Misty Elam stated that when looking at the e-mail chain, it appears to have been approved by Lorene Burns in Planning. Coffelt said the request came to Cherie in Building Safety, where she looked at it and sent it back to Planning. He said Planning sent Cherie the Waiver Forms for the Utilities, and they were sent to the Utilities, and then returned to Planning for their approval. He said that is all that was done. Mayor Edwards said that from that point, Nicole and Lorene have been working on it together and City Attorney Rabal said it still needs to go through the Easement Vacancy process.

Lorene Burns added that she did not give approval of this request. She said that she told Cherie that Planning would not approve encroachment into this Easement and that Mr. Sheppard would have to submit to vacate the Easement. Burns said she told Cherie that if the Building Safety Department wanted to pursue the encroachment route, then she could speak with Coffelt and they could handle the process. Burns said she did not request the forms, but told Cherie that she could use the forms and fix them for an encroachment. Burns said she told Cherie that if Building Safety wanted to approve the Permit, then they could pursue the process. Coffelt disagreed.

Robin Reed asked if Mr. Sheppard has already purchased the pool. Sheppard said he received an e-mail, stating that if he did "this, this and this...", this is what you need to do, and it will be up to Cherie "Building Safety" to come out with a Permit to be placed in a permit box. He said they were told that is all they would need to do. He said that he put in 100 man-hours and contacted each of the

Utilities and purchased a \$30,000.00 Fiberglass Pool that will be delivered in 2 weeks. He said he got an e-mail 2-3 days later stating that the City is going to go a whole different direction, so he has had to try and find a place to store this pool. Reed asked that the Mayor and all parties involved with the e-mails get together and try to figure this out before the Public Hearing. Mayor Edwards said we have already gotten it figured out, and are going through the process recommended by the City Attorney. Coffelt said a Permit has not been issued by Building Safety, and he would not issue a Permit until he got a ruling from Planning on the encroachment. He said he has all of the e-mails involving Building Safety.

Elam said she feels like there has been some miscommunication, and asked if this request can be expedited. City Attorney Brian Rabal said due to legal notice requirements, it would likely require Special Meeting(s) for both Planning and City Council.

Keith Higginbotham stated that he felt that after dealing with the City for over a month, the applicant should not be obligated for the cost of any special meetings. He said the applicant has done all of the leg-work, and apparently all but one of the Utilities have no use for the easement, giving Sheppard the approval for the 5' request. Higginbotham asked again about the streamlining the added process. City Attorney Rabal said he was just made aware of this, 3-4 days ago and has not seen the string of e-mail communications being discussed. Wayne Low said he has also not seen any e-mails. Lorene Burns said she has not either. Mr. Sheppard said he would resend all of the e-mails. Rabal said there is a process, and we need to be careful about making exceptions. He said with the information that has been given to him, it appears that we need to vacate the easement, and there are procedures to do that, pursuant to Code and Statute.

Darren Warren said we definitely want to vacate this easement, for Mr. Sheppard's protection.

Lorene Burns said we are expediting this as fast as we can, following the procedures required by the State.

Mayor Edwards said that Planning will meet on 6/02/2020 and City Council meets on 6/09/2020.

Mayor Edwards said it sounds like everyone is in agreeance and we are going to work together to get this worked out. He said he also got involved with this at the end of last week.

Mayor Edwards asked the Council if there were any questions. There were none.

Darren Warren made a motion to read the Resolution by title only, with a 2nd from Keith Higginbotham. All Council Members voted in favor, except for Misty Elam, who voted NO, and the motion carried. Brian Rabal read the

Resolution by title only. Darren Warren made a motion to adopt the Resolution, with a 2nd from Keith Higginbotham. All Council Members voted in favor, except for Misty Elam, who voted NO, and the motion carried.

(7) Discuss Condemnation of Utility Easement – Frank Holzkamper -

Mayor Edwards addressed the Council, stating that this item is concerning condemnation of a Utility Easement involving the Water & Sewer Department.

Director of Centerton Utilities Frank Holzkamper addressed the Council, stating that they are in the process of providing Sewer to Keller Road, where the City has purchased about 20 Acres, as well as providing service for other properties in the area. He said they have one piece of property that they have been unable to come to an agreement with. He said the individual refuses to contact W&S. He said we have sent a Certified Letter from W&S, that was refused, and a Certified Letter from the Attorney, that was accepted, but no calls have been returned to the Attorney. Holzkamper said this is the only property, at this time, keeping us from being able to install Sewer Service, leaving us no choice but to condemn this piece of property.

City Attorney Brian Rabal said we are attempting to acquire a temporary easement for construction and a permanent easement for where the actual infrastructure will go.

Holzkamper said we started this conversation with the previous property owner, but the current property owner refuses to talk to us. He said the appraisal for the acquisition and court cost is about \$3100.00. He said his hope is that they will want to negotiate and not have to go to court.

Keith Higginbotham made a motion to proceed with the Condemnation of the Utility Easement, with a 2nd from Robin Reed. All Council members voted in favor and the motion carried.

(8) Public Comment - None

(9) Other Business - None

(10) Announcements -

- **5/16/2020 – Coffee with the Mayor (Virtual Meeting) 9:00am**
- **5/19/2020 – Planning Commission (Virtual Meeting) 6:00pm**

(11) Adjourn -

Keith Higginbotham made a motion to Adjourn at 7:35 PM with a 2nd from Darren Warren. All Council members voted in favor and the motion carried.

Bill Edwards, Mayor

Todd Wright, City Clerk