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Minutes for the City Council meeting on May 6, 2002

APPEAL HEARING - 6:15 P.M. - An appeal hearing was conducted regarding the Metropolitan Area Planning Commission's recommendation to deny a zoning change from Residential (R-1) to Commercial (C-3) for property located on the northwest corner of Johnson Avenue and Clinton School Road. Mr. Millard Cooper had requested the appeal hearing and was represented by Mr. Jerry Mays. No opposition was voiced.

CITY COUNCIL MINUTES - May 6, 2002

The Jonesboro City Council met Monday, May 6, 2002, at 6:30 p.m. A full quorum was in attendance. Present were: City Attorney, Phillip Crego, City Clerk, Donna K. Jackson, and twelve council members. Those members were: Kelton, Tate, Rorex, Crockett, McCall, Rega, Province, Moore, Young, Perrin, Copeland, and Roddy. Vice Mayor Young presided over the meeting in the absence of Mayor Brodell.

Councilman Roddy moved, seconded by Councilman Moore to approve the minutes of April 15, 2002, as previously delivered. A voice vote was taken resulting in all members voting aye. Those members were: Kelton, Tate, Rorex, Crockett, McCall, Rega, Province, Moore, Young, Perrin Copeland and Roddy.

Council recognized Brownie Girl Scout Troop #15 and Crowley's Ridge Girl Scout Troop #193 for outstanding community work in the Jonesboro area involving hours of volunteer service in Craighead County.

Councilman Kelton offered the following ordinance for first reading:

ORDINANCE CONFIRMING MATTERS PERTAINING TO INDUSTRIAL DEVELOPMENT REVENUE BONDS PREVIOUSLY AUTHORIZED; AUTHORIZING AND PRESCRIBING OTHER MATTERS PERTAINING THERETO; AND DECLARING AN EMERGENCY. (NESTLE)

Councilman Rega moved, seconded by Councilman Moore to amend the Ordinance by changing \$35,000,000 to \$225,000,000 in Section 1. A voice vote was taken resulting in all members voting aye. Those members were: Kelton, Tate, Rorex, Crockett, McCall, Rega, Province, Moore, Young, Perrin Copeland and Roddy. Councilman Perrin moved, seconded by Councilman Moore to suspend the rules and place on second reading. A voice vote was taken resulting in all members voting aye. Those members were: Kelton, Tate, Rorex, Crockett, McCall, Rega, Province, Moore, Young, Perrin Copeland and Roddy. Councilman Rega moved, seconded by Councilman Roddy to further suspend the rules and place on third and final reading. A voice vote was taken resulting in all members voting aye. Those members were: Kelton, Tate, Rorex, Crockett, McCall, Rega, Province, Moore, Young, Perrin Copeland and Roddy. Councilman Copeland moved, seconded by Councilman Tate for the adoption of the ordinance. A roll call vote was taken resulting in all members voting aye. Those members were: Kelton, Tate, Rorex, Crockett, McCall, Rega, Province, Moore, Young, Perrin

Copeland and Roddy. Councilman Rega moved, seconded by Councilman Roddy for the adoption of the emergency clause. A roll call vote was taken resulting in all members voting aye. Those members were: Kelton, Tate, Rorex, Crockett, McCall, Rega, Province, Moore, Young, Perrin Copeland and Roddy. The ordinance was assigned ordinance number 3354.

Councilman Perrin offered the following ordinance for first reading:

ORDINANCE CONFIRMING MATTERS PERTAINING TO INDUSTRIAL DEVELOPMENT REVENUE BONDS PREVIOUSLY AUTHORIZED; AUTHORIZING AND PRESCRIBING OTHER MATTERS PERTAINING THERETO; AND DECLARING AN EMERGENCY. (MILLARD)

Councilman Tate moved, seconded by Councilman Roddy to suspend the rules and place on second reading. A voice vote was taken resulting in all members voting aye. Those members were: Kelton, Tate, Rorex, Crockett, McCall, Rega, Province, Moore, Young, Perrin Copeland and Roddy. Councilman Tate moved, seconded by Councilman Perrin to further suspend the rules and place on third and final reading. A voice vote was taken resulting in all members voting aye. Those members were: Kelton, Tate, Rorex, Crockett, McCall, Rega, Province, Moore, Young, Perrin Copeland and Roddy. Councilman Rega moved, seconded by Councilman Tate for the adoption of the ordinance. A roll call vote was taken resulting in all members voting aye. Those members were: Kelton, Tate, Rorex, Crockett, McCall, Rega, Province, Moore, Young, Perrin Copeland and Roddy. Councilman Copeland moved, seconded by Councilman Perrin for the adoption of the emergency clause. A roll call vote was taken resulting in all members voting aye. Those members were: Kelton, Tate, Rorex, Crockett, McCall, Rega, Province, Moore, Young, Perrin Copeland and Roddy. The ordinance was assigned ordinance number 3355.

Councilman Tate offered the following ordinance:

ORDINANCE AMENDING TITLE 14, THE ZONING ORDINANCE, TO REZONE FROM R-1 TO C-3, CERTAIN PROPERTY (HIGHWAY 49 NORTH) (Millard Cooper)

Councilman Tate moved, seconded by Councilman Moore to suspend the rules and place on second reading. A voice vote was taken resulting in all members voting aye. Those members were: Kelton, Tate, Rorex, Crockett, McCall, Rega, Province, Moore, Young, Perrin Copeland and Roddy. Councilman Rega moved, seconded by Councilman McCall to further suspend the rules and place on third and final reading. A voice vote was taken resulting in all members voting aye. Those members were: Kelton, Tate, Rorex, Crockett, McCall, Rega, Province, Moore, Young, Perrin Copeland and Roddy. Councilman Perrin moved, seconded by Councilman Moore for the adoption of the ordinance. A roll call vote was taken resulting in all members voting aye. Those members were: Kelton, Tate, Rorex, Crockett, McCall, Rega, Province, Moore, Young, Perrin Copeland and Roddy. Councilman Copeland moved, seconded by Councilman Perrin for the adoption of the emergency clause. A roll call vote was taken resulting in all members voting aye. Those members were: Kelton, Tate, Rorex, Crockett, McCall, Rega, Province, Moore, Young, Perrin Copeland and Roddy. The ordinance was assigned ordinance number 3356.

Councilman Kelton offered the following ordinance for first reading:

ORDINANCE AMENDING THE JONESBORO CODE OF ORDINANCES CHAPETER 5.16 ENTITLED GARBAGE, TRASH AND WEEDS.

Councilman Tate moved, seconded by Councilman Moore to suspend the rules and place on second reading. A voice vote was taken resulting in all members voting aye. Those members were: Kelton, Tate, Rorex, Crockett, McCall, Rega, Province, Moore, Young, Perrin Copeland and Roddy. Councilman Rega moved, seconded by Councilman McCall to further suspend the rules and place on third and final reading. A voice vote was taken resulting in all members voting aye. Those members were: Kelton, Tate, Rorex, Crockett, McCall, Rega, Province, Moore, Young, Perrin Copeland and Roddy. Councilman Perrin moved, seconded by Councilman Moore for the adoption of the ordinance. A voice vote was taken resulting in all members voting aye. Those members were: Kelton, Tate, Rorex, Crockett, McCall, Rega, Province, Moore, Young, Perrin Copeland and Roddy. The ordinance was assigned ordinance number 3357.

Under new business, Councilman Perrin moved, seconded by Councilman Roddy for the adoption of a resolution authorizing the execution of a letter agreement concerning the City's 1997 and 1999 taxable industrial development bond for Frito-Lay, Inc. Project. A voice call vote was taken resulting in all members voting aye. Those members were: Kelton, Tate, Rorex, Crockett, McCall, Rega, Province, Moore, Young, Perrin Copeland and Roddy. The resolution was assigned number 2002:19.

Councilman Rega offered the following ordinance for first reading:

ORDINANCE TO ESTABLISH HOURS OF OPERATION FOR PUBLIC PARKS AND CEMETRIES WITHIN THE CITY OF

JONESBORO

Councilman Rega moved, seconded by Councilman McCall to suspend the rules and place on second reading. A voice vote was taken resulting in all members voting aye. Those members were: Kelton, Tate, Rorex, Crockett, McCall, Rega, Province, Moore, Young, Perrin Copeland and Roddy. Councilman Rega moved, seconded by Councilman Perrin to further suspend the rules and place on third and final reading. A voice vote was taken resulting in all members voting aye. Those members were: Kelton, Tate, Rorex, Crockett, McCall, Rega, Province, Moore, Young, Perrin Copeland and Roddy. Councilman Tate moved, seconded by Councilman Moore for the adoption of the ordinance. A voice vote was taken resulting in all members voting aye. Those members were: Kelton, Tate, Rorex, Crockett, McCall, Rega, Province, Moore, Young, Perrin Copeland and Roddy. The ordinance was assigned ordinance number 3358.

Councilman Province moved, seconded by Councilman Perrin for the adoption of a resolution entering into a lease allowing St. Bernard's to lease the Huntington Building, located at 900 W. Monroe. A voice call vote was taken resulting in all members voting aye with the exception of Councilman Rega who recused himself from voting. Those members were: Kelton, Tate, Rorex, Crockett, McCall, Province, Moore, Young, Perrin Copeland and Roddy. The resolution was assigned number 2002:20.

Councilman Tate introduced a resolution entering into an agreement with Jack Brand Construction whereby the sum of \$20,000 would be paid by Jack Brand Construction within 90 days, that a bill for \$7,000 would be charged off by Jack Brand Construction with no payment made by the City of Jonesboro, and a list of repairs would be performed by Jack Brand Construction (according to the terms of an agreement attached as exhibit "A".) Councilman Tate explained the Street Committee had met for 2½ hours and had reached an agreement with Brand Construction and explained the City of Jonesboro would purchase the additional concrete for the repairs listed in exhibit "A". He estimated the repairs for the additional ditch work to be \$40,000 to \$50,000. Councilman McCall questioned why the City of Jonesboro should settle for a fraction of the \$41,000 over charge. Councilman Tate responded saying after hearing comments from both sides the Street Committee made the decision to accept the sum total of \$27,000 leaving a deficit of approximately \$14,000. Councilman Crockett expressed concern for paying Brand Construction for doing substandard work. Councilman Moore responded saying he also was opposed to the \$41,000 overpayment and viewed it as a separate issue from the ditch repair work. The following discussion and explanation took place:

Moore: We were over charged for the amount of work the City of Jonesboro received.

Tate: It was a city employee who did the initial measurements. They (Brand) did not put the bill together. We had a city employee who measured. It would be like if I brought you a bill for 10,000 square foot, then you found out there was only 8,000, but if you told me it was 10,000 sq. feet and paid me for that then come back six months later.

Rega: The city had someone measure and sign off, and then we had somebody approve it?

Tate: Correct

Moore: The person who signed off, they approved it because the way the City of Jonesboro works, the department head signs off before the bill is paid; so by signing off by department head it's assumed it's been approved.

Kelton: Let's make that past tense, because that's no longer the policy for the City of Jonesboro. We did not realize some of the policies this city implemented were not in our best interest nor the tax payer's best interest. The reason I voted to favor the settlement was to finally put it to bed. We were looking at a settlement to avoid having to go to court. Our hands as far as the city was concerned were not completely clean and we thought the best thing to do was to belly up to the bar, pay the bill and go.

Moore: The reason, I like Mr. Kelton, went for it was because I'm convinced we could win a lawsuit for the \$41,000; I'm not convinced we could win a law suit over the quality of the ditches because we issued no specifications. Given the fact there is \$40,000 to \$50,000 worth of repairs on the ditches, plus the \$27,000, I thought it was a better deal. That was the compromise that was reached. I also would like to point out this is not the end of this regardless of how we vote. We will still address the responsibility on the city's part with the personnel.

Kelton: Even though I did vote for the settlement, I am not happy about it.

Tate: I am not happy about it, but it is in the best interest of the city to accept this offer and again I don't feel like that the city would have much of a case if it went to court regarding repairs with no inspections and no specifications.

Crockett: There was a city employee that measured it and if we overbilled because of that.

Young: How will you assess a legally binding contract with Mr. Brand between him and the city?

Tate: The agreement gives him 90 days to make repairs and pay \$20,000.

Young: My point is we have from him a letter . . .

Tate: The letter dated April 10, 2002, that was when they first agreed to make the repairs and had nothing to do with the over payment. With this resolution the City Attorney will draft the agreement and have it signed by Mr. Brand. Just like everything else we will have to wait and see if he does it.

Young: That's my question; I think we need something that will bind him legally.

Tate: What we are asking for tonight is for the authorization for the City Clerk and the Mayor to execute such a document.

Young: What we have would not bind us or him to anything.

Tate: That's what this Section 2 is. It gives the Mayor and City Clerk the authority to execute such documents as necessary to effectuate the terms of this resolution.

Young: Also, I am not sure I understand your (speaking to Mr. Moore) comment about this is not the end of it, that we still have to address city personnel issues.

Moore: Well let me explain that to you, Vice Mayor. The city is just as responsible as the contractor was. This is the contract that is going to deal with the Contractor. I came tonight prepared to make a motion to go into executive session to discuss personnel, but due to the fact that the Mayor did not make it tonight I held that motion for the next council meeting. At the next council meeting I will move that we go to executive session. Mr. Tate will present the evidence against city employees that we believe are responsible for getting us into this position. At that time we will then make whatever responsible decision necessary.

Young: When did the city council get involved in making decisions regarding employees?

Moore: We were going to make the recommendation as the Street Committee, because we have a city employee who got us into this situation. What would you suggest we do Mr. Young?

Roddy: Mr. Mayor, isn't that the Mayor's decision? That's his call not ours.

Province: I feel that's an executive decision. That falls directly under him; he's directly responsible. Any decision along those lines, we may have influence on them, we may help make up somebody's mind, but I feel like it's the Mayor's decision to make, not the Council's. We cannot afford to get into this kind of decision making process because it will go on and on with every project the city does.

Moore: I do not want to get into the day to day operations of the city, but we have a considerable amount of money here and we have Mr. Tate's complete investigation into the situation with all the evidence with the people involved.

Kelton: Well, he's turned that over the Mayor. I think we should not be involved in it unless we strongly disagree. We will have some really strong feelings if the Mayor does not take affirmative action and at that point perhaps we come together as a body with a unanimous vote and perhaps over rule the Mayor, but let's give the Mayor an opportunity first to run the city.

Roddy: We will do that when the time comes.

Kelton: Yes sir, if necessary

Moore: I'm here to tell you that I'm not comfortable if we drop it at this point because Mr. Brand is responsible and the city is responsible and we are not talking about \$15,000 worth of over charges on items.

Young: Well, what would your say the loss to the city was in dollars?

Moore: Roughly \$650,000. Labor and concrete that we bought and I presume we will continue to buy concrete.

Young: Well, I disagree

Roddy: Probably 5% from what I read in the paper. That is for poor construction, things that were done wrong, but that is not a reflection on the whole job.

Moore: Well, what you read is not correct if you believe 5%. Mr. Tate and I and the Mayor walked ditches and there is none of the ditches that will probably last more than 5 years. The ditches are already a year old.

Young: The whole project barely was \$650,000 and I disagree that the whole thing was a wash. I have a statement though that I would like to make after reading the paper this morning and the comments that were made there and then over the past eight weeks receiving numerous telephone calls from citizens, and then having other people express concerns.

Young: You know sometimes it's easier to just dwell on the negative and point out Statement: the immediate flaws than it is to look at the big picture; and I know as councilmen all of us are concerned about the efficient operation of city government. We don't want to see any money misused or wasted and I think that's why this ditch paving has probably received so much attention. The project cost nearly \$640,000, but I want you to note that is less than 2% of the city budget. None of us are happy with the deficiency in the work, but Garry and others have worked diligently to take action to remedy that problem. We have this proposal where the contractor has agreed to pay back \$20,000 in cash, \$7,000 in time, and to repair any significant structural flaws that were noted in the engineers report. Another question I have is; how is it possible that in the engineers report there were 405 structural flaws and yet we only have 49 itemized that are in need of repair? If the city pays for 30 or 40 or 50 yards of concrete as far as the actual loss to the tax payers, it seems to me we are looking at less than probably \$10,000 to \$15,000.

Tate & Moore: I would like to respond to that.

Young: Well, I am not through with my statement.

Moore: I thought you were asking a question.

Young: You know it's been proposed and I've had a couple comment to me that we need to take disciplinary action against city personnel, and namely Gene Barnett as department head of the Street Department. A couple have commented that he needs to be fired or put on probation, but just in reflecting on the Street Department and Gene Barnett since I have been on the council, which this is my seventh year. We did the Mata Project stating in 1996 and out of that program Gene has over seen 232 street projects at a cost of \$6,293,000,000 and not in one of those projects has there ever been a formal complaint. All the projects met the engineering standards and because the street department completed the paving of those gravel roads as opposed to bidding them out as jobs the city saved approximately \$23.00 per foot or \$915,280.00. Gene has been street superintendent for 17 years since 1985 and over the past 17 years he's managed 66 department employees at various times and there has never been a formal complaint or lawsuit regarding his management of the street department and there has never been any allegations of any mismanagement of funds or sorry workmanship. In addition to those things he presently manages the annual street department budget of \$23,500,000. Those funds go to build roads and sidewalks and the parks; to lay the foundation for the construction of our industrial plants, to maintain all of our city streets including putting out sand on snow days, and all that's done under Gene's supervision without any complaints. As far as the ditch work it's my understanding that Gene asks several months ago not to be required to conduct the inspections, since his brother was involved in doing the work and even assigned a maintenance supervisor to conduct the inspections, and those flaws were noted, some flaws were noted as early as August of last year. It seems to me in visiting with some of the department heads and listening to some of the accusations that have been made that it is very apparent there is a lack of communication, particularly between the Street Department and the Engineering Department. It's the Mayor's responsibility to resolve personnel issues and I think the Mayor will be responsible in resolving the issues between the Street Department and Engineering Department if there are any. The Council previously hired, recommended hiring a public works director with an engineering degree and that might resolve some of the problems, but I think at best all of our department heads, including the Finance Department, the Street Department, Sanitation, Parks, Engineering, Mata, Grants, Planning, Inspections, and Human Resources need to work on their communication between their department and other departments within the city and if that had been done then none of this would have ever happened on the ditch work, because both Engineering and Streets would have been informed. So we need to better communicate and support each other and I think if we will do that we will be a more efficient operation of city government and I don't think it is our place as a city council to hand down personnel decisions. We have a proposal before us to put to bed the problems with the . . .

Tate: First of all Vice Mayor, I would like to respond to the comments that you have made. The ditch work that was done early on was probably acceptable, probably half the ditches where walls were poured correctly, they were poured down the side of the ditch bottoms, but as the work went on it just got sloppier. They got to where they poured the wall on top, with a lot of thin spots. I think as far as the total value I don't agree with \$600 and some thousand dollars. I think in the worst case scenario, by the fact we had no specifications that there's probably \$50,000 to \$60,000 worth of real bad work that needs to be pointed out. As far as the Mata projects that were completed by the city, I don't know how much the rest of the Council knows, but we paid \$450,000 for engineering plans and then did not build roads according to those plans. There are several deficiencies as far as engineers set of drawings verses

what was built.

Young: I don't disagree that there is problems between engineering and street departments.

Tate: I have fielded complaints from engineering companies that are designing subdivisions according to the Mata Plan that were submitted to the street department, but now they are running into problems because the pipes are under sized, areas where there are small pipes where the plans show box culverts. There is quite a bit of difference between the \$450,000 worth of plans we paid for and what we have gotten. So to discuss a savings anytime you draw a set of drawings and estimate a job under those terms but then you only go out there and build only half of what's on the plans, then you can expect to save half the money. To my knowledge none of the Mata projects, that were designed by registered professional engineers, were built according to the drawings. There are several cases were pipes were left out or undersized; box culverts that were supposed to be built that were not.

Moore: Does that also include the bill for instance where the pipe was going to cost us \$90,000 for the church on Highland Drive to relocate it?

Young: That's a completely different issue.

Moore: No, you said you had never heard a complaint. I'm trying to show you there have been a variety of complaints.

Young: Well, the complaint I heard on that was about the Engineering Department not the Street Department.

Moore: There have been numerous other complaints and the reason you have 405 items listed on the engineering report, narrowed down to 49 items, is because a large percentage of them are not fixable. None of the ditches contain any type doweling to support the walls. One hundred percent of those ditches do not have reinforcement in the walls.

Tate: When the City Engineer was asked to do an evaluation he was not asked to do an evaluation of Jack Brand's work, he was asked to do an evaluation of the ditch from the city's stand point and from the contractor's stand point and a lot of those flaws that are noted in there were due to the fact that there was no design criteria. Myself, Larry Johnson, and two representatives of Jack Brand walked the ditches. I am the one that made the list in their presents and from the contractors point of view I picked out what I thought they should be responsible for fixing. There was some stuff I over looked because I felt it was the city's responsibility.

Moore: But, one hundred percent of the ditches have no reinforcement. Mr. Young the life expectancy on the ditches, without reinforcement, that cannot be repaired, so they do not fall in the 49 items that Mr. Brand is suppose to correct, yet the city will eventually bare the responsibility for that work.

Rega: Mr. Crego, in your opinion is this our best recourse?

Crego: Yes. I think it was stated fairly distinctly by Councilman Moore when he indicated that we may well win on the \$41,000 (overcharge), but lose on the repair work that would be done. Balancing those two out I think we get the repair work plus \$27,000 cash is more than litigation will get us.

Councilman Kelton moved, seconded by Councilman Tate for the adoption of the resolution authorizing the Mayor and City Clerk to enter into a contract agreement with Brand Construction for \$20,000 cash, \$7,000 in previously billed work by Brand, and repairs to the ditches according to the list of ditch repairs dated April 10, 2002. Vice Mayor Young called for a roll call vote. The vote resulted in a ten (10) to two (2) vote in favor of the motion. Those members voting aye were: Kelton, Tate, Rorex, Crockett, Rega, Province, Moore, Perrin, Roddy, and Young. Those members voting nay were: McCall and Copeland.

Under new business, Councilman Kelton requested council members to review the Property Maintenance Ordinance and the Land Development Code and to contact the Planning Department if they have any recommendations or amendments.

Councilman Roddy reported the CDBG committee met and opened bids, one being the Mays Sewer Improvements, Phase 3, and the other on play ground equipment. He requested Mr. Jim McKinnon, Grants Coordinator to address the Council regarding the bids. Mr. McKinnon stated on May 1, 2002, they received bids for Mays Sewer Improvements, Phase 3 with the low bidder being David Cline Construction for a total contract of \$126, 022.00. Councilman Roddy moved, seconded by Councilman Perrin to accept the low bid meeting specifications. A voice vote was taken resulting in all members voting aye. Those members were: Kelton, Tate, Rorex, Crockett, McCall, Rega, Province, Moore, Young, Perrin, Copeland, and Roddy.

Mr. McKinnon reported through the CDBG Block Grant Program, proposals were submitted for park equipment for four parks and seven bids were recieved. It was stated that the Playground Selection Committee recommended Miracle Equipment for roughly

\$41,992.00. Mr. McKinnon reported the contract amount through CDBG was \$42,000.00. Councilman Rega moved, seconded by Councilman Crockett to accept the Miracle Playground Equipment bid. A voice vote was taken resulting in all members voting aye. Those members were: Kelton, Tate, Rorex, Crockett, McCall, Rega, Province, Moore, Young, Perrin, Copeland, and Roddy.

With no further business, the meeting was adjourned.