

**MINUTES OF THE REGULAR MEETING OF
OF THE MOORE CITY COUNCIL
THE MOORE PUBLIC WORKS AUTHORITY
THE MOORE RISK MANAGEMENT BOARD
AND A PUBLIC HEARING OF THE MOORE CITY COUNCIL
JANUARY 4, 2010 – 6:30 P.M.**

The City Council of the City of Moore met in the City Council Chambers, 301 North Broadway, Moore, Oklahoma on January 4, 2010 at 6:30 p.m. with Mayor Glenn Lewis presiding.

*David Roberts
Councilman, Ward I*

*Robert Krows
Councilman, Ward I*

*Kathy McMillan
Councilwoman, Ward II*

*Janie Milum
Councilwoman, Ward II*

*Jason Blair
Councilman, Ward III*

*Terry Cavnar
Councilman, Ward III*

PRESENT: Krows, Blair, McMillan, Cavnar, Roberts, Milum, Lewis
ABSENT: None

STAFF MEMBERS PRESENT: City Manager, Steve Eddy; Assistant City Manager, Stan Drake; City Attorney, Randy Brink; City Clerk, Jim Corbett; Economic Development Director, Deidre Ebrey; Emergency Management/Communications Director, Gayland Kitch; Fire Chief, Charles Stephens; Community Development Director, Elizabeth Jones; Manager of Information Technology, David Thompson; Police Chief, Ted Williams; Public Works Director, Richard Sandefur; Risk Manager, Gary Benefield; Parks and Recreation Director, Cindy Deckard; Veolia Water Project Manager, Robert Pistole; and Purchasing Agent, Carol Folsom.

The invocation was given by Pastor Leslie Johnson with Eastlake Cumberland Presbyterian Church.

Mayor Lewis presented Oklahoma Municipal League service pins and certificates to Jim Corbett and Gayland Kitch for 25-years of service. Chris Yandell, James Reed, John Rosson, David Harthcock, Donnie Andrews, and Scott Lance were also honored for 25-years of service, but were not in attendance at the meeting.

Agenda Item Number 2 being:

CONSENT DOCKET:

- A) APPROVE THE MINUTES OF THE REGULAR CITY COUNCIL MEETING HELD DECEMBER 21, 2009.
- B) APPROVE THE CONTRACT BETWEEN THE MOORE SCHOOL DISTRICT AND THE CITY OF MOORE IN THE AMOUNT OF \$223,021.89 FOR THE SCHOOL RESOURCE OFFICER PROGRAM.

- C) APPROVE AND RATIFY CLAIMS AND EXPENDITURES FOR FY 2009-2010 IN THE AMOUNT OF \$1,234,965.11.

Councilman Krows moved to approve the consent docket in its entirety, second by Councilman Roberts. Motion carried unanimously.

Ayes: Krows, Blair, McMillan, Cavnar, Roberts, Milum, Lewis
Nays: None

Agenda Item Number 3 being:

CONSIDER REZONING APPLICATION NO. RZ-847 LOCATED IN THE NE/4 OF SECTION 15, T10N, R3W, BEING NORTH OF NW 5TH STREET AND WEST OF I-35 FROM C-4 PLANNED UNIT SHOPPING CENTER DISTRICT TO C-4 PLANNED UNIT SHOPPING CENTER DISTRICT WITH A PERMISSIVE USE FOR A BAR AND DANCE HALL; AND APPROVE ORDINANCE NO. 660(09). APPLICATION BY INCAHOOTS SALOON, LLC/ALLEN PORTER. (PLANNING COMMISSION RECOMMENDED DENIAL 6-1).

Elizabeth Jones, Community Development Director, advised that Rezoning Application No. RZ-847 was tabled from the December 7, 2009 City Council meeting. She advised that the subject site was located north of NW 5th Street and west of I-35. The applicant was requesting a permissive use for a bar and dance club to be located in the vacant Ace Hardware lease space located at 621 I-35 Frontage Road. Ms. Jones noted that existing utilities and adequate parking were available to serve the site. Access would be from the I-35 Service Road and NW 5th Street. She advised that the Moore Vision 20/20 designated the parcel of land as Medium Commercial which coincides with C-4 uses. However, the proposed use was not anticipated during preparation of the Moore Vision 20/20; therefore, the City Council would be required to determine whether using retail space for a high impact recreational activity conforms with the intent of the comprehensive plan, and if the use is compatible with surrounding land uses which are retail and service oriented. The City typically supports retrofitting vacant big box sites for new uses; however, being located within the I-35 corridor the retrofit does not meet the established criteria for the Moore Vision 20/20. If the City Council approves the application staff would recommend the following contingencies:

1. Increased parking lot lighting. Staff would require review and approval of a parking lot lighting plan prior to the issuance of an occupancy permit.
2. Incahoots would be required to provide Cleet certified security personnel during normal business hours.

Ms. Jones stated that several property owners were present at the Planning Commission meeting and spoke in opposition to the item. She advised that a letter from business owner Ed McCreary was e-mailed to the City Council that outlined many of the concerns expressed by the citizens at the Planning Commission. Ms. Jones stated that she also e-mailed a business plan from the applicant which might answer some of Council's questions. She advised that the Planning Commission recommended denial of the item based on concerns surrounding access to the property, specifically the intersection of NW 5th Street and Telephone Road/I-35 Service Road.

Allen Porter indicated that he was an architect for the owners of the New City Center and the Double Deuce Dance Hall and was appearing on their behalf. Mr. Porter indicated that the applicant proposed turning the 12,000 square foot space, previously known as the Ace Hardware store, into an upscale country and western dance hall. He presented the City Council with plans of what the facility would look like. Mr. Porter advised that a dance floor would be constructed in the center of the space with a stage for a live band and appearances by celebrity country music stars as they travel between other engagements. Mr. Porter stated that the owners of the Double Deuce also have bars in Oklahoma City and Tulsa, and are responsible business people with good backing. He related that projections for the

first year sales are estimated to be around \$2,712,000. Based on that figure the City would collect around \$94,920 in sales tax revenue.

Mr. Porter indicated that the parking lot lighting was upgraded directly in front of the proposed development in September 2009. Areas marked in red on the plan are where 40-foot tall parking lot lights were installed. Additional lighting would come from wall lights along the front of the dance hall. Mr. Porter felt that the New City Center owners would not jeopardize their property or the property of their tenants over one lease. New City Center currently has an occupancy of 74%. They are anticipating a slow to moderate increase in occupancy of only 3% yearly over the next three years, outside of this lease.

Mr. Porter advised that the City experienced a \$45,000 decrease in sales tax in October 2009 compared to October 2008. However, they understand that a one month decrease is not a trend; however, retail sales all over the country have been slumping. The people that run the Double Deuce see it as an entertainment center. There will be drinking; however, non-alcoholic beverages will also be served. Security officers will be on site. Under the DRAM laws of Oklahoma the owner of a bar could be held responsible for an individual who drive drunk after leaving the bar. This type of law changes the way bar owners operate their business and deal with their customers. One of the owners was born in Moore, went to school in Moore, and currently lives in Moore. Mr. Porter indicated that on the best night they anticipate a maximum of 500 patrons in the club. Because of the way people come to the bar, either in pairs or small groups, they estimate approximately 150 cars at any given time. There is more than adequate parking and they don't feel traffic will be a problem. Mr. Porter stated that the problem with the intersection at 5th and Telephone Road/I-35 Service Road was an existing problem and should be addressed. The owners attempt to be supportive of the cities in which their bars are located. They would be happy to assist with events that benefit the City. They have a good rapport with police departments in the cities in which they operate. He felt it was sometimes better to provide young people with entertainment in the City where they live so that situations can be controlled through City ordinances.

Mayor Lewis asked what staff's recommendation was for the item. Elizabeth Jones, Community Development Director, indicated that this was a big departure from what was anticipated in the Moore Vision 20/20. There is a big difference between a high impact recreational use such as the Double Deuce versus a retail use such as Kohl's. Because of this she felt the decision should be made by Council or the community. Mayor Lewis asked for the opinion of Deidre Ebrey, Economic Development Director. Ms. Ebrey advised that she was in the unique position of knowing the owners of the shopping center and felt that they would not do anything to jeopardize the shopping center or their tenants.

Mr. Porter stated that the shopping center would possibly be losing another big tenant due to the 12th Street exit closing. He realized that the City was not involved in that decision since it comes under the purview of ODOT; however, it created a negative situation for the shopping center.

Councilman Roberts asked if a Permissive Use was granted would it stay with the applicant or go with the property. Randy Brink, City Attorney, indicated that it would stay with the specific lease space.

Citizens to Speak:

George Elassal stated that he owns property close to the shopping center. He advised that he had previously appeared before the Planning Commission to voice his concerns. Mr. Elassal indicated that he wished any potential business owner success because it was good for the City; however, he had several concerns with the proposed development. He stated that although adequate security might be provided inside the business, they had no control over what the patrons might do after leaving the premises. Due to the quiet nature of the area patrols didn't occur as frequently as in busier areas of the City. He also expressed concern about apartments on the other side of the shopping strip whose tranquility might be affected during the night time hours. Another concern was with the intersection at 5th and Telephone

Road. He felt the area was confusing and if someone was not familiar with the roadway it could result in an accident. He felt that traffic from special events would also be an issue. He wished the owners every success with their business but did not feel the location was ideal, and that it would be better suited to an area where there was already adequate security and lighting.

Mark Hamm, 706 Harmon Circle, spoke in opposition to the item. He stated that there was a big difference between a CLEET certified security officer and a CLEET certified police officer. He also felt that a security officer's interest would be to take care of the business and its patrons; whereas, a police officer's interest would be to protect the community. Mr. Hamm advised that he had been in law enforcement for over 13 years and felt this type of business would increase the possibility of injuries due to automobile accidents or fights. Mr. Hamm stated that he lived in Moore his entire life and did not want this type of business in his community.

Ed McCreary, 2728 SW 115th, Oklahoma City, advised that he wrote a letter to the City Council since he was out of town and unable to attend the Planning Commission meeting. The observations were made on behalf of himself as a property and business owner in the immediate location. He indicated that his greatest concern was late night vandalism. Mr. McCreary felt sure that the owners were responsible with a good business management plan. His only concern was with the proposed location.

Councilman Krows addressed Mr. Porter with some questions. He asked if the owners looked at other locations such as 19th Street and I-35. Mr. Porter advised that he was not certain where the owners looked. He only knew that when they came upon the lease space it appeared to be the right size at the perfect location. Mr. Porter addressed the noise concerns that were expressed. The owners wanted to go into a retail area. The proposed site faces I-35 and the back or east side of the shopping acts as a buffer and there is almost ½ mile of shopping center toward the north and 5th Street to the south. There are only three property owners that fell within the 300 foot notification area. Some of those he believed to be rental property.

Councilman Krows asked if there were plans for traffic lights at 5th and Telephone Road/I-35 service road. Elizabeth Jones, Community Development Director, indicated that 5th Street was part of the G.O. Bond project. Discussion has occurred about redesigning the intersection. Mr. Eddy indicated that the City would be looking at different solutions for the intersection. He indicated that staff would be contacting the City's traffic engineer to get recommendations on what should be done.

Councilman Krows asked how long the lease space was empty. Mr. Porter indicated that Ace vacated the space in January 2009. However, he did not know if they had a big presence there in the months prior to that time. Ms. Jones stated that her impression was that the big retail spaces were hard to fill with one tenant. In older shopping centers you tend to have more specialized establishments that require a much smaller space. Councilman Krows asked if Harry Bear's planned to change locations or stay in the shopping center. Ms. Jones indicated that she had no knowledge of Harry Bear's plans.

Mr. Porter clarified that when he indicated that they would have CLEET certified officers he did mean police officers. They checked with Moore and found that, much like Oklahoma City, they cannot use off-duty Moore police officers to provide security. The owners typically use Oklahoma County Sheriff Deputies who are CLEET certified.

Mayor Lewis asked Chief Williams for his opinion on the proposed use. Chief Williams stated that there are no perfect bars or clubs and that police officers arrest drunk drivers every night. While it is a violation of the law to serve someone drunk, it is difficult to prove unless the officer witnessed the drunken individual being served. It would also be difficult to prove where the driver became intoxicated. Chief Williams stated that it was his experience that bars generate more calls for service than other retail establishments. Chief Williams felt it was a positive thing that they use off-duty deputies for security

although they are out of their jurisdiction and have no authority; therefore the Moore Police Department would be responsible for transportation of individuals placed under citizen's arrest. Councilman Krows asked if he had noticed an increase in drunk drivers and accidents since restaurants serving liquor have opened. Chief Williams indicated that the police department arrests a lot of drunk drivers off 19th Street and have received a number of calls for service at Buffalo Wild Wings.

Councilman Roberts felt that the decision Council makes should not be based on the sales tax revenues that the business might generate for the City. His personal opinion was the bar would not disturb anyone, and felt that the owners appeared to be responsible operators of a bar with knowledge of what they were doing. He did not see them generating any more calls than a similar establishment would generate. However, he did receive e-mails from people who do not want this type of establishment in Moore. He stated that because of the retail development along 19th Street it has made it more difficult for shopping centers on the north side of the City to find big box tenants.

Councilman Cavnar indicated that he had more response from citizens on this issue than any other issue in his seven years on the City Council. Every one of them voiced opposition to the item. He stated that he attempted to base his vote on the recommendations made by the Planning Commission and on what his constituents want. In this case they have made it clear to him that they do not want a bar at this location.

Councilwoman Milum indicated that she sat on the committee that worked on the Moore Vision 20/20. The committee as a whole stressed retail very strongly. They all wanted what was best for the community. She stated that a friend of hers operates a business in the shopping center and she voiced her concern with the Double Deuce being located there. She felt that other locations might better fit this type of establishment.

Councilman Roberts stated that when cities start pushing this type of business into the neighborhoods there are big concerns.

Councilwoman McMillan felt that the location was not suitable for this type of establishment. She would like to see the location moved.

Councilman Blair advised that his concern wasn't with 95% of the people that would frequent the bar. His concern was with the other 5%.

Councilman Krows stated that he did not personally have a problem with a bar and dance hall being located in Moore. In fact, he felt it would be nice to have this type of establishment for the younger members of the community. He commented that he has friends that go to dance, not to get drunk. Based on comments from his constituents he did not feel that the location was appropriate. He did feel that there was a need for this type of entertainment but in a different location.

Mr. Porter indicated that the reason the site was so attractive was because it was an existing structure and the shopping center was very amenable to giving tenant improvement allowances. He stated that Council could have ten people who do not want it speak louder than the 100 that do want it but do not contact Council. If in the future the bar causes the shopping center problems there is language in the lease to allow them to control the situation.

Councilman Cavnar moved to deny Rezoning Application No. RZ-847, second by Councilman Blair. Motion carried unanimously.

Ayes: Krows, Blair, McMillan, Cavnar, Roberts, Milum, Lewis
Nays: None

Agenda Item Number 4 being:

APPROVE RESOLUTION NO. 686(10) AUTHORIZING ENTERING INTO AN AGREEMENT WITH CLAIMS MANAGEMENT RESOURCES, AS PROVIDED BY 11 OKLA. STAT. § 22-138 (2009), ALLOWING CLAIMS MANAGEMENT RESOURCES TO PERFORM SUBROGATION SERVICES FOR THE CITY OF MOORE TO RECOVER DAMAGES TO CERTAIN CITY OF MOORE PROPERTY AND TO PROVIDE A FEE OF THIRTY-FIVE PERCENT (35%) IN ADDITION TO THE RECOVERED AMOUNT.

Gary Benefield, Risk Manager, advised that Claims Management Resources is a subrogation company that assists the City with collection efforts on damages to roadway lighting, traffic signals, signs, guardrails, fire hydrants, etc. House Bill 1800 allows the City to contract with subrogation companies and for the company to add their fees to the recoveries. This would primarily involve recovering damages from insurance companies. On most claims the City would receive 100% of the damages. This is similar to what the City does on utility collections. Cities such as Broken Arrow, Sapulpa, Tulsa, Sand Springs, Bixby use Claims Management Resources for collection purposes as well as ODOT and OG&E. Staff recommended approval of Resolution No. 686(10) and the agreement with Claims Management Resources.

Councilman Krows moved to approve Resolution No. 686(10), second by Councilwoman McMillan. Motion carried unanimously.

Ayes: Krows, Blair, McMillan, Cavnar, Roberts, Milum, Lewis
Nays: None

THE CITY COUNCIL MEETING WAS RECESSED AND THE MOORE PUBLIC WORKS AUTHORITY MEETING CONVENED AT 7:28 P.M.

Agenda Item Number 5 being:

CONSENT DOCKET:

- A) RECEIVE AND APPROVE THE MINUTES OF THE REGULAR MOORE PUBLIC WORKS AUTHORITY MEETING HELD DECEMBER 21, 2009.
- B) APPROVE AND RATIFY CLAIMS AND EXPENDITURES FOR FY 2009-2010 IN THE AMOUNT OF \$672,401.76.

Trustee McMillan to approve the consent docket in its entirety, second by Trustee Krows. Motion carried unanimously.

Ayes: Krows, Blair, McMillan, Cavnar, Roberts, Milum, Lewis
Nays: None

Agenda Item Number 6 being:

APPROVE RESOLUTION NO. 227(10) AUTHORIZING ENTERING INTO AN AGREEMENT WITH CLAIMS MANAGEMENT RESOURCES, AS PROVIDED BY 11 OKLA. STAT. § 22-138 (2009), ALLOWING CLAIMS MANAGEMENT RESOURCES TO PERFORM SUBROGATION SERVICES FOR THE MOORE PUBLIC WORKS AUTHORITY TO RECOVER DAMAGES TO CERTAIN MOORE PUBLIC WORKS AUTHORITY PROPERTY AND TO PROVIDE A FEE OF THIRTY-FIVE PERCENT (35%) IN ADDITION TO THE RECOVERED AMOUNT.

Trustee Krows moved to approve Resolution No. 227(10), second by Trustee Cavnar. Motion carried unanimously.

Ayes: Krows, Blair, McMillan, Cavnar, Roberts, Milum, Lewis
Nays: None

THE MOORE PUBLIC WORKS AUTHORITY MEETING WAS RECESSED AND THE MOORE RISK MANAGEMENT MEETING CONVENED AT 7:30 P.M.

Agenda Item Number 7 being:

CONSENT DOCKET:

- A) ACCEPT THE MINUTES OF THE REGULAR MOORE RISK MANAGEMENT MEETING HELD DECEMBER 21, 2009.
- B) APPROVE AND RATIFY CLAIMS AND EXPENDITURES FOR FY 2009-2010 IN THE AMOUNT OF \$213,193.82.

Trustee Krows moved to approve the consent docket in its entirety, second by Trustee Roberts. Motion carried unanimously.

Ayes: Krows, Blair, McMillan, Cavnar, Roberts, Milum, Lewis
Nays: None

THE RISK MANAGEMENT MEETING WAS RECESSED AND THE CITY COUNCIL MEETING RECONVENED AT 7:31 P.M.

Agenda Item Number 8 being:

NEW BUSINESS:

- A) CITIZENS' FORUM FOR ITEMS NOT ON THE AGENDA.

There were no citizens to speak.

- B) ITEMS FROM THE CITY COUNCIL/MPWA TRUSTEES.

There were no items from the City Council.

- C) ITEMS FROM THE CITY/TRUST MANAGER.

Steve Eddy, City Manager, informed the City Council of the following items:

- Introduced new Parks and Recreation Director Cindy Deckard.
- Expressed appreciation to Assistant City Manager Stan Drake and Public Works Director Richard Sandefur for spending a good portion of their Christmas Eve and Christmas Day driving around in the community along with Police Chief Ted Williams and Fire Chief Charles Stephens to monitor the condition of the roads. He stated that he had received a number compliments on the roadways and the snow removal. Councilman Krows asked what number citizens should call regarding delays in sanitation pick up. Mr. Eddy indicated that notification is made through the City's website and through Code Red.

- Preliminary reports indicate that additional federal stimulus monies might become available for use on Phase II of the wastewater treatment plant.
- Activity on various construction projects slowed down due to the inclement weather and the holidays.

Agenda Item Number 9 being:

ADJOURNMENT

Councilwoman McMillan moved to adjourn the City Council meeting, second by Councilman Cavnar. Motion carried unanimously.

Ayes: Krows, Blair, McMillan, Cavnar, Roberts, Milum, Lewis
Nays: None

The City Council, Moore Public Works Authority, and the Moore Risk Management meetings were adjourned at 7:35 p.m.

TRANSCRIBED BY:

RHONDA BAXTER, Executive Assistant

RECORDED BY:

CAROL FOLSOM, Purchasing Agent

FOR:

JANIE MILUM, MPWA Secretary

FOR:

KATHY MCMILLAN, MEDA Secretary

These minutes passed and approved as noted this ____ day of _____, 2010.

ATTEST:

JIM CORBETT, City Clerk