

CITY COUNCIL
BUSINESS AND COMMUNITY AFFAIRS COMMITTEE MINUTES

March 1, 2012

The City Council Business and Community Affairs Committee of the City of Norman, Cleveland County, State of Oklahoma, met at 9:00 a.m. in the Conference Room on the 1st day of March 2012, and notice and agenda of the meeting were posted in the Municipal Building at 201 West Gray and the Norman Public Library at 225 North Webster 48 hours prior to the beginning of the meeting.

PRESENT: Councilmembers Lockett, Quinn, Spaulding, and Chairman Ezzell

ABSENT: None

OTHERS PRESENT: Ms. Jacy Crosbie, Ward Six Council Candidate
Councilmember Roger Gallagher, Ward One
Councilmember Tom Kovach, Ward Two
Mr. Jesse Bryant, University of Oklahoma (OU) Student
Mr. Hunder Healy, University of Oklahoma (OU) Student
Mr. Bill Hickman, Attorney
Mr. Tony Tyler, Tyler Outdoor Signs
Mr. Don Wood, Norman Economic Development Coalition Executive Director
Mr. John Woods, Chamber of Commerce Director

STAFF PRESENT: Mr. Jeff Bryant, City Attorney
Ms. Susan Connors, Director of Planning and Community Development
Mr. Steve Lewis, City Manager
Mr. Doug Koscinski, Current Planning Manager
Mr. Shawn O'Leary, Director of Public Works
Ms. Kathryn Walker, Assistant City Attorney
Ms. Syndi Runyon, Administrative Technician IV

Item 1, being:

CONTINUED DISCUSSION REGARDING THE CREATION OF A PUBLIC TRUST AUTHORITY TO FACILITATE ECONOMIC DEVELOPMENT AND OTHER ECONOMIC DEVELOPMENT TOOLS.

Chairman Ezzell said the Business and Community Affairs Committee (BCA) has been working on a proposed Public Trust Authority (PTA) to facilitate economic development and other economic development tools for several months. He said discussions have come down to two outstanding issues consisting of City Council representation on the PTA Board and eminent domain. He said his proposed solutions are to appoint two ex-officio Councilmembers (non-voting members) to the current proposed five member trust and adding language that all eminent domain issues must be approved by a majority vote of the City Council, which would be five votes to pass. He felt it would be unusual for a Councilmember to vote twice, once as a member of the Board of Trustees and again as a member of City Council and that is why he is suggesting ex-officio members. He said on the eminent domain issue he added language in Article VIII. Powers and Duties of Trustees.

Councilmember Kovach said the State wants cities to file their trust audit's with the State Auditor's Office to be placed on the State's website and asked if the City has done that with their other trusts. Mr. Jeff Bryant, City Attorney, said it was a suggestion from the State that public trust's file their final audits with the State Auditor's Office and he would have to check with the Finance Department to see if that has been done, but did not feel that would be a problem. Councilmember Kovach said he would like to see the City of Norman begin that procedure.

Councilmember Lockett said she did not like the idea of giving so much authority to any group and felt there were very few limitations in the trust document. She said the language from Chairman Ezzell regarding eminent domain helps, but felt Council had very little control. Chairman Ezzell said any action the PTA takes must be approved by City Council and the PTA cannot independently authorize debt. He said the Council is simply creating a body that will be specialized in its mission, but cannot act without Council approval. He said if the City of Norman wants to be competitive in the world of business development, this is a step that must be taken.

Councilmember Lockett said she was worried about a recent eminent domain case, KELO versus the City of New London, Connecticut, that sent a red flag to cities and she did not know if language was included in the trust that would prevent the City of Norman from getting into a similar situation. Mr. Bryant said KELO was a case in which the Supreme Court approved the use of eminent domain and, in that circumstance, was used strictly for economic development. He said there was a some nationwide backlash with the belief that the ruling was overreaching, but the Supreme Court ruled it was within the law. He said part of the idea of the language proposed by Chairman Ezzell was to give elected officials the final say on whether or not to use eminent domain for economic development circumstances.

Councilmember Kovach asked how Norman having its own local PTA would fit into the growing trend of regionalizing trusts and asked if Norman's trust could work with regional trusts. Chairman Ezzell said when cities get into large projects, trusts give them the ability to participate and multiple trust authority's can participate. Mr. Don Wood, Executive Director of the Norman Economic Development Coalition (NEDC), said "regional" is a marketing term and when a project gets into local, site specific issues some of the regional issues go away, but the project can still be marketed as regional because the business will most likely attract business to the Oklahoma City metro area and the events that take place there. He said trust authorities are expensive and sometimes bank loans can be cheaper to obtain, but a PTA would give the City of Norman more tools in their toolbox and more options to incoming businesses. Councilmember Kovach asked if a trust could benefit smaller businesses and Mr. Wood said, because of the costs of doing a project through a trust authority, the project would have to a large one. Chairman Ezzell said NEDC would help smaller businesses. Councilmember Quinn said the trust would position the City for future projects to be competitive, but Council would still have oversight. Councilmember Kovach felt that if the City does not create a PTA it takes the chance of losing businesses that could make use of a PTA.

Councilmember Gallagher said the boundaries for a majority vote of City Council is five votes and said five votes swings a lot of things. He said the majority of Council turns down very few proposals that come before them, some of which have been questionable in his opinion. He said eminent domain should be the last possible resort and when that happens, public good should be construed to be something vast. He said he would like to see seven as the super majority vote for eminent domain. He was also concerned about five people having control of public money. Chairman Ezzell said anyone can be elected to the City Council and they do not have to have any unique experience, background, training, or ability in the realm of issues the PTA will be overseeing. He said the PTA has specific requirements as to who can be a trustee in regards to educational and professional background. He said Council's plate is already too full so there would be nine people who are already busy with no educational or professional experience that gives them the ability to be a trustee. He felt Council cannot, as a group, effectively run the trust. He said although it is theoretically possible, it is not probable. He said saying a private entity is handling public money is not accurate as the elected representatives will have the final decision. He understands the caution regarding Council approving issues with five votes in regards to eminent domain, but majority and super majority vote issues are dictated by Charter. Councilmember Spaulding said he also liked the idea of requiring a super majority vote of seven for eminent domain.

Councilmember Spaulding said he was concerned about conflict of interest regarding trustees and possible projects. He asked what would happen in a situation where a bank representative is a trustee and his/her bank is a possible applicant in a loan. Chairman Ezzell said the City's Conflict of Interest Policy would control that and the trustee would need to abstain. Councilmember Gallagher asked that language be placed in the trust to make conflict of interest issues clear. Chairman Ezzell asked Staff to include language that trustees are governed by the City's Conflict of Interest Policy.

Chairman Ezzell said he would be comfortable with eminent domain requiring seven votes; however, that would require a Charter amendment. He said he has not voted on an eminent domain item since being seated on Council and the City has acquired a lot of property in that time span. He asked Mr. Bryant how many eminent domain cases the City has had and Mr. Bryant said there were a couple of properties that had issues for the Robinson Street Underpass Project; however, they eventually made a settlement without using eminent domain or going to Court. He said eminent domain is a process to make sure there is fair compensation for the land that is being acquired. He said there can be a question as to whether it is a proper subject for condemnation, but the City has never had a case go to the Court system. He said the City has never had a case where it asserted eminent domain strictly for economic development.

Mr. Bryant said the purpose of the PTA is to get a group of trustees that are specific to economic development and can evaluate deals on a business basis. He said the PTA would then bring that forward to Council if there is a need for public money. He said, at this point, there is no public money or revenue stream for the trust to spend, but if there was a business that needs help with carrying costs on property, a PTA would be the vehicle to help them as long as they meet the criteria for economic development.

Mr. Steve Lewis, City Manager, said a multi-national corporation making a decision about locating in Norman will have a site selection team to make that decision. He said he feels there is more of an affinity with business people in the community first before they deal with elected officials, which speaks to a trust primarily made up of business people and is a good first impression for the community. Mr. Wood agreed and said a company does want to know that public officials are pro-business, but they get that more from community businesses they can speak to about what it is like doing business within the community. He said NEDC usually connects new businesses with existing businesses such as Hitachi or York for testimony.

Councilmember Lockett asked how the trust was being paid for and Chairman Ezzell said there is no dedicated funding source or costs. He said Council is creating the PTA as a tool and if something comes forward, the PTA will ask the Council to approve the conduit financing package they propose to make the deal work. She asked where the trustee costs will come from and Chairman Ezzell said it will be no different than any other City board in that City Staff will act as the PTA Staff. Councilmember Lockett said she did not like voting on issues with no funding source. She felt that although there are no funding issues currently, there could be in future years. Mr. Wood said Cleveland County's Trust charges an administrative fee of 1% from a project and the City could consider that as well. Mr. Bryant said the PTA would only meet if there was a project to discuss and costs would be minimal.

Councilmember Spaulding asked if having a trust could have attracted a project such as Warren Theater and Mr. Wood said yes. Councilmember Spaulding said that theater should have been in Norman and he is excited about the possibility of attracting a project like that. Chairman Ezzell said one of the reasons the theater was not in Norman was because they wanted a particular portion of the infrastructure costs paid and there was no mechanism to pay that and the trust would have been that mechanism.

Chairman Ezzell said he would like language included for conflict of interest then forward to Council for a Study Session. Councilmember Quinn suggested language stating that all PTA action must adhere to the Charter and Mr. Bryant felt that would be a good idea.

Item 1, continued:

Items submitted for record

1. Memorandum dated December 28, 2011, from Kathryn L. Walker, Assistant City Attorney, through Jeff H. Bryant, City Attorney, to Members of the Business and Community Affairs Committee
2. Draft Trust Indenture Creating the Norman Economic Development Authority
3. Proposed amended to Article VIII of the draft Trust Indenture Creation the Norman Economic Development Authority

Item 2, being:

CONTINUED DISCUSSION REGARDING ON AND OFF PREMISE SIGN CODE REGULATIONS.

Ms. Susan Connors, Director of Planning and Community Development, said the off-premise digital signs proposals were being brought back to the Committee to clarify questions from Mr. Tony Tyler, Tyler Outdoor Signs, and Mr. Bill Hickman, Attorney. She said the remaining issue is the brightness of the illumination as Staff has suggested 300 NITS at night and 5,000 NITS during the day and Mr. Tyler and Mr. Hickman had recommended 500 NITS at night and 6,500 NITS during the day. Chairman Ezell asked what the basis was for the City's position on the NITS and would like Mr. Tyler and Mr. Hickman's response on the industry position. Ms. Connors said the City's proposals were patterned after several communities who relied on studies not sponsored by the industry, which suggest lower limits due to potential negative impacts on nearby residences and the traveling public as well as ordinances from other communities. Mr. Tyler said it has been suggested that he borrow a NIT Gun from the City of Oklahoma City and check several signs, at night, to determine a brightness number and he has invited City Staff. Chairman Ezzell felt that was a great idea and will defer the issue until that takes place. Councilmember Quinn asked if NIT levels can be adjusted after the sign has been built or does it have to be built with a particular level and Mr. Tyler said NITS can be adjusted. Councilmember Gallagher asked if the main concern was safety, brightness, or both and Mr. Tyler said both, but he was more concerned about the minimum amount of illumination that can be used without causing problems. Councilmember Kovach said he has seen some signs that seem excessively bright at night and asked if it was a concern for public safety or a distraction/blinding issue. Ms. Connors said it is mainly a public safety issue and drivers not being so distracted by the sign that you lose track of the road. Councilmember Kovach said at night that could be a real distraction due to contrast, but did not see an issue in the day and Ms. Connors said it was an issue of how much brightness is really needed in order to see the sign during the day.

Ms. Connors said Staff is proposing new language for on-premise signs, which has not been previously discussed by the Committee. Staff is recommending that on-premise signs be the same size and requirements as currently required in the Sign Code for commercial and industrial. She said Staff added language regarding on-premise digital signs for institutional uses. She said they must have a static change message with a swell time to twelve seconds and no flashing or blinking to avoid problems with drivers. She said the illuminations recommendations are the same as off-premise digital signs. She said the on-premise digital signs would have to be extinguished no later than 11:00 p.m. or within thirty minutes after close of business.

Chairman Ezzell said one concern he has about on-premise digital signs is that Staff has not had much input from the Chamber of Commerce or businesses that will be most affected by on-premise sign issues. He asked Mr. John Woods, Director of the Norman Chamber of Commerce, to distribute the proposals to the businesses for feedback. Chairman Ezzell said he loved the idea of getting actual field test results versus written studies. Ms. Connors said off-premise proposals were going to be reviewed by the Planning Commission next week and Staff could give the field trial results when it is forwarded to City Council for review and Chairman Ezzell said that would be fine to keep the off-premise sign proposals on track for approval.

Mr. Hickman said he would like the Committee to discuss cleaning up non-conforming off-premise signs on the surface streets of Norman. He said some are very old and the industry gets complaints about how ugly and unsightly they are, but the industry cannot remove the signs. He said the industry can maintain the signs, but cannot make them look more contemporary. He said another issue he would like discussed is including language in the Sign Code to allow sign companies to relocate signs to another location in the City when sign must be removed because of taking for public projects. Chairman Ezzell said those issues can be placed on the next agenda.

Items submitted for record

1. Memorandum dated February 24, 2012, from Doug Koscinski, AICP, Manager, Current Planning Division, via Susan Connors, AICP, Director of Planning and Community Development, to Business and Community Affairs Committee, with Exhibit A, Digital Sign Proposed Amendments, and Exhibit B, Draft Proposed Amendment to City of Norman's Sign Ordinance

Item 3, being:

MISCELLANEOUS DISCUSSION.

None

The meeting adjourned at 9:58 a.m.

ATTEST:

City Clerk

Mayor