

CITY COUNCIL SPECIAL SESSION MINUTES

March 27, 2012

The City Council of the City of Norman, Cleveland County, State of Oklahoma, met in Special Session at 5:00 p.m. in the Municipal Building Conference Room on the 27th 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 Dillingham, Ezzell, Gallagher, Griffith, Kovach, Lockett, Spaulding, Quinn, Mayor Rosenthal

ABSENT: None

Item 1, being:

DISCUSSION REGARDING THE TRUST INDENTURE FOR THE NORMAN ECONOMIC DEVELOPMENT AUTHORITY.

Ms. Kathryn Walker, Assistant City Attorney, said the creation of an Economic Development Authority was identified as a discussion priority at the August 2011, City Council Business and Community Affairs Committee (BCAC) meeting. Staff reviewed several tools for economic development at the October 2011, BCAC meeting and one of the tools was the public trust. Ms. Walker said under Oklahoma law, public trusts are often used to benefit the municipality by allowing long-term indebtedness to occur and assist with long term planning and investments. The BACA Committee directed Staff to draft a trust indenture creating the Norman Economic Development Authority, (NEDA) which was presented to the Committee at its November 2011 meeting.

Mr. Mark Nuttle, a nationally recognized economic development expert, spoke to the Committee at its December 2011 meeting about the need to fill trustee positions for the trust that are specially qualified in areas such as banking, commercial finance, law, and accounting. The Committee asked Staff to revise the trust indenture to incorporate Mr. Nuttle's comments and the Committee discussed the revisions at the February and March meetings.

Ms. Walker said a Trust is an entity that creates a fiduciary relationship whereby Trustees hold the title to property, i.e., trust estate or trust property and act as authorized in relation to the property for the benefit of another beneficiary. She said a Trust provides an avenue to engage in the day-to-day activities associated with promoting economic development in Norman without putting the City of Norman at risk for debt, loss, or liability and provides tool to review requests for economic development funds.

Ms. Walker said Norman's Public Trusts currently include:

- Norman Municipal Authority (NMA) – manages the golf course and transfer station
- Norman Utilities Authority (NUA) – manages the water and sewer projects
- Norman Regional Health System Authority – manages the hospital
- Norman Tax Increment Finance Authority (NTIFA) – manages the infrastructure, park, and economic development projects within the University North Park Tax Increment Finance District (UNPTIF)

Ms. Walker distributed a draft trust indenture containing standard language that empowers NEDA with the typical powers set forth for public trusts by Oklahoma law to include:

- Exist for the public benefit – enumerated powers in trust indenture have all been recognized as a valid exercise of powers for the furtherance and accomplishment of a proper public function or purpose
- Exist as legal entities separate and distinct from municipal beneficiaries
- Act on behalf and in furtherance of a public function
- Created to enable long-term financial obligations and simplify the sale of real or personal property. The City is limited in issuing long-term debt by a constitutional debt limitation, but a public trust would not be limited.
- May utilize eminent domain

Ms. Walker said Article VII sets forth the identity of the Trustees, how each Trustee is selected, as well as the identity of the Chairman and the Clerk of the Trustees. The indenture provides that there will be five (5) trustees: one (1) chosen by the Board of Directors of the Norman Economic Development Coalition (NEDC); one (1) chosen by the Executive Committee of the Norman Chamber of Commerce; and three (3) nominated by the Mayor with an educational and/or employment background in banking, commercial finance, law, or accounting. Ms. Walker said in addition, two (2) Councilmembers will serve as ex-officio members and all appointments must be approved by a majority vote of Council.

Ms. Walker said all Trustees must be citizens and residents of Norman and the members of Council selected to serve as ex-officio Trustees shall be chosen at the beginning of each fiscal year in order to accommodate new Councilmembers as they take office on July 1, which also corresponds with when other Council appointments are made. The five (5) voting Trustees will serve staggered terms so that the possibility of a complete board turnover is minimal. The Chairperson of the Trustee Board is selected at the first meeting of each fiscal year by the Trustees and the City Clerk

will serve as the Secretary of the Trustees, ensuring the meeting minutes and other trust related documents are maintained in similar fashion to other City of Norman records.

Ms. Walker said as a result of Committee discussions and concerns, additional language was added to ensure all trustees of NEDA would be bound by the City of Norman Ethics Policy (Article VII, Section 12 of the Trust), Trustees appointed by Council; therefore, Council would need five (5) votes to remove any member of NEDA and eminent domain cannot be exercised without a majority vote of City Council.

Ms. Walker said NEDA will be required to follow the Open Meetings Act and Open Records Act, as well as the Public Competitive Bidding Act for construction, labor, equipment, material, or repairs. In addition, NEDA will have to file annual financial reports and audits with both the City of Norman and with the State Auditor's office and NEDA will be unable to issue debt or enter into financial obligations for real or personal property without 2/3 approval of City Council.

If Council chooses to move forward with NEDA, the next steps would include:

- Council consideration and approval of a resolution authorizing the creation of the Trust and accepting beneficial interest of the Trust
- Select Trustees
- Execute Trust Documents
- Record Trust Documents, i.e., file with the County, file creation documents with Secretary of State, and file notice of creation with the State auditor

Councilmember Kovach asked how NEDA would be used as an economic development tool and Ms. Walker said an Economic Development Trust would operate as a Board, and consider requests for any type of economic development incentive(s). She said an example would be if a business would like to locate to Norman but wanted some incentive for the land and/or infrastructure, NEDA can negotiate that particular deal. Ms. Walker said a funding source is not currently dedicated for economic development; therefore, if the aforementioned scenario were to occur, NEDA would bring a proposal for issuing debt to Council for consideration and approval. Councilmember Ezzell provided an example from the City of Broken Bow stating that the Broken Bow Economic Development Authority was set up to facilitate the arrangement of a \$185 million manufacturing plant. He said the Brown Bow Authority constructed and owned the facility, putting parameters on employment figures such as number of people to be hired, including the salaries and benefits in exchange for a long-term lease of the facility. Councilmember Ezzell felt NEDA would give the Norman Economic Development Coalition (NEDC) another economic tool in which to put together transactions on a project-by-project basis.

Mayor Rosenthal asked what the NEDA Trust would do that the County Trust Authority does not already do and Councilmember Ezzell said basically NEDA would give the City the ability to participate with the County in the project. Councilmember Ezzell said he was not sure the County Trust indenture is exactly the same as the proposed City's Trust indenture, but the types of transaction(s) will be similar; therefore, the City and County could partner in a project. He felt the reality of economic development for this area will be the partnerships, whether with the County or other entities, depending on the projects.

Mr. Anthony Francisco, Director of Finance, said it would be to Norman's benefit to have NEDA in the case where the jurisdiction(s) are within the County, for instance where Norman and Moore might be competing for the same project. He said another reason/example to have an Authority separate from the City is in a situation where the Authority issued a particular debt to a manufacturing plant, but if the manufacturing plant goes out of business the City would not be legally responsible, instead the Authority would be liable. Councilmember Spaulding asked for an explanation on how and why the Authority would be obligated rather than the City and Councilmember Ezzell said typically a lender has secure ties on a specific piece of property within a normal mortgage transaction; therefore, the lender/bond holder would have the right to foreclose on a manufacturing plant/facility if they go out of business just like any other financial institution that holds a debt obligation. Councilmember Ezzell said NEDA is a separate legal entity and unless the City was to also pledge or give security the City would not be obligated. He said that the debt/bond holders can also look at guarantees from the company/manufacturing plant as well, but the debt/bond holders would not have any recourse to come back to the City to satisfy the debt.

Councilmember Gallagher asked where in the by-laws it stated that the City would not be responsible for the debt(s) in situations where the companies go out of business after the Authority entered into an incentive agreement with them and Councilmember Ezzell said there are no documents that will state such, that state law references public trusts. Mr. Jeff Bryant, City Attorney, said there are many layers to public trusts, the City can be a partner of the trust, but if the City does not securitize a loan then the City is not responsible should the project collapse after the public trust securitized the loan. He said occasionally, in an effort to get financing, prospective business(s) may ask the City to pledge their full faith and credit in order to move the project forward. However, the Council will have total control and always have the final say as to whether any City revenues or full faith in credit will be pledged on any project.

Mr. Francisco felt it was important to understand that any NEDA proposal coming forward for Council consideration could be different for any individual project and encouraged Council to be as independent as possible understanding that the more the City is tied to the Trust Authority – the more the City will be responsible for project(s). Mr. Francisco

said the City Charter was recently changed for this very reason, so that the City would be more independent from the Norman Hospital Authority. Councilmember Ezzell said the reason the Council trustees are ex-officio, or non-voting members, is exactly what Mr. Francisco has described. He said a public trust is created in most cities/communities with a panel/board of people who have a unique set of skills and expertise to assist with economic development projects and are the initial decision-makers whether the opportunity is good or bad. Councilmember Ezzell said if there is no dedicated revenue stream and/or no money "put on a shelf" for the project, then the project has to come back to Council to create the revenue stream or otherwise facilitate how the design has to be worked out in the project and Council will ultimately have the final approval which has been determined to be the level of oversight desired. He said as the Trust Authority is designed, unless Council takes some exceptional action to otherwise obligate the City, the City will not be at risk for debt, loss, or liability. Mayor Rosenthal felt the trade-off is the accountability issue which is that Council is ultimately accountable to the voters.

Mayor Rosenthal said she is concerned with the broad coverage in Article IV, stating an entity is being established that competes with existing organizations of the City as follows:

- 1(a) "...promote and develop water, sewer, electric, solid waste..." which is already managed by the Norman Utilities Authority (NUA);
- 1(d) "...promote, finance, and develop hospitals, ambulances, and other health care facilities..." which is already managed by Norman Hospital Authority (NHA);
- 1(g) develop, finance, and promote recreational, sports, tourism..." which is already managed by the Norman Municipal Authority (NMA); and
- 2 "...promote the development of adequate housing...", does the City really intend on setting up an authority to compete with the private sector in terms of the housing market?

Mayor Rosenthal would be more comfortable with NEDA being more focused specifically on economic development and asked Staff how the potential conflicts are being worked out. Mr. Bryant said any project would have to be approved by Council and the proposed language is standard language through statute(s) that ensures the trust's hands in any project that they may have to branch out. Councilmember Ezzell said Staff basically took a compilation of public trust authority documents throughout the state and region as a starting template and then began to construct a trust indenture for Norman. He felt the reality is a public trust authority will not operate independently to set up a new water utility, hospital, etc., unless Council approves the action, therefore he did not feel the duplication was significant. Councilmember Ezzell said he would not be opposed to taking out the language in Article IV, 3(a) and (b) because housing would not ever be on any project. Councilmember Ezzell felt there could be unforeseen consequences for red-lining and/or taking out some of the trust indenture language because Council may never know what may be cut-out for the authority to use in the future. Councilmember Quinn agreed and felt the purpose of creating NEDA is so that potential business(s) trying to come to Norman do not run into "red tape," while at the same time Council's hands do not get tied when trying to acquire potential business(s) to locate to Norman. He said the more the trust indenture is narrowed, the less broad that particular appealing piece becomes, which he felt would only put the City back in the same position. Councilmember Quinn felt the proposed NEDA is modeled off of other cities and has been a successful tool. Councilmember Griffith agreed and felt the language needed to be as broad as possible because the limitations may restrict development and/or opportunities yet unforeseen. Mayor Rosenthal said she is concerned the same issues will occur if NEDA coverage is too broad. She said there could be future situations where NEDA may establish an independent revenue stream, such as a hospital utility, and may not need Council approval.

Councilmember Spaulding asked if there are scenarios where a permanent dedicated financing can be created or is it generally done project by project. Councilmember Ezzell said it typically is done according to project, but there are economic development authorities where citizens have elected to give the economic development authority, for example, a dedicated sales tax revenue which can be accumulated and used to finance certain activities. He said in that type of scenario, citizens would have elected to fund the economic development authority; not the Council. Councilmember Ezzell reminded Council that the proposed NEDA is not etched in stone and future amendments, additions, and/or deletions to NEDA can be considered and approved by Council in order to assure the scope of the trust is neither too broad nor too narrow for specific and/or changing issues. He felt those issues would need to be responded to as they occur and Council cannot, in a predictive fashion, look at the next 30 years of exactly how NEDA can and will be used.

Councilmember Kovach asked if any of the current trust(s) have language similar to the proposed NEDA, i.e., that could in theory have a conflict but in fact do not., and Mr. Bryant said that Norman Regional Hospital Authority Trust does have similar language and powers. Mr. Francisco said the Norman Municipal Authority (NMA) also has similar language and powers.

Councilmember Dillingham asked how, during discussions in recent BCAC meetings, the BCAC and Norman business leaders envisioned eminent domain operating under NEDA and Councilmember Ezzell said that any eminent domain acquired prior to a project would have to come before Council just as it does currently. He said it was a concern during discussions and that is why the proposed trust indenture states that Council would have to approve eminent domain, not the public trust authority. Councilmember Spaulding said he was concerned about the potential size and scope of the proposed NEDA and Councilmember Kovach said Council would need to consider each project on its merits. Councilmember Kovach said he viewed the proposed public trust as a means of setting up opportunities for the Council to review and consider.

Councilmember Gallagher felt there would be future conflicts regarding eminent domain and would like eminent domain to require seven (7) affirmative votes.

Mayor Rosenthal asked if Council would like to move forward with a public hearing or study session and Council felt a future Town Hall Meeting should be scheduled.

Items submitted for the record

1. Memorandum dated March 22, 2012, from Jeff H. Bryant, City Attorney, to Honorable Mayor and Council Members
2. Draft Trust Indenture Creating the Norman Economic Development Authority
3. PowerPoint presentation entitled, "Norman Economic Development Authority," Council Conference dated May 27, 2012

Item 2, being:

CONSIDERATION OF ADJOURNING INTO AN EXECUTIVE SESSION AS AUTHORIZED BY OKLAHOMA STATUTES TITLE 25 § 307(B)(3) IN ORDER TO DISCUSS CLEVELAND COUNTY DISTRICT COURT CASE NO. CJ-2010-406 L, CENTRAL OKLAHOMA MASTER CONSERVANCY DISTRICT VS. THE CITY OF NORMAN; WORKERS COMPENSATION COURT CASE NO. WCC-2010-09516Y, KEVIN ALDRIDGE VS. THE CITY OF NORMAN; AND WORKERS COMPENSATION COURT CASE NOS. WCC-2009-08463R, WCC-2009-08465A, WCC-2009-08466A, AND WCC-2009-08464Y, RICK BLALOCK VS. THE CITY OF NORMAN.

Councilmember Quinn moved that the Special Session be adjourned out of and an Executive Session be convened into as authorized by Oklahoma Statutes Title 25 § 307(B)(3) to discuss Cleveland County District Court Case No. CJ-2010-406 L, Central Oklahoma Master Conservancy District vs. the City of Norman; Workers Compensation Court Case No. WCC-2010-09516Y, Kevin Aldridge vs. the City of Norman; and Workers Compensation Court Case Nos. WCC-2009-08463R, WCC-2009-08465A, WCC-2009-08466A, and WCC-2009-08464Y, Rick Blalock vs. the City of Norman, which motion was duly seconded by Councilmember Spaulding; and the question being upon adjourning out of the Special Session and convening into an Executive Session in order to discuss Cleveland County District Court Case No. CJ-2010-406 L, Central Oklahoma Master Conservancy District vs. the City of Norman; Workers Compensation Court Case No. WCC-2010-09516Y, Kevin Aldridge vs. the City of Norman; and Workers Compensation Court Case Nos. WCC-2009-08463R, WCC-2009-08465A, WCC-2009-08466A, and WCC-2009-08464Y, Rick Blalock vs. the City of Norman, the vote was taken with the following result:

PRESENT: Councilmembers Dillingham, Ezzell, Gallagher, Griffith, Kovach, Lockett, Spaulding, Quinn, Mayor Rosenthal

ABSENT: None

The Mayor declared the motion carried and the Special Session adjourned out of; and an Executive Session was convened into to discuss Cleveland County District Court Case No. CJ-2010-406 L, Central Oklahoma Master Conservancy District vs. the City of Norman; Workers Compensation Court Case No. WCC-2010-09516Y, Kevin Aldridge vs. the City of Norman; and Workers Compensation Court Case Nos. WCC-2009-08463R, WCC-2009-08465A, WCC-2009-08466A, and WCC-2009-08464Y, Rick Blalock vs. the City of Norman.

The City Council adjourned into Executive Session at 5:55 p.m. Mr. Steve Lewis, City Manager, Mr. Jeff Bryant, City Attorney, Ms. Jeanne Snider, Assistant City Attorney, Mr. Rick Knighton, Assistant City Attorney, and Ms. Kathryn Walker, Assistant City Attorney, were in attendance at the Executive Session.

The Mayor said the Cleveland County District Court Case No. CJ-2010-406 L, Central Oklahoma Master Conservancy District vs. the City of Norman was discussed in Executive Session. No action was taken and no votes were cast.

RECESS

Councilmember Quinn moved that the meeting be recessed and reconvened after the regular City Council meeting, which motion was duly seconded by Councilmember Griffith; and the question being upon recessing the meeting and the subsequent reconvening, a vote was taken with the following result:

YEAS: Councilmembers Dillingham, Ezzell, Gallagher, Griffith, Kovach, Lockett, Spaulding, Quinn, Mayor Rosenthal

NAYES: None

The Mayor declared the motion carried and the meeting was recessed at 6:23 p.m. to be reconvened after the regular City Council meeting.

* * * * *

Mayor Rosenthal acknowledged return to the Special Session. Councilmembers Gallagher and Kovach left the meeting.

Item 2, continued:

\
Thereupon, Councilmember Dillingham moved that the Special Session be reconvened, which motion was duly seconded by Councilmember Quinn; and the question being upon reconvening the Special Session, a vote was taken with the following result:

YEAS: Councilmembers Dillingham, Ezzell, Griffith, Lockett, Spaulding, Quinn, Mayor Rosenthal

NAYES: None

The Mayor declared the motion carried and the Special Session was reconvened at 9:07 p.m.

* * * * *

Thereupon, Councilmember Quinn moved that the Special Session be adjourned out of and an Executive Session be convened into as authorized by Oklahoma Statutes Title 25 § 307(B)(3) to discuss Workers Compensation Court Case No. WCC-2010-09516Y, Kevin Aldridge vs. the City of Norman, and Workers Compensation Court Case Nos. WCC-2009-08463R, WCC-2009-08465A, WCC-2009-08466A, and WCC-2009-08464Y, Rick Blalock vs. the City of Norman, which motion was duly seconded by Councilmember Spaulding; and the question being upon adjourning out of the Special Session and convening into an Executive Session in order to discuss Workers Compensation Court Case No. WCC-2010-09516Y, Kevin Aldridge vs. the City of Norman, and Workers Compensation Court Case Nos. WCC-2009-08463R, WCC-2009-08465A, WCC-2009-08466A, and WCC 2009-08464Y, Rick Blalock vs. the City of Norman, the subsequent vote was taken with the following result:

PRESENT: Councilmembers Dillingham, Ezzell, Griffith, Lockett, Spaulding, Quinn, Mayor Rosenthal

ABSENT: None

The Mayor declared the motion carried and the Special Session adjourned out of; and an Executive Session was convened into to discuss Workers Compensation Court Case No. WCC-2010-09516Y, Kevin Aldridge vs. the City of Norman, and Workers Compensation Court Case Nos. WCC-2009-08463R, WCC-2009-08465A, WCC-2009-08466A, and WCC-2009-08464Y, Rick Blalock vs. the City of Norman.

The City Council adjourned into Executive Session at 9:10 p.m. Mr. Steve Lewis, City Manager, and Mr. Jeff Bryant, City Attorney, were in attendance at the Executive Session.

The Mayor said Workers Compensation Court Case No. WCC-2010-09516Y, Kevin Aldridge vs. the City of Norman, and Workers Compensation Court Case Nos. WCC-2009-08463R, WCC-2009-08465A, WCC-2009-08466A, and WCC-2009-08464Y, Rick Blalock vs. the City of Norman were discussed in Executive Session. No action was taken and no votes were cast.

* * * * *

Item 2, continued:

Thereupon, Councilmember Quinn moved that Executive Session be adjourned out of and the Special Session be reconvened, which motion was duly seconded by Councilmember Spaulding; and the question being upon adjourning out of Executive Session and upon the subsequent reconvening, a vote was taken with the following result:

YEAS: Councilmembers Dillingham, Ezzell, Griffith,
Lockett, Spaulding, Quinn, Mayor Rosenthal

NAYES: None

The Mayor declared the motion carried and Executive Session adjourned out of; and the Special Session was reconvened at 9:35 p.m.

* * * * *

Item 3, being:

ADJOURNMENT

There being no further business, Councilmember Quinn moved that the meeting be adjourned, which motion was duly seconded by Councilmember Spaulding; and the question being upon adjournment of the meeting, a vote was taken with the following result:

YEAS: Councilmembers Dillingham, Ezzell, Griffith,
Lockett, Spaulding, Quinn, Mayor Rosenthal

NAYES: None

The Mayor declared the motion carried and the meeting was adjourned at 9:36 p.m.

ATTEST:

City Clerk

Mayor