CITY COUNCIL SPECIAL SESSION MINUTES

November 12, 2013

The City Council of the City of Norman, Cleveland County, State of Oklahoma, met in Special Session at 5:05 p.m. in the Municipal Building Conference Room on the 12th day of November, 2013, 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 Castleberry, Griffith, Heiple, Holman, Jungman, Kovach, Miller, Williams, Mayor Rosenthal
ABSENT:	None

Item 1, being:

CONSIDERATION OF ADJOURNING INTO AN EXECUTIVE SESSION AS AUTHORIZED BY OKLAHOMA STATUTES TITLE 25 §307(B)(4) TO DISCUSS PENDING LITIGATION IN THE WORKERS' COMPENSATION CASES OF MARVIN BARTON VS. THE CITY OF NORMAN, WCC-2012-12945A AND WCC-2013-07113A.

Councilmember Kovach moved that the Special Session be adjourned out of and an Executive Session be convened in order to discuss pending litigation in the Workers' Compensation Cases of Marvin Barton vs. the City of Norman, WCC-2012-12945A and WCC-2013-07113A, which motion was duly seconded by Councilmember Holman; and the question being upon adjourning out of the Special Session and convening an Executive Session, a vote was taken with the following result:

YEAS:	Councilmembers Castleberry, Griffith, Heiple, Holman, Jungman, Kovach, Miller, Williams, Mayor Rosenthal
NAYES:	None

The Mayor declared the motion carried and the Special Session adjourned out of; and an Executive Session was convened in order to discuss pending litigation in the Workers' Compensation Cases of Marvin Barton vs. the City of Norman, WCC-2012-12945A and WCC-2013-07113A.

The City Council adjourned into Executive Session at 5:32 p.m. Mr. Steve Lewis, City Manager; Mr. Jeff Bryant, City Attorney; and Ms. Jeanne Snider, Assistant City Attorney, were in attendance at the Executive Session.

Mayor Rosenthal acknowledged return to Open Session.

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

YEAS:	Councilmembers Castleberry, Griffith, Heiple, Holman, Jungman, Kovach, Miller, Williams, Mayor Rosenthal
NAYES:	None

The Mayor declared the motion carried and the Special Session was reconvened at 5:55 p.m.

The Mayor said pending litigation in the Workers' Compensation Cases of Marvin Barton vs. the City of Norman, WCC- 2012-12945A and WCC 2013-07113A were discussed in Executive Session. No action was taken and no votes were cast.

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Item 2, being:

DISCUSSION OF CITY COUNCIL DEVELOPMENT APPLICATION POSTPONEMENT PRACTICES.

Ms. Susan Connors, Director of Planning and Community Development, said Staff was asked by the Community Planning and Transportation Committee (CPTC) to prepare a draft resolution regarding a policy for the postponement of development cases when they are before City Council.

Ms. Connors said at the September meeting Staff provided information on how other cities handle postponements and a summary of applications in Norman that have been postponed at Planning Commission and City Council since 2009, and identified reasons to consider when determining when a postponement was appropriate.

Item 2, continued:

At the October meeting Staff presented a draft policy and after further discussion, the Committee requested language be added requiring any postponement requested by the applicant be done so by 5:00 p.m. on the Friday before the City Council meeting except that City Council may accept a postponement request after that time in the case of an emergency. Once, requested, a postponement cannot be withdrawn by the applicant.

Ms. Connors highlighted a draft Resolution which incorporated the information presented by Staff as well as the changes requested by the CPTC Committee. She said the draft Resolution includes the following provisions:

- An applicant for a real estate development application before Council seeking a zoning amendment, LUP amendment, or preliminary plat approval may postpone that application as a matter of right no more than two (2) times. Each request must be in writing and the total postponement period cannot exceed six (6) months;
- Any postponement requested by the applicant must be requested by 5:00 p.m. on the Friday before the City Council meeting except that Council may accept a postponement request after that time in the case of an emergency. Once requested, the postponement cannot be withdrawn by the applicant;
- If an application is not heard after the second postponement at Council, the application must start over; except that Council may postpone an application to a date specific with or without the consent of the applicant after considering the factors below. An affirmative vote of at least five (5) Councilmembers shall be required to grant a postponement. The record shall indicate any stipulations or conditions placed on the postponement;
    - Substantive changes in the project or the area of the project after the PC hearing;
    - Major scheduling conflicts for the applicant or the applicant's representative or agent with the date of hearing;
    - Missing or incomplete information that does not allow a full review of the project;
    - Whether a City-sponsored study may give an applicant additional guidance on whether a pending application is consistent with overall Council planning objectives;
    - Neighborhood input or concerns; and
    - Other causes for the postponement found to be reasonable by five (5) affirmative votes of Council.
- If an item subject to public hearing is continued or otherwise carried over to a subsequent date and the public hearing has been opened, the public hearing shall not be deemed concluded until the date on which the hearing is formally closed. If a continuance provides the date on which the matter will be heard, re-publication of notice is not required. If a continuance does not specify a date on which the matter will be heard, public notice, as applicable, shall be provided prior to the date on which the matter is heard; and
- Should an applicant fail to move an application forward to the next step in the development process for a period of 12 months, it shall be considered withdrawn unless the applicant provides written reasons why the application has remained inactive, including a schedule when the application will again be active.

Councilmember Jungman thought at the October CPTC meeting, it had been clarified that a postponement by right cannot be created without an ordinance and asked whether a resolution can create a legal right. Mr. Jeff Bryant, City Attorney, said if Council passes a resolution on how to handle particular applications then he felt Staff would certainly abide by the resolution.

Councilmember Castleberry said due to the high density discussions the Risser Project was postponed several times and Ms. Connors said each of the postponements were requested by the applicant for reason of "on-going discussions regarding high density". She said the postponements were then granted by Council.

Mayor Rosenthal stated another applicant, Elsey Brothers, opted not to postpone their application. Councilmember Kovach said he recalled the meeting and said Council requested the Elsey Brothers postpone because the high density ordinance was not complete. He said it is not good policy to make a policy based on an aberration that does not occur very often. According to history, there have been only two applicants who had requested postponements from 2009 to present. Councilmember Kovach felt there may be a lot of unintended consequences if this policy is adopted and Mayor Rosenthal said those unintended consequences would only be the anticipated exceptions rather than the rule; the rule would be that this policy would not affect most applications.

Councilmember Williams felt a postponement policy will take control out of Council's hands and to try to repair or fix an issue that is not broken which is not a good practice. Councilmember Jungman suggested this policy would simply be taking reasonable actions on lessons learned. He said the City is in the same exact place it was last year; there are development proposals that would like to come forward but are not making applications. Councilmember Jungman said the City has rules that are being worked on, just not at present; therefore, would the City do the same as last year and keep postponing an application over and over should the application be for a high density development? He felt the proposed policy and draft resolution is not overly burdensome to either party and is very generous in creating a right that does not currently exist.

Councilmember Miller said she understands not wanting to make another rule/policy for an issue that does not appear to be a problem; however, she felt what happened with the Risser Project could be setting a precedent

regarding postponement after postponement as a way to wear Council down. Councilmember Miller felt a policy would also protect the public.

Councilmember Kovach said Council should take responsibility for asking applicants to wait until high density was completed. He felt applicants going through the process cannot be handicapped by Council for unforeseen circumstances. He said postponements are not a problem at this time and felt the proposed policy should wait until such time that this issue becomes a problem.

Mayor Rosenthal said to postpone this until a problem regarding postponements occurred would be changing the rules during the process and would allow Council to pick and choose applications that would not be granted and felt doing so could be arbitrary and capricious. Councilmember Kovach felt the process would not be "stopped" until after the second postponement and if a postponement for a particular project becomes a problem then Council could use that as data regarding a policy for future consideration. He felt two applications requesting a postponement from 2009 to present is not a very good percentage to consider this a problem.

Councilmember Williams said if the continued postponements for the Risser Project would have been a problem Council would have rejected their requests for postponement(s). He felt if a project were to come forward abusing postponement requests then Council should reject the postponement. Mayor Rosenthal felt the proposed policy will change a long-standing practice modestly.

Councilmember Castleberry felt there is not a problem with postponements and felt a policy would be premature. Councilmember Holman said he feels more strongly about providing the public notice in advance.

Councilmember Kovach suggested adopting a more simple resolution that says Council will consider each postponement on its own merits. Councilmember Jungman felt a policy would address constituents concerns. Councilmember Griffith said he would support either way and Councilmember Heiple said a policy would put expectations in line with reality, helping with consistency.

Councilmember Kovach said "by right" means Council would be required to vote one way and said Council cannot violate state statute promising a vote. He wondered whether doing so would violate the Open Meeting Act. Mayor Rosenthal suggested Councilmembers Kovach and Jungman work with Mr. Bryant on modifying language.

Items submitted for the record

1. Memorandum dated November 12, 2013, to Mayor and Members of City Council, from Susan Connors, Director of Planning and Community Development, with attached Table 1 Applicant Requested Postponements and Draft Resolution
2. Pertinent minutes dated October 28, 2013, from Community Planning and Transportation Committee

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Item 3, being:

ADJOURNMENT

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

YEAS:	Councilmembers Castleberry, Griffith, Heiple, Holman, Jungman, Kovach, Miller, Williams, Mayor Rosenthal
NAYES:	None

The Mayor declared the motion carried and the meeting was adjourned at 6:27 p.m.

ATTEST:

City Clerk

Mayor