



City of Clay
P.O. Box 345
Clay, Al 35048-0345

CITY COUNCIL MINUTES
CALLED CITY COUNCIL MEETING
June 28, 2010

The City Council of the City of Clay, Alabama met in a called meeting on Monday, June 28, 2010, at 6:00 p.m. in the Mayor's Conference Room at City Hall with Mayor Ed McGuffie presiding and City Clerk Bobby Christmas serving as recorder.

Mayor McGuffie called the meeting to order and City Clerk Bobby Christmas opened in prayer.

Councilman Kevin Small led everyone in reciting the Pledge of Allegiance to the flag of the United States.

Roll call of those present was answered by the following:

Councilman L. B. Feemster

Councilwoman Becky Johnson

Councilman Charles Webster

Councilwoman Jackie Hambrick

Councilman Kevin Small

Mayor Ed McGuffie

Absent. None

Mayor McGuffie announced there were no pre-council minutes to approve.

Mayor McGuffie announced there were no regular council minutes to be approved.

Mayor McGuffie called for a motion to approve tonight's Meeting Agenda. Councilman Small made a motion to approve the City Council agenda which was seconded by Councilman Feemster and approved by a unanimous voice vote.

Mayor McGuffie announced there was no Consent Agenda for tonight.

Under **Scheduled Public Comments**, Mayor McGuffie announced there were none.

Under **Reports from Standing Committees** Mayor McGuffie announced there were no reports.

Under **Reading of Petitions, Applications, Complaints, Appeals, Communications, etc.** Mayor McGuffie announced there was nothing to report.

Under the **City Clerk's Report**, Mayor McGuffie announced there was no report.

Under **Resolutions, Ordinances, Orders and Other Business** Mayor McGuffie announced there were none.



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Under **Public Comments**, Mayor McGuffie announced that there were none.

Under **Mayor and Council Comments**, Mayor McGuffie recognized Councilman Feemster. Councilman Feemster explained that in February 2009 the City Council adopted a policy that everything over \$5,000 would be bid out. He explained that there was a situation at the ballpark whereby the storm water problems needed to be stabilized and we did not need to wait. He stated that they were at the state where some of the hills had been prepared and ready to be stabilized. Councilman Feemster explained that seed, hay, fertilizer, etc. needed to be purchased as soon as possible to begin the stabilization process.

Councilman Feemster explained that Mr. Hunter Bruce, who had been hired to advise us on this work, had located two providers for the materials needed for this project. He stated that Pennington Seed and Supply had quoted a price of \$18,948.50 to supply some of these materials and Hanes GEO Components had quoted a price of \$4,133.00 for the rest of the materials. Councilman Feemster stated he expressed concern to Mr. Bruce that the Pennington Seed quote was over the state bid limit. Mr. Bruce suggested moving some of the materials from Pennington Seed to Hanes to reduce the quotes below the state bid level which they did. After these changes the Pennington Seed quote was \$14,999.00 and the Hanes quote was \$9,834.00. Copies of the original and revised quotes were given to the Mayor, Council members and City Attorney for review. It was pointed out that there were differences in the amount of materials from the original quote to the revised quote. Councilman Webster expressed concern that some of the costs were cut and some of the pounds per acre were reduced. The revised quote from Pennington was \$14,999.00 and Hanes was \$9,834.00. Councilman Webster asks if these materials were being bought through SpreadRite and Councilman Feemster responded no.

Councilman Feemster stated he had concerns about shifting these quotes around to get under the state bid level and discussed it with Mr. Russell Steen, City Attorney. Mr. Steen suggested getting in touch with the Legal Department of the Alabama League of Municipalities and get their advice. Councilman Feemster stated he talked to Ms. Lori Lein, Attorney with the Alabama League of Municipalities who said that, based on the situation, she felt we had a valid reason for doing this but she did not bless it.

Councilman Feemster stated that, with all the details of this situation stated above, there was still the requirement of the \$5,000 bid policy that the City Council had adopted. He questioned if the Council would be willing to temporarily suspend this \$5,000 requirement for this one time in order to move forward with this project.

Councilwoman Johnson asks if this would be the end of this project. Councilman Feemster stated that this may not necessarily be the end of the stabilization but Mr. Bruce told him this would be 100% of the materials needed from Pennington.

Councilwoman Hambrick asks if this stabilization would stop the runoff which Councilman Feemster stated it would stop the silt in the runoff.



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Councilwoman Hambrick stated that (1) the Council had voted to allow Mr. Bruce the authority to decide what needs to be done and (2) if it is not done we will be asking for more money due to legal situations and (3) this is a time sensitive situation.

Councilman Small pointed out that this situation was caused because no one was held accountable in the past. He questioned if we were getting back into a situation where we would spend a lot of money and still cannot hold anybody accountable if it does not work. Mayor McGuffie responded that he did not see a way to hold anyone accountable because of unforeseen weather and there would probably be patching that would need to be done after the project is complete.

Councilman Webster questioned who else sells the materials needed for this project which Councilman Feemster stated he did not know. Councilman Webster asks if anyone had checked for anyone else that sells this material.

Councilwoman Johnson ask who Hunter Bruce was and Councilman Feemster stated he owned SpreadRite and had done this type work for Grand River and Bass Pro Shop. Councilwoman Johnson asks if Hunter Bruce was an Engineer and Councilman Feemster replied that he was an Engineer and this type work was his specialty.

Councilwoman Johnson questioned how much Mr. Bruce was getting paid and Councilman Feemster responded \$95 per hour. Councilman Small pointed out that the Council approved the \$95 per hour not to exceed 40 hours.

Mr. Steen stated that he saw the necessity in it and the defense for it but, like Ms. Lein stated, he did not like splitting the bid. Councilman Feemster agreed but stated that bids were being split throughout this project the way we were going about it.

Councilman Small questioned if it could be bid out and the bid be awarded at the same meeting as the bid openings. Mr. Steen stated it could be written into the bid that this bid would be awarded on the same night it is open and whoever is awarded the bid would be expected to perform the following day. Councilman Feemster stated it would be impossible because of the time it would take to load the materials. Councilwoman Johnson asks if we would get the materials tomorrow. Councilman Feemster responded that we would receive the materials tomorrow because they are in the process of loading it as we meet.

City Attorney Russ Steen pointed out that he was not the legislative part of this process.

Councilman Feemster stated that Ms. Lori Lein told him that the alternative would be to go to an expedited bid process and give three days and have a special called meeting to open the bids and go from there. Councilman Feemster stated the bid specs had to be written to be broad enough so anybody that wants to bid on it could.

Councilman Small stated he did not think the price would change that much but he was concerned with the process. Also, he stated his concern with all the bids that have been put out by the city was how few vendors bid.



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Councilman Feemster stated that the problem now with bidding it out was the fact that Pennington Seed and Hanes quotes are on the table and public knowledge. He stated he was okay either way but if it came a gulley washer we could have some big problems with the water runoff and possible legal actions from property owners downstream. He stated he wanted everyone to be comfortable with the way this was handled because this is looking like we are trying to get around the bid law.

Mr. Steen stated that the need for it to happen quickly could be very easily defended but that was the legal aspect of it. He stated this situation could be declared an emergency and could take action based on that.

Councilwoman Hambrick questioned how much it would take and Councilwoman Johnson stated another bid would have been good. Councilman Feemster stated this was not the big issue. He stated the big issue to him was if they were circumventing the bid law.

Councilman Webster questioned how long it would take to get it bid for which the Mayor responded the specs would have to be written up first. Councilman Webster questioned how long it would be before the other slopes will be ready. Mayor McGuffie stated they had started on it. Councilman Webster questioned why the paperwork wasn't done earlier.

Councilman Small restated his concern that this was not about the price but the process. He stated if we go ahead with this that it needs to be made very clear that this is an emergency and an exception because we should not make a habit of doing this. Councilman Small asks if this expense would come out of the AmFund Account and the Mayor replied yes. Councilman Feemster stated that all the money in the AmFund Account designated for the Park had been spent so it would come from other designated funds in the AmFund Account.

Councilwoman Johnson questioned the Mayor if he was comfortable with splitting up the quotes. Mayor McGuffie explained that each Council member had different areas of responsibility that he depended on each of you to tell him your suggestions for your area. He stated this had been put off because he did not want to spend any more money than we had to. He suggested going ahead and spend the money to shore up this problem the way it should be.

Councilman Feemster asks Mr. Steen to express his opinion as the City Attorney. Mr. Steen stated that he did not like the appearance of it but he did think the defense of it would be fairly easy. He stated the necessity of this situation calls for extraordinary measures. He stated that, at this point, his advice was to go ahead but have Hunter Bruce give us what is needed in the future to get bids on now.

Councilman Webster stated that Hunter Bruce should have known that this was needed at this time. Councilman Feemster stated that Hunter Bruce did not know about this a couple of weeks ago because they were planning on bidding the whole project out at that time. Councilman Webster responded that it had been stated that the hydro-seeding should be done as soon as the slopes are ready and some of the slopes have been ready for a couple of weeks.



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Councilwoman Hambrick stated that there has been so much money put out to do and redo to make something out of something that wasn't meant for a ballpark. She stated it was an absolutely gorgeous ballpark but has cost so much.

Councilman Feemster stated that this came to pass because everybody involved agreed the city did not have the personnel on staff or the equipment to do the work. He stated they decided to put the work out for bid until Tommy Frye was hired to operate the heavy equipment. Mr. Frye stated he could do the work with the equipment we had. At that time everything changed.

Councilman Small questioned how the pre-construction meeting came about without the Council voting to put it out to bid. Councilman Feemster stated this was a pre-bid conference.

Councilman Feemster stated it could be bid if that was what the council wanted to do. Councilman Webster stated he was for it but would feel better if it were bid.

Councilman Feemster made a motion to put out for bid the purchase of materials needed for stabilizing the slopes at the ballpark. Councilman Webster seconded the motion.

That the Mayor called for a roll call vote with the results as follows:

Yeas: Council members Feemster, Johnson, Small and Webster

Nays: Councilwoman Hambrick and Mayor McGuffie

Mayor McGuffie stated the bids would be put out tomorrow to be returned by Friday and opened and awarded on Tuesday.

Councilman Small made a motion to amend the previous motion to award the bid following the opening of the bids in the regular City Council meeting on Tuesday July 6, 2010. Councilwoman Johnson seconded the motion which was approved by a unanimous voice vote.

Councilman Small made a motion to adjourn which was seconded by Councilwoman Johnson.

The Called City Council meeting adjourned at 7:15 p.m.

Respectfully Submitted,

Bobby Christmas
City Clerk / Treasurer