

**MINUTES OF THE
REGULAR COUNCIL MEETING
CITY OF AUSTELL
MONDAY, AUGUST 1, 2011**

Present: Mayor Joe Jerkins
Kirsten Anderson
Trudie Causey
Randy Green
Virginia Reagan
Martin Standard
Scott Thomas

Absent: T. Williams

The regular meeting of the Mayor and the City Council was held on Monday, August 1, 2011 at 7:00 P.M. at City Hall.

Also present were: Scott Kimbrough, City Attorney; Carolyn Duncan, City Clerk; Sandra Farmer, Deputy City Clerk; General Administration; Randy Bowens, Public Works Director; Jim Graham, Community Affairs Director; Bob Starrett, Police Chief.

1. CALL TO ORDER

Mayor Jerkins called the meeting to order. Dr. Robert Moore, Sr. gave the Invocation and Mayor Jerkins led the Pledge of Allegiance. Mayor Jerkins asked if any Council Member would like to add items to the Agenda. Mr. Kimbrough stated he would like to add 14A. Discussion Only: Zoning Ordinance and Grandfather Clause.

2. CONSENT AGENDA – INFORMATION AND UPDATE

(NO Action Required by Council – See Specific Department Director before Meeting.)

3. CONSENT AGENDA

- A. Approve Bills
- B. Approve Legal Bills \$3,905.00
- C. Approve Minutes of Regular Council Meeting July 11, 2011

Mr. Thomas moved to follow the recommendation of Mayor Jerkins to approve the Consent Agenda. Seconded by Ms. Reagan. Motion passed (6-0).

4. EXCEPTION TO CONSENT AGENDA

5. CITIZENS REPORT

Mayor Jerkins asked if anyone would like to speak to the Mayor and Council. No one spoke.

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**6. GAS SYSTEM REPRESENTATIVE
JOE JERKINS**

Mr. Kimbrough stated he attended the meeting and the normal business of adopting the applicable gas rate schedule for this billing period was discussed. The final annual check is due for the City of Austell.

**7. FINANCE DEPARTMENT
VIRGINIA REAGAN, CHAIRPERSON
Denise Soesbee, Director**

- A. Financial Report
- B. City Hall Changing Operating Hours

Ms. Reagan stated the City Hall will close at 4:45 P.M. effective October 1, 2011.

**8. GENERAL ADMINISTRATION
KIRSTEN ANDERSON, CHAIRPERSON
Carolyn Duncan, Director**

- A. No Report

**9. POLICE DEPARTMENT
VIRGINIA REAGAN, CHAIRPERSON
Bob Starrett, Police Chief**

- A. Police Report
- B. Code Enforcement Report

**10. FIRE DEPARTMENT
SCOTT THOMAS, CHAIRPERSON
Tim Williams, Fire Chief**

- A. Fire Report

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**11. PUBLIC WORKS DEPARTMENT
MARTIN STANDARD, CHAIRPERSON
Randy Bowens, Director**

A. Asbestos Abatement and Demolition
Hazard Mitigation Grant Program

Mr. Standard stated he would like to turn this over to Mr. Bowens. Mr. Bowens stated the Buyer Program as we call it the City and our Department submitted a Request for Proposals for Asbestos Abatement and Structure Demolition. This is for the nineteen (19) homes that we have in the mitigated program. As a result of that we had sixteen contractors who picked up packages for Request for Proposal. This is a Request for Proposal not a bid and the reason we elected to do it this way is to eliminate any form of actually having to go with the lowest bidder and go with whomever we preferred to use and whoever had the experience. Pricing is also a factor that is very important to us. The cover page 11A is the Contractors that bid on the projects and this has been broken down into two categories. Some construction companies had in-house personnel to do the inspection and the abatement portion of it and some contractors just bid on the demolition portion of it. Of those sixteen (16) contractors we actually compiled a spreadsheet for your review. It is the contractors cost associated with each individual structure. This was done in a form where the contract for Asbestos Testing Abatement is a separate contract from the demolition portion. These are the calculations we have received. We have looked over these and talked with some of the contractors and got their amounts back in and some of those, like the first eight on the first page are contractors that do both. They do the testing and the demolition. As you review the numbers at the top you will see the addresses of the homes. These are prices they have listed for each individual structure. Each individual home is a separate contract in itself. This way we award it separately or award all together depending on the cost. The second page we have the other contractors and if you look and go down to the individual columns the total on all of these is the amounts they will do for structural demolition. If you look at number nine (9) Baker Construction it is only for structural demolition on all the homes. The second column is the City's percentage of what we would have to pay of that amount. Each individual property to the right of that is the total cost to demolish that structure. What we have decided to do is to bring this to Mayor and Council for your review and we are basically narrowing down the number of contractors with various options. Depending on what we can do to lessen the amount of the demolition costs which in turn will lessen the amount the City has to pay.

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We do not necessarily have to vote on this tonight but please review and give us your recommendation. We can possibly have a Special Called Meeting to award the contract to the individual contractor.

Mr. Standard asked Mr. Bowens on the spreadsheet you have some of these highlighted. Mr. Bowens stated, yes, we do because those were based on the prices and the ability to perform the job and they had in-house inspectors for Asbestos Abatement and contractors to do demolition work. You will see a lot of changes in it and they vary because some of the ones we thought were capable of doing the job and the ones we had highlighted could not do the job and there were a lot of factors to consider. Most of these contractors that came in expected to get all nineteen houses. We are in discussion with some of the contractors now to find out if they are willing to split up some of the houses. Some of them have lower pricing and are better equipped to do the work than others. We would like to minimize the amount for the homes that would have one contractor. Some of which are contractors who went way over our budget. We have a maximum on what we have plugged in to the HMGP Program for demolition and we have a set number in there for asbestos testing and abatement. Those were the packets we gave and once we got the calculations back we looked at which ones were within the budget line items. The ones that are highlighted are the ones we felt like are under budget and able to do the job. I asked Treasure Rogers to come down here for any questions you may have. We wanted to present this just for the Mayor and Council to view and we will come back with some options and suggestions. Ms. Causey asked Mr. Bowens if any of these contractors owed the City of Austell any taxes. Mr. Bowens stated to his knowledge I have been told there is one person that owes taxes. We cannot alienate him from the bidding process. Ms. Anderson stated she had a question, on the Asbestos Abatement is there any reason there is so much difference in some of these prices, like two-hundred sixty per house compared to ten thousand dollars per house. Mr. Bowens stated one of the problems we had in getting a definite number on the testing and abatement was that most of the testing companies will not go out there and pull samples and then send to the lab because they insure their costs of actually doing that and it would be out of pocket costs for them. They basically have to go into a structure and look at it and see what possibly could be asbestos material and do an estimate on that and then at that point and time let that reflect on the amount they will remove. Some of them bid kind of high and some bid low. As I was talking to some of the contractors who were actually filling out the request for proposal that most of these houses have already been stripped. Most of them do not have drywall or insulation or floor covering.

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It is a very small amount if any on the structure that has a roof system that hasn't been changed in twenty, thirty or forty years. It doesn't have to be four sided brick it can be siding on there so there would be limited testing they would have to do. Some contractors we talked to their prices on their test samples and what lab they used would vary. We could not get a definite hold on what one particular company did as far as their testing and their lab work and what the cost would be associated with that. The numbers you see on the spreadsheet are the numbers that were submitted to us.

Mr. Standard stated I think the primary concern is once we get to choosing who and we come up with agreeing on a number what we want to do is make sure the number they have estimated will be the right number. We certainly don't want that number to double because that does happen a lot. So, as long and when we decide who and what and if it comes under it maybe that is a good thing. We have to turn in the receipts in to whoever gives us the check is that right. Mr. Bowens stated, yes, that's correct. Mr. Standard stated if they are saying they don't know how much the asbestos is going to be then they would have to give us a number instead of saying it is eight thousand dollars so when we know who it will be then that number doesn't go any higher. Mr. Bowens stated one thing we have been doing in talking with some of the contractors and some of the assessors just today we have started some of those assessments with them because once they have submitted these numbers to us we had no idea how they had arrived at these numbers for five thousand dollars for a asbestos testing abatement. We are doing one on one conversation's with these contractors now that we feel might be able to do the job and find out how they come up with these numbers. We will have a specific way or formula on what they use so we can hold them to that number they have plugged in for the asbestos testing abatement. We had a conversation today and we have one tomorrow and two more Wednesday. This will give us enough time and enough feedback from these contractors on knowing how they came up with these figures. Construction is basically about the same. We want to know if they are actually including something into the demolition portion to cover any offsets or unforeseen asbestos that we might run into. In my opinion going into most of the houses that we have and are involved in this program I don't see them as having that. As a matter of fact, as we were discussing today most of these houses that qualify for this buyout are houses that were flooded in 2005. So, most of these houses have been renovated since 2005 completely with drywall torn out and stuff like that such as insulation and anything which might be in the structure has been replaced since 2005. I don't foresee a lot of asbestos being in a lot of the materials that are being tested. Mr. Green stated, so what you are saying is they haven't tested any of the houses more or less speculated on the prices.

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So, before this goes through we will know which house has asbestos and what they are charging us. Mr. Bowens stated once they are awarded the contract then they can send their personnel out there to send their samples off to the lab. As they do that and those samples come back then they will supply us with a copy of that and to see if the material that was sent out for the analysis does contain asbestos. At that point and time they can give us the amount of what has to be removed out of there. The conversation we are now having is that will decide the amount they have put in for the asbestos and removal and this is what they will be held to. Mr. Green stated it should be less if the houses have been renovated. This should be checked very thoroughly to see what they come up with. Mr. Bowens stated the material, meaning asbestos that is removed; they will have to show where it is placed because it will have to be placed in a separate section of the land field. There will be adequate documentation to show it was placed there. Like you said, Mr. Green, some houses might not have asbestos and some may go over the limit. But, we have a check and balance and I think the figures and the numbers we have plugged into the asbestos testing abatement will cover it. All of these figures basically with the ones that are highlighted are the ones that came in under budget for what we had projected. Mr. Green stated all I am saying is to make sure the houses have the asbestos they say it does. Mr. Bowens stated they have to show proof of this. Mr. Green asked before anything is moved? Mr. Standard stated, yes, it will not go so fast that we can't keep an eye on it. You certainly don't want them to take a dump load to this house and pickup another one around the block. Mr. Bowens stated this whole demolition process will be monitored by the State. We will be able to see what they are doing and there is a waiting period. When they go out and pull a sample from a structure and they send their sample off to a lab to be tested then there is a ten day waiting period before they can actually start demolition on the structure. If it comes back positive and they give us that information and then we go out and verify that area and at that point after ten days the contractor can start the demolition.

**12. PARKS DEPARTMENT
RANDY GREEN, CHAIRPERSON
Jim Graham, Director**

A. Clarify Minutes for July 11, 2011

Mr. Green stated the Community Center will have no minimum rental hours on Monday through Thursday. On Friday through Sunday there will remain a 4 hour minimum rental time.

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Taxpaying residents of the City will be given a 50% discount Saturday and Sunday.

Mr. Green moved to follow the recommendation of the Parks Committee to approve the correction of the July 11, 2011 minutes. Seconded by Ms. Reagan. Motion passed (6-0).

**13. COMMUNITY DEVELOPMENT DEPARTMENT
TRUDIE CAUSEY, CHAIRPERSON
Jim Graham, Director**

- A. No Report

14. ATTORNEY – DUPREE & KIMBROUGH

- A. Legal Zoning Issue

Mr. Kimbrough stated this would be for discussion and information only. Ms. Causey had asked me to look at the Grandfather Clause in the newly adopted Comprehensive Zoning Ordinance for the City. To see how that interacted with other uses of the property such as parking. Parking of any type of vehicle that should not be on that type of property and how it is zoned. In Section 22-11 of the Comprehensive Zoning Ordinance does contain what is called a Grandfather Clause. Officially it is called the non-conforming uses. If a piece of property is used for something let's say a residential home and the area around it is rezoned to something else and as long as it stays a home then it can continue to be used as a home. These rules and this ordinance mainly go towards the use of the property and it specifically is set out there in Sub-Section B, of Section 22-11. I will not read through the entire document but B and C allow for these types of properties to continue to be used as they were used as long as they continue that use. The property will not be altered or damage done to the property not to exceed 75% of the total value of the property. There are plenty of sections in here that cover the ability to continue to use a piece of property and if certain things happen to not being able to use that property. Specifically, as to Ms. Causey's request for me to look up Sub-Section E of 22-11 states specifically this: To protect the public from inconsistent zoning requirements and to make non-forming uses as consistent with conforming uses as possible, non-conforming uses must comply with zoning requirements such as parking, landscaping, setback, outside storage, screening or buffering with requirements for the zoning district or use which does not substantially impact the non-conforming use or non-conforming structure.

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What I have gathered from that is even though there might be a piece of property that does not fit with the surrounding area because it is grandfathered in they still have to comply with all of the other zoning requirements. Such as parking and landscaping, setback, etc. What I have gathered from looking at this is these rules apply to the use of the property. Parking a commercial vehicle on a residential lot for longer than it is supposed to be parked does not mean it is grandfathered in and that person can continue to park a commercial vehicle there. That does not go towards the use of the property. Mr. Kimbrough asked if the Council Members understood. Ms. Causey stated, kind of. Mr. Kimbrough stated basically, they cannot park it there unless they can do it under some other sub-section of the code. For example, some plumber has been parking his truck at the back of his house; he or she cannot say that he or she has been doing this for twenty years and it's grandfathered in. It is the use of the property that is grandfathered in it is not the parking. Mr. Kimbrough asked if anyone had any questions. Mr. Green stated he thought we would have a lot of problems with people. Ms. Reagan asked if we had an Ordinance that states we can park a vehicle on private property. Mr. Kimbrough stated like I said unless they can park under some other provision of the ordinance and that would be fine. Mr. Green stated I think what you were reading to use was aimed towards new construction homes. Mr. Kimbrough stated it is aimed toward businesses or property that has been grandfathered in. New construction would not be grandfathered in because it would have to comply with the existing codes or ordinances with regard to that particular area and how it is zoned. Mr. Green stated we have had people that are self-employed and living here for years and years and years and they have been allowed to do that, so what will we do run off our self-employed people. Mr. Kimbrough stated they may be allowed to park and probably can. Ms. Causey stated it does say in there they can bring a business vehicle to park. Mr. Graham stated this is really the grandfather clause if you wish to call that. We get requests from Real Estate all the time. All through the City there are some duplexes and whenever this Comprehensive Zoning was implemented in 1988 or 1989 they changed the residential without the duplex zoning. We state because they haven't changed they have been duplexes for all these years and as long as they maintain that it is called a legal non-conforming use. Some of them have been twenty years before the ordinance passed on the use of the property. If they have violated some other law about where they are parking that is not grandfathered in. Mr. Kimbrough stated the use is outside storage, you can store something in a storage yard or salvage yard but you can't do that at your house even though you have been doing it for twenty years that is not in consistent with the code.

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Mr. Green stated he had no problem with that, but the people that are using their vehicles to go to work that is a problem. Mr. Kimbrough stated and they can use their vehicle to go to work under the ordinance and bring that vehicle home and park it there and take it out the next day. There is provision for that in the ordinance to allow them to do that. So as long as they can continue to do that kind of parking and I am not saying use of the property because that would not be use of the property. But, as long as they can do that under some portion of the ordinance that is fine. Ms. Causey stated the main thing we were concerned about was people bringing home equipment, such as tractors, backhoes, and leaving them parked and it is an eyesore to the community. They need to have a place to park their equipment other than a residential area. Mr. Standard stated he wasn't sure how far back you would have to go back where it didn't say you could do that or you could park anything you want to in a residential area. Some of the residential areas have been residential for a long time and never said you could use it as a salvage yard. So it's not like oh! Just because they have been doing it doesn't mean it's o.k. to do it. Mr. Green stated I understand that, but there are not any two houses alike and all through the years houses have developed totally different from each other and a lot of ordinances is not really setup for the differences of the homes. I am just saying we need to try and find some happy medium and leave some of these alone. But, I understand if people get really irate with what we are doing. I guess you could say well you let them do that and that is a Code violation. Mr. Kimbrough stated it has to be consistent. Mr. Green stated we need to leave it alone and handle it the best we can and see what happens. You will not write ordinances that will be good for every citizens or business. It's impossible! Mr. Kimbrough stated the adoption of this type of ordinance is just like the sign ordinance it's a continuing thing. You adopt it and as you try and implement it maybe it is unreasonable or not feasible to implement it so maybe you need to go back and make changes and amendments to it and this is where we are and I agree with you Mr. Green it has to be consistent. Ms. Causey stated most of our ordinances are based on Cobb County's ordinances, right, Mr. Graham? Mr. Graham stated, yes, they are and you can go on their website. About once every quarter Cobb has amended some ordinance for something. Either to make it stronger because you can't create an ordinance against something you don't know what will happen, because there are so many changes in businesses and so many problems that have never happened before and this is why you have to amend them to keep properties clean. Mr. Standard stated change begets change if they build a school somewhere it changes everything around that school. Speed limits and who can live near the school and all that. If you change it all everyone has to change with it.

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You can't say I have always done this and I am not going to change. Mr. Green stated I will say one thing about Cobb County you can read their ordinances and you can ride around and you will see that they don't push a lot of people. Mr. Standard stated they do if they are called. If you call and they ride by they will take of the problem from what I have seen. Mr. Thomas stated if Cobb County gets a complaint they will examine it. Ms. Anderson stated I think that is what our ordinance books are for when do have issues that are very bad and people write complaints on them, but to drive around and look in people's yards and garage's looking for something that is causing a problem I don't think that's necessary. Mr. Green stated that is harassment. Ms. Reagan stated, she agreed. Mr. Standard stated there is a lot of obvious out there that needs fixing. You don't have to look too hard to find it. Mr. Green stated if you go through the county you would be so busy you would have to hire another staff. Mr. Graham stated he had seen homes that are beautiful one day and maybe a couple of years later someone has rented it and it is trashed. The ordinances are there to protect everyone's property value. It's not there to harass anyone but you have the right to protect your property as well. When an ordinance is created and as long as they don't change the footprint or add on to them they are legal non-conforming uses. Mr. Standard asked if there were moratoriums on that, say if a car lot is closed for a year can you open it back up as a car lot. Mr. Graham stated the City has the desecration to approve or not to approve. Mr. Kimbrough if our ordinance states fifteen hundred foot space and after they have closed for over a year are they considered grandfathered in any longer. Mr. Kimbrough stated it was either a year or six months. I think it is six months. Mr. Graham stated the Council can say we do not want a car lot there any longer. Mr. Standard stated some cities have ordinances that say you can't build anymore duplexes in here. Without it we can't say that. Mr. Graham stated anyone that comes in and they have a large tract of property and want to put duplexes on it they have to rezone it as residential duplex. At that time they would go to Planning and Zoning. Mr. Green stated when they did that in 1988 they didn't check thoroughly because the duplex I am speaking of you can look out the door and see an apartment building and duplexes almost to the end of the street. Mr. Graham stated he was not with the city when this happened.

15. MAYOR'S REPORT

A. CMA MEETING

NO MEETING

B. Prissy Dutton's House

Mayor Jerkins stated the family of Prissy Dutton's old home place is being donated to the City and Leo Clifton is working on it. There are four or five hundred dollars owed on taxes for this year and the City will pay the amount.

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Mr. Thomas moved to follow the recommendation of Mayor Jerkins to approve the donation of Prissy Dutton's house. Seconded by Ms. Reagan. Motion passed (6-0).

16. ADJOURN

Ms. Causey moved to follow the recommendation to adjourn the meeting. Seconded by Ms. Reagan. Motion passed (6-0).