BROKEN ARROW CITY COUNCIL MINUTES
SEPTEMBER 20, 2004

The Broken Arrow City Council met in regular session in the City Hall Council Chambers on Monday, September 20, 2004, at 7:00 p.m.

1. Mayor Richard Carter called the meeting to order at the noted time of 7:00 p.m.
2. No one was present to provide the Invocation.
3. Mayor Carter called for roll call:

Present: Mayor Richard Carter
Vice-Mayor Craig Thurmond
Councilwoman Melissa Mahan
Councilman Wade McCaleb
Councilman Tom Chatterton

Staff Present: James Twombly, City Manager
Gary Blackford, Assistant to the City Manager
Melanie Bolduc, City Clerk
Michael Vanderburg, City Attorney
Jay Heinrichs, Controller
Farhad Daroga, City Planner
Todd Wuestewald, Police Chief
Dave Wooden, Public Works Director
Allen Stanton, Chief Building Inspector
Tom Hendrix, Acting City Engineer
Dale Brooks, Fire Marshal
Scott Esmond, Parks Director
Branon Dodd, Risk and Safety Manager

4. Councilman McCaleb led those present in the pledge of allegiance to the flag.

5. Council considered the Consent Agenda.
   A. Approval of minutes of regular meeting of September 7, 2004
   B. Approval of and authorization for the Mayor to execute a proclamation declaring the week of October 3-9, 2004: "Fire Prevention Week" in the City of Broken Arrow
   C. Approval of and authorization for the Mayor to execute a contract with Union Pacific Railroad and accompanying Resolution No. 387, to reimburse Union Pacific Railroad one-half of the actual costs for repairs to the Railroad Crossing on Kenosha at Mile Post 290.40
   D. Approval of and authorization for the Mayor to execute Change Number 1 to the Memorandum of Understanding between the City of Broken Arrow and Roland Investments, Ltd., regarding contribution of two acres for the City's proposed Conference Center site (Section 2, Township 18 North, Range 14 East)
   E. Approval of and authorization for the City Manager to execute Major Change Order #4 to Contract EDG.04 Topsoil and Mass Grading for the Bass Pro Project
   F. Approval of and authorization for the Council to enter into a contract with the Municipal Code Corporation for the re-codification of the Broken Arrow General Code
   G. Approval of request to officially adopt the National Incident Management System (NIMS), including the Incident Command System, by incorporating NIMS into the City of Broken Arrow's Emergency Operations Plan as Appendix 5 to Annex A
   H. Approval of Revised Conditional Final Plat of Castlegate (PT03-116), 38 lots, 19.344 acres, PUD 120-B/O-3 via BAZ 1606, BAZ 1377, and BAZ 1387 and R-3 via (BAZ 1387), approximately ¼ mile north of Washington Street/91st, on the east side of Garnett Road
   I. Approval of BAZ 1648, Church's Fried Chicken, 0.16 acres, R-3 to C-3, east of the southeast corner of Elm Place and Fort Worth Street
   J. Approval of BAZ 1649, Wyatt Duplex, 0.5 acres, A-1 to R-4, northwest corner of Louisville Street and Highway 51
   K. Approval of BAZ 1651 and PUD 146, Forest Creek, 71.72 acres, R-1 to R-1, R-5, C-2, C-3, and PUD 146 (FD recommended for Flood Plain), northeast corner of Houston Street/81st and Garnett Road
   L. Approval of PUD 118B, Aspen Park Village, major amendment, 54.06 acres, R-3, R-4, C-5 (BAZ 1562), ¼ mile north of Kenosha Street/71st on the east side of Aspen Avenue/145th East Avenue
   M. Approval of request to declare specific weapons and accessories of the Police Department as surplus and authorization to sell same as a package item through an auction process

N. Approval of request from the Student Council of Broken Arrow High School to hold the annual "Homecoming Parade", on Friday, October 1, 2004, at 4:00 p.m., including closing Main Street from College to the railroad tracks, beginning at 3:30 p.m..
O. Approval of sole source purchase of HTE Evidence/Property Barcoding Interface to upgrade the existing HTE CRIMES Records Management System
P. Approval of and authorization for the Mayor to execute the proposed Architect/Engineer Contract with Flynt & Kallenberger, Inc., for design of the Indian Springs Sports Complex Baseball Field Lighting
Q. Acceptance of bids received and awarding of the most advantageous bid for the construction contract for the Albany Street and Elm Place Intersection Project
R. Acceptance of Oklahoma Department of Environmental Quality permits for the construction of water and sewer lines and appurtenances to serve Eagle Ridge Village, Phase I
S. Acceptance of Oklahoma Department of Environmental Quality permit for the construction of sewer lines and appurtenances to serve the North Elm Place and Albany Street sanitary sewer line extension
T. Approval of and authorization for the Mayor to execute an "Easement and Right-of-Way" granting a portion of a public utility easement and right-of-way to Valor Telecommunications (S2 T18N R14E) and (S35 T19N R14E) (Project: Bass Pro)
U. Approval of and authorization for the Mayor to execute a "Right-of-Way Agreement" granting a portion of a public utility easement and right-of-way to Oklahoma Natural Gas Company (S2 T18N R14E) and (S35 T19N R14E) (Project: Bass Pro)
V. Acceptance of Water Line Easement (Corporate) from Armory, L.L.C (S8 T18N R15E) (Project: 36" Waterline)
W. Approval of Claims List

Motion by Chatterton, second by Mahan, to approve Consent Agenda Items B-I & K-W.

Aye: Mahan, Chatterton, McCaleb, Thurmond, Carter
Nay: None
Motion Carried

6. Council considered Consent Agenda Items A & J which were removed for separate consideration.

Thurmond commented on Consent Agenda Item A and articulated that additional information be included in the minutes for the regular meeting of September 7, 2004 under discussions on: a) Item 7A pertaining to the issue of banners; discussions about having two school systems and allowing banners for Union if someone desired to provide a flag to be put up that they would be able to put that up, b) Item 9C pertaining to discussion of Northside Christian Church's request concerning the possibility of a Special Use Permit for the Wal-Mart building on Kenosha and County Line Road at a future time, to include comments made by several of the Council Members on their support, though they had not submitted an application, if they did submit one that Council definitely supported the concept.

Motion by Thurmond, second by McCaleb, to approve Consent Agenda Item A, minutes of regular meeting of September 7, 2004, amended with noted adjustments to minute Items 7A and 9C as discussed.

Aye: Mahan, Chatterton, McCaleb, Thurmond, Carter
Nay: None
Motion Carried

City Planner Farhad Daroga provided background information on Consent Agenda Item J. In response to Mayor Carter's inquiry, Daroga confirmed late 1970's to early 1980's that there once was an office building on the lot, which had burned down several years ago, prior to being brought into the City as A-1, with additional surrounding vacant land. Considering the frontage of Highway 51 the Comprehensive Plan would allow for R-4 platting. In response to McCaleb, Daroga confirmed that the R-4 zoning would be possible and allowed with the current Comprehensive Plan.

Applicant Mr. Wade Wyatt, 13900 S. 241st, commented that he believes the development would improve the area, as currently the lot is being used by residents in the area for parking cars for sale and tree trimmings. In response to Mayor Carter, it is desired to have the garages side by side with the driveway in the center of the property.

Mayor Carter announced that two individuals, Marge Lysinger and Michael Bartczak, had signed up in opposition and chose not to speak. (Note: Ms. Lysinger did speak later in the meeting on this Item.)

Mr. Scott Centille, 3500 E. Louisville, desired to speak in opposition to the proposed duplex and state that he does not believe it will enhance the neighborhood. He noted the single family residences in the neighborhood, where he has resided for eight years; whereas, a duplex would not coincide with the feel of the area and he is apprehensive that it may lower the surrounding property values. He expressed his concerns of high turn over of duplex residences; duplex residents not having a homeowners interest in the upkeep of the property. Traffic issues are a concern at the location; the speed limit for vehicles traveling on Highway 51 is 55 MPH and he explained difficulties with turning off of Highway 51 to enter the development without having traffic coming up from behind too close. Developing a duplex at the location would add additional traffic at the entrance. He referenced a Planning Commission Member's comment in relation to the location needing to be platted before it is to be rezoned. In response to Mr. Centille's inquiry, Thurmond explained that the location would need to be zoned prior to being platted. He commented that he would prefer a single family dwelling and commented that it would also be a sound barrier from Highway 51. Chatterton commented as to whether or not there would be a difference between a single family residence with one driveway and a duplex with one driveway, the traffic would be the same. In response, Mr. Centille expressed that either way there would be a traffic problem at the location and suggested changes to the turn options from Highway 51.

Mayor Carter explained that the entire intersection of Highway 51 and Houston (81st St.) is in the process of being redone, but he is unsure whether or not it may have an effect on this location.

In response to Mahan, Wyatt explained that the total square footage would be 1,992 living area not including the garages. He presented a sketch of the proposed duplex style on the overview projector.

Mayor Carter commented that there have been duplexes in Oak Creek Park off County Line at Ft. Worth next to R-2 housing for the past 8-10 years and have not appeared to have an adverse effect on the neighborhood, just a transitional zoning.

In response to McCaleb, Wyatt explained that the proposed set backs/side yards would be 20-30 feet in the front, 40 in the back and would like 20 feet between the duplex and neighbor.

Daroga explained that the width of the triangular lot would make it difficult for a good size single family residence with the set backs and easements.

Ms. Yvonne Rogalla, 1105 S. 35th Street, had signed up to speak in opposition and explained that she resides in the second house on 35th Street. She commented on her concerns of children residing at the location; behind her house there is four acres that she inquired as to placing a park and she had been informed that it was too close to the Highway and the subject property is right on the Highway. In response to Chatterton, Ms. Rogalla expressed that she understood that commercial development may be built on the subject property.

In response to McCaleb, Thurmond explained that the 10 feet would be required on the west side and would not need to be included into the motion.

Ms. Marge Lysinger, 3521 E. Nashville Street, resides a block North and a block West of the subject location. She expressed her disbelief that a duplex could be built on the lot, as it is small and the noise from traffic on Highway 51. The potential of lowering the property value of the neighborhood was one of her primary concerns. In response to Ms. Lysinger, Thurmond explained that the development would be required to be in compliance with the City's R-4 requirements; the platting process would come out of the Planning Commission. Farhad explained there is no size limit to the size of the duplex, as long and the development meets all other requirements.

Motion by McCaleb, second by Chatterton, to approve Consent Agenda Item J, BAZ 1649.

Aye:	Mahan, Chatterton, McCaleb, Thurmond, Carter
Nay:	None
Motion	Carried

7. Public Hearings, Appeals, Presentations, Recognitions, and Awards

A. **APPEAL:** Request to appeal denial of Traffic Calming Program implementation on Sweetgum from Kenosha to Detroit.

Public Works Director Dave Wooden provided background information and explained that the traffic study did not reveal that the location met the criteria for the Traffic Calming Program. In response to Thurmond, Wooden confirmed that the study showed an average speed of 23 MPH.

Ms. Mary Miller, 709 N. Sweetgum Avenue, signed up and spoke in favor of the appeal and presented a board display (held by seven year old neighbor, Katlyn) with a hand drawn map of the neighborhood streets of concern. She noted the houses, driveways and intersection at the subject location and that the 24 hour analysis was not sufficient, as the reconvening of the school year traffic has increased. Miller had sited speeding vehicles on numerous occasions and in the afternoons teenage drivers are speeding. Miller explained that while she is backing out of her driveway she needs to use extreme caution with vehicles coming around the curve. She is also concerned about children on the North end of Sweetgum Avenue getting off the school bus and walking home. Miller commented that she has requested police officers to monitor the speed of vehicles in the area. In response to McCaleb, Miller explained that her neighbors claim to have had a previous traffic study conducted in the area prior to their purchase of the residence.

Mahan expressed now that school has started she would like to see a second survey conducted. Mayor Carter explained that the vehicular count meets the criteria, but the cumulative speed did not. Mahan expressed that the curve also concerns her. In response to McCaleb, Miller commented that a petition had not yet been done; she was unclear as to whether or not she needed to have that before appearing at the current meeting.

In response to Mayor Carter, Wooden commented that he could not recall placing less than two speed bumps on a street and those speed bumps are not placed on curves, but either before or after the curve. He explained that if a vehicle was to hit a speed bump on the curve there would be a strong possibility that the driver could loose control of the vehicle, so they are only placed on straight stretches. Wooden explained that the curve at this location is an issue. Public Works would conduct another survey and at which time if the criteria are met they would be able to install the speed bumps without returning to Council.

In response to Mayor Carter, Miller clarified that traffic enforcement had been done on the subject street and that she had phoned the Police Department just that morning and provided them with the times the traffic is worse and they would turn the information over to their traffic division.

Ms. Shannon Abbott, 720 N. Sweetgum Avenue, has been a resident at the current location for nine years and that the Miller's house had recently been built up on a hill and blocks the view of the cars coming around the curve. She expressed that it has become a hazard for the children in the neighborhood.

Motion by Mahan, second by Chatterton, to authorize Public Works to conduct an additional traffic study during school times, and to take the appropriate action resulting from additional study.

Aye:	Mahan, Chatterton, McCaleb, Thurmond, Carter
Nay:	None
Motion	Carried

B. Council considered public hearing to abate general public nuisances Revised List:

	TRASH (State Title 11 22.111)	
1.	12808 S 145 E Ave	S198 E/2 NE SE SE 4.17.15 1.5AC
	WEEDS (State Title 11 22.111)	
1.	1032 W Norman St	Lt 19 Blk 1 Rockwood 2nd Addn
2.	12808 S 145 E Ave	S198 E/2 NE SE SE 4.17.15 1.5AC
3.	3205 S 1st St	Lt 2 Blk 3 Vandever East 4th Amd
4.	1716 S Pine Ave	Lt 29 Blk 5 Stacey Lynn 5th
5.	2812 S Dogwood Ave	Lt 11 Blk 3 Wolf Creek Estates VI

Motion by McCaleb, second by Chatterton, to approve abatement revised list as submitted, with the exception of 3205 S. 1st Street.

Aye: Mahan, Chatterton, McCaleb, Thurmond, Carter
Nay: None
Motion Carried

Scott Wise, 3205 S. 1st Street, expressed that he is aware of the condition of the backyard and is awaiting his payday, so that he may pay to have it removed. He requested additional time. In response to Mayor Carter, Wise confirmed that he expected to have it cleaned up within a week.

Motion by Mahan, second by Thurmond, to approve an extension of one week (seven days) on abatement process for 3205 S. 1st Street, contingent upon follow up inspection.

Aye: Mahan, Chatterton, McCaleb, Thurmond, Carter
Nay: None
Motion Carried

City Manager James Twombly explained that since the previous meeting, per Council request, staff had researched the current abatement process in view of condensing the abatement process time. City Attorney Michael Vanderburg cited Sections 15-1 through 15-54 and that over the years the State had increased authority for cities in the nuisance arena. Essentially each time the State gave new authority a new ordinance would be passed dealing with the unique or special characteristics of that particular nuisance abatement process. This resulted in a lot of redundancy and additional processes. Historically Council, during the 1970's, as well as the '80's and '90's when these ordinances were being written, Council chose to keep the hearing process before the Council itself. There were occasions when they never delegated the authority to anyone and then there were other occasions when they did delegate, but never implemented the delegation of authority to a hearing officer. In order to speed the process up, there may be two essential changes, but doing this throughout all 54 sections of the Code: 1) Consolidate all the definitions of a nuisance into one or two sections, it appears as if all except motor vehicles may be combined with single nuisance definition; a single nuisance abatement process, and motor vehicles would have a separate nuisance abatement process. 2) Council delegates hearing authority to a hearing officer on a routine basis; what happens is the City goes through the process and notice when time runs out a day or two after the Agenda preparation and another problem, where there may be another week or two weeks and sometimes three weeks before the Council may have a hearing. If this was delegated to a hearing officer, which would tentatively propose to be the City Manager or a designee of his, and at anytime a designee may be appointed and avoid at least a week, if not two or three weeks of delay built up into the system. If those concepts are acceptable to the Council, or if Council would like to add additional concepts, the City could have actual language in front of them for review at the next Council Meeting.

McCaleb commented that last time it had been discussed basically going down to a ten day process, as required by State Law. In the past the ten days would expire and sometimes be fifteen days before the next Council Meeting, which would be 26 days to get a yard mowed and was already 12 inches when the report had been received and since the complaint had been almost a month. This would allow after the ten days the citizen would have the right to appeal to the Council, but it would be up to them to request that; currently it is an automatic appeal, so that Public Works may go out and clean up if it comes to Council. He expressed that it was his intent to ask so that the weed nuisances may be cleaned up quicker than a month after the complaint had come in and speed it up by about two weeks.

Vanderburg explained that everything he had discussed during this meeting is true about the initial process of abatement and that is what is normally dealt with. There are some procedures that are available if there's a repetitive nuisance problem that goes through a much faster process and the City would still be keeping those repetitive facilities in place, so the City would not have to go through this long of a process.

McCaleb stated he would also like to keep the sign posting that seems to be working in accordance with inspections. He commented that this procedure had begun approximately three years ago and it seems to be working, when the signs are seen the tendency is to clean up the area a lot quicker. He expressed that he does not what that changed, basically the change be made to place it upon the citizen to request the appeal rather than an automatic appeal, that way two weeks or more are removed from the process.

In response to Mayor Carter, Vanderburg confirmed that there are abatement processes in place for more rapid abatement when there is a danger to citizens or children, to abate more quickly. McCaleb also commented that an immediate threat as a refrigerator, the City can immediately go out and fix that situation.

Mayor Carter commented that he appreciates the issue being brought up and that he is in favor of making changes to make the process quicker and simplified.

McCaleb explained that there still would be a checks and balance through the City Manager's Office and reports to Council. Vanderburg explained that though the bulk of the work would be handled at the Administration level; there would still be an appeal process, but rather having it as a default system an individual would have to come in and file an application to appeal to Council.

McCaleb requested that the preview ordinance be brought to Council for their next meeting.

Member of the audience had inquired as whether or not a property was on the abatement list; Council confirmed that the address in question was not on the list.

Mr. Terry Hamersley, 126 W. Kent Street, referenced the property at 118 W. Kent Street, which had previously come before Council for abatement. He expressed his support for changes that would speed up the abatement process. He commented on the infestation of insects at the location and inquired as to whether or not the City can request a witness report from the exterminators about the extreme condition of the inside of the house. Mayor Carter stated he had visited the site and witnessed roaches. Hamersley explained that he had spoken with the exterminator at the location and that they advised him the house would need to be gutted to rid the location of all the roaches. He inquired as to whether or not Council may have an ordinance which under such circumstances and with exterminator statements that would speed up the process. He expressed his concern that the roaches will be spreading through the neighborhood and spreading diseases. He's already seeing roaches two houses away from the subject location, which he believes is evidence of the extent of the infestation.

Mayor Carter explained that the legal process would need to be followed. Vanderburg explained that he and the Mayor had visited the location, which may have spurred the recent attempt with the exterminator. In response to Vanderburg inquiry, Hamersley indicated he had spoken with the exterminator from Arrow.

McCaleb commented that he has been informed from exterminators that the fogs are not successful. Mahan explained that the location would still need to be inspected after the exterminating is done.

Mayor Carter reiterated that the legal process would need to be followed and the City can not just go out and gut a house, there are rights of private property and access with the laws that are set up, which are for protestation of the citizens. Vanderburg provided Hamersley with his business card and informed him that copies of changes in the language of the ordinances may be provided to him.

8. Citizen's Opportunity to Address the Council

Mr. Dan Magrini, 408 W. Charleston, expressed concerns regarding school traffic of Arrow Springs Elementary School and students walking to school and the lack of sidewalks. There have been vehicles that don't stop for the stop sign on Vicksburg. He would like to have signs installed and crossing guards on Vicksburg for the children's safety. Members and Magrini discussed the location and the sidewalks that are currently there, also that there are not crossing guards available at Arrow Springs, other than at Twin Oaks.

In response to McCaleb, Wooden explained that homeowners had previously approached Council Members concerning the lack of sidewalks at the subject location; because of the issue of designating one location over another in an assessment district for the placement of a sidewalk they chose not to approve the installation of the sidewalks. McCaleb commented that the current Council had not been involved in the previous decision and they may evaluation the situation. There were discussions of the installation of bike lanes, but vehicles would still park in those lanes.

Council requested that this issue be brought before Council during the next meeting.

In response to McCaleb, Magrini confirmed he had spoken with the Principal, but did not discuss crossing guards, and that the Principal had contacted the Police Department to try to get some traffic officers for before or after school, but they have not been able to assist due to various reasons.

Ms. Phyllis Cast, 2701 S. Juniper #103, stated that there were four residents present at the current meeting representing the forty-four residents at their complex. She expressed their concerns with weeds, trash and the dilapidated condition of the residences from 2901 to 2709 W. Juniper Avenue (behind St. Francis Hospital). She claimed that they have tried to get action for the past two years and the condition has been getting worse. In response to McCaleb, Stanton commented that he did not recall the location. Mayor Carter referred her to meet with Chief Building Inspector Allen Stanton and provide him with the details and requested City Manager Jim Twombly to have Stanton report back to Council at the next meeting.

In response to McCaleb and Mahan, Administrative Assistant to the City Clerk Mary Jean Manley explained the process of the Action Center citizen's complaint system and that there were some glitches in the system regarding the dispersal of letters when the recent city-wide system upgrade was conducted. Mayor Carter asked City Manager James Twombly to look into the situation.

9. General Council Business.

A. Council considered possible approval for publication and issuance of the Request for Proposals for the design, construction, and operation of a Conference Center and associated hotel and authorization for the City Manager to execute the appropriate documents in connection therewith.

Twombly provided background information and potentials for a Conference Center and associated hotel and Request for Proposals (RFP) for the design, construction, and operation. In response to McCaleb, Twombly confirmed that the City reserves the right to not accept just any proposal, but they hope to have one that meets the criteria. The RFP's are to be sent to approximately 70 hotel establishments that are on the compiled list.

Motion by Mahan, second by Chatterton, to approve publication and issuance of the Request for Proposals for the design, construction, and operation of a Conference Center and associated hotel and authorization for the City Manager to execute the appropriate documents in connection therewith.

Aye: Mahan, Chatterton, McCaleb, Thurmond, Carter
Nay: None
Motion: Carried

C. Consideration of request from Green Country Cycle City, located on the north side of Southwest Expressway Drive, ½ mile west of Elm, 2.17 acres, C-4, for permission to retain a driveway constructed as a loading/unloading zone and parking area within the public right-of-way to be used to park vehicles, trucks, and trailers that visit the place of business.

City Planner Farhad Daroga provided background information and explained that Staff recommends possibly allowing the slab to remain for approximately 12 or 24 months to allow the business owner to get the new facility up and running with a new loading and unloading zone, then come back and remove the subject slab. Members and Staff reviewed the information provided and safety issues regarding the curb cuts along the curb at the location of the slab that is being used for loading and unloading. There were other discussions of use of the rights-of-way by other businesses in the area and the lack of permits from the previous property owner. Daroga explained the two separate issues, different items, which are at the same subject location.

Applicant Mr. Ron Bray, owner of Green Country Cycle City, explained he is attempting to correctly obtain the necessary permits and the purpose of the slab that is for loading and unloading. He highlighted the safety issues with traffic and the need for loading and unloading and that there was not sufficient room in the parking lot.

Mayor Carter explained to Bray that he understood his safety concerns to have the loading and unloading removed from the street, unfortunately it should not be in the City's right-of-way. Members and Staff discussed the potential of waiving the

recommended parking spaces at the new location to accommodate the need for a loading and unloading zone, or some parking spaces may be utilized for parking, loading and unloading. In response to McCaleb, Daroga confirmed that the landscaping would be able to remain. In response to McCaleb, Bray commented that the set back at that location is approximately 50 feet.

Mayor Carter explained that the curb cut and driveway would not have been permitted if the contractor had gone through the proper process. McCaleb suggested the removal of the curb cut. Mayor Carter expressed the potential of removing the curb cut and installing poles to prevent parking on the slab, following the completion of the additional facility; which would eliminate the cost of removal.

Motion by Thurmond, second by McCaleb, to accept the application with the exception of waiving the number of parking spaces required in the parking lot to allow a designated loading and unloading location; once the new parking lot is in effect the current curb cuts to the slab in the right-of-way be removed and poles be placed to prevent vehicular access.

Aye: Mahan, Chatterton, McCaleb, Thurmond, Carter
Nay: None
Motion: Carried

C. Council considered possible approval of and authorization for the Mayor Carter to execute a "Public Easement Encroachment Release of Liability Agreement" between the City and Ronald and Beverly Bray, owners of Lot 1, Block 1, Green Country Honda Addition, also known as 1200 West Southwest Expressway Drive in Broken Arrow.

Vanderburg provided background information and explained Staff's recommendation of not authorizing the release of the easement. In response to Thurmond, Bray explained that he was in favor of the "Public Easement Encroachment Release of Liability Agreement", which will allow future use of the easement for utilities.

Motion by Thurmond, second by Chatterton, to approve and authorize the Mayor to execute a "Public Easement Encroachment Release of Liability Agreement".

Aye: Mahan, Chatterton, McCaleb, Thurmond, Carter
Nay: None
Motion: Carried

D. Discussion of and possible action on the City's Itinerant Merchant Permit ordinance and policy concerning use of temporary structures for sales from private parking lots.

Mayor Carter expressed his concerns regarding itinerate merchants and traffic hazard from corner exhibits hinder the view of traffic. Chatterton expressed his concerns regarding street vendors having an unfair advantage over merchants that have businesses, pay rent and insurance that may sell the same products; no clear accounting for sales tax from the street vendors. Thurmond expressed that there is currently no shortage of dark retail space that may be leased and used by vendors.

Mr. Chris Moseley, vendor at Kenosha (71st Street) and Elm Street with Faux Mink Blankets stated that he does have a Tax ID Number and has been paying sales tax. Chatterton clarified that he had not indicated that the vendor was dishonest; rather the City had no clear way of accounting for all the vendors to ensure they all are paying sales tax. Moseley suggested that the police inspect the vendors to ensure they are legal and have sales tax permits and ticket those without and not be unfair to the vendors that try to stay legal. He explained that there are many businesses and individuals in Broken Arrow that he does business with and they recognize that his business is legitimate; those that are not legitimate need to be investigated and ticketed accordingly. He commented that those vendors that are legal are not hurting anybody and are helping the economy.

Mayor Carter explained that to obtain a permit a Tax ID Number must be provided and allowed access to the books to review the taxes. He explained that the City does not have the police force to go out and check every occasional vendor. Moseley indicated that for some time he has been looking for a building to move into. In response to Mayor Carter, Moseley commented that he does operate his business year round and does relocate locations when that location permit expires.

Thurmond explained that the goal for Broken Arrow is to maintain and enhance the appeal of the City and steer away from those issues that detour from that appeal (i.e. signage in the rights-of-way with requirements). Moseley expressed that whatever requirements the City sets he would abide by those requirements. Thurmond commented on the issues of the set back requirements for all businesses in the City and being fair. Mayor Carter included that the vendors set up too close to the street, especially on corners, hinder the drivers' views of oncoming traffic which lead to hazards; he reiterated the desire of Council to have permanent businesses in the City. Chatterton commented on the safety issues of having vendors set up at gas stations with drivers trying to maneuver through and around the items and pedestrians.

McCaleb, Thurmond and Mahan suggested banning street vendors, if it is possible. In response to Mahan, Vanderburg explained that the City has not ever tried an out right ban; this essentially grew out of craft shows, events such as Rooster Days and so forth, that were tied to other programs, but originated from door to door salesmen. Chatterton expressed that he is in favor of a "Farmer's Market" type of sales with a designated location for once a week. Thurmond explained that may be added into ordinance. In response to Members, Stanton explained that the flower vendors, such as at Reasors, had come in under itinerate merchant's permit; with the type of set up the City was able to go in and require the same set back requirements as a standard business, with the exception that they did not need a site plan through the Planning Commission because they were only going to be there 120 days.

In further response to Mahan, Vanderburg explained that State Law on the subject references vendors that are primarily selling merchandise out of the back of a vehicle and not setting up on the ground. After searching itinerate merchants in Wes Law and part of the Statute, resulted in only three references in the first part of the Statute and some 25 references all tied in to Title 47; which is the Code on motor vehicles, so essentially State Law is assuming itinerate merchants are being used for sales from motor vehicles, not the way the City is using it.

Thurmond suggested further research as to what can and cannot be done regarding that issue and outside sales, such as at Reasors; where they are looking at those set ups as extensions of the store. Such as Christmas trees at many grocery stores that are sold through the store, which is different then itinerate merchant temporary sales. Mayor Carter reiterated that those are set back and not on the corner. In response to Twombly, Council reconfirmed that the research be focused on the legality of eliminating. In response to McCaleb, Mayor Carter explained that door to door salespersons would still need to obtain a permit.

Council requested that Legal conduct additional research on the issue. In response to Mayor Carter, Vanderburg commented he would have it ready for Council by the next meeting.

No Action taken at this time.

E. Council considered request to set a policy on providing water service to residents in the subdivision normally referred to as Willow Springs, located north of Jasper, between Olive and Garnett (Section 5, Township 17 North, Range 14 East).

Public Works Director Dave Wooden provided background information and explained the subdivision is outside of City Limits. He explained his concern that the City is providing water to those annexed in and not being able to provide fire protection. He advised that the City should consider placing a hydrant system in the area. The problem in the area has resurfaced with problems of contaminated wells. In response to McCaleb, Wooden explained that there once was funding that had been dropped from the budget because the City was unable to get an agreement for the easements for the water lines, so there was no reason to continue to carry the project. He suggested the potential of an assessment district that could have a program to have the water put in.

In response to Mahan, Vanderburg replied that the area had been originally planned to be annexed approximately 2006-2007, under old annexation scheme that was under old State Statutes and will need to be re-evaluated under the new State Laws to go into effect this year, November 1st; those dates are subject to change. In response to McCaleb, Vanderburg replied that there are not three sides in the City, but Willow Springs has been subdivided into less than four acres, so there are grounds to force the subdivision in. In response to Mayor Carter, Wooden confirmed that Staff had recommended setting a

policy that the water taps will not be placed until the area is annexed and a proper water system for fire protection has been constructed. Vanderburg explained that would bring them to apply for annexation ahead of schedule, because the program Staff has is City sponsored, rather than owner sponsored. In response to Mayor Carter, Wooden replied that there are approximately seven residents in the subdivision which have spoken with City Staff and none have able to locate anyone willing to sponsor annexation. Wooden responded to McCaleb, that they are all septic and shallow wells in that area. Mahan commented that she has had many calls regarding how bad the water quality is in the subject area. Mayor expressed concern with the liability of the City placing water taps without providing sufficient fire protection and that he agreed with Staffs request for policy and they may request annexation.

Motion by McCaleb, second by Chatterton, to approve Staffs proposed policy for water taps.

Aye: Mahan, Chatterton, McCaleb, Thurmond, Carter
Nay: None
Motion: Carried

10. City Manager's Report

A. Submission of combined informational report and possible discussion on the following subjects: Battle Creek Golf Course (golf ball flight along Hole #1); status of Cambridge Estates nuisance abatement issues; and status of abatement of 118 West Kent.

Mayor Carter introduced the item of Battle Creek Golf Course (golf ball flight along Hole #1).

Ms. Lori Pettus, 3510 N Narcissus Court, present to speak for residents which reside on Hole #1 of Battle Creek Golf Course. She explained that for several years the residents have experienced ball flight into their property and causing damages to homes and cars; there is great concern of safety for families whenever they step outside of their homes, residences in the area pick up an average of 500 golf balls each month. She suggested that recent Bond Funds be used for golf course improvements and that the first tee box be realigned or moved and plant large trees along the cart path to protect the homes and families.

City Manager James Twombly referenced a memo and explained that there have been reports of problems at Hole #1 and others. He noted that there have been discussions at the Broken Arrow Public Golf Authority Meetings about these problems. He emphasized that the Golf Authority is the appropriate body to address the issue that has been brought up and he believes it is on their next meeting agenda.

Mayor Carter confirmed that the Golf Authority was created and empowered by the Council for the golf course and they must allow them to do their function; though Council may sympathize, they may not direct them to take any actions for or against. Mayor Carter explained that he was present with many others when they looked at the situation.

Pettus commented that there are no homeowners that are on the Board representing the interest of the residents; though Mahan's participation as a Council Member is appreciated. She expressed that the perception of the Golf Authority is for the interest of the golf course only, because when residents had gone to them with concerns she feels that there is a great deal of hostility, over and over again, which indicated to her they are there for the golf course. Residents feel it is a planned golfing community and that their positions and concerns need to be dealt with; there is not an appointed member of the Authority to represent their interests. She commented on the duration of the issues and that Bond Funds are now available. Mayor Carter responded that it would be left to the Authority to delegate for those issues which were voted on.

Twombly introduced the item of status of Cambridge Estates nuisance abatement issues. He commented on the report and responses of the discussion that took place during the July 19th Council Meeting regarding the Cambridge Estates subdivision. There had been various individuals from the City of Broken Arrow, City of Tulsa Code Enforcement and Tulsa County representatives that have looked at the area to determine what the violations are, which lots, and so on. He continued with the report which identified the lots and he presented a map to Council for their review; he also commented that pictures

were available to display, if they chose. Twombly explained that the last instructions were that any violations that were found, the property owners were to be notified and those notices had gone out that day. The City will follow the normal nuisance abatement process and that he believes work was being done on the lots that day. He stated that the notices had gone out to proceed as they would with any other violation. There were a number of other issues looked at and different visits to the area, including drainage and street issues, and so on. The focus was primarily on the weeds and tall grass; of course there are some other lots that have debris that is either accumulated or been deposited, so those violations are also being dealt with. Mahan and Stanton discussed whether or not the developer had seen the map or list provided by Staff during the Council Meeting. Stanton explained that there was a meeting with Mr. Larry Allison, developer, and each item on the list had been reviewed with him, with the exception of the three or four that are separate from Allison's problems; lots that have been built on that have drainage issues. In response to Mahan, Stanton replied that notices had gone out and if the areas were not cleaned by the October 18th Council Meeting inspection date the locations would be addressed for abatement. In response to Mahan, Stanton replied that the residents in that area have not been notified; there is a vacant lot that has a drainage problem, which has resulted in problems with several of those listed locations. Mahan and Stanton discussed a previous offer by Public Works that had been denied by the previous property owner, for the placement of a tinhorn and documentation of such.

Mayor Carter stated for the record that there were seven individuals that don't wish to speak and had signed up in support of action being taken, not the nuisances. Citizen(s) who chose not to speak and remain recorded as being in favor included: Keith Hilton, Larry Wasson, Denise Wasson, George Smith, Tavia Dooley, Sue Forschen, and Stephanie Chambers.

Mr. Jim Polovich, 23993 Lamb Terrace, currently President of the Homeowners Association and has been a resident in Cambridge for approximately eight years. On behalf of the Association he thanked Council for being actively involved and addressing their issues of concern; the problems with the lots had been going on for years. He noted that there had been action of mowing within the past 12-24 hours. He requested that prior to any of the locations being removed from the City's abatement list that it be discussed with either Fran Smith or himself, because of the history of the lots and the problems they have had.

Ms. Kelly Shoemaker, 8396 Wright Avenue, explained that she is on lot 15, not shown on the map that was shown on the overhead projector, but is adjacent to lot 16. Her main concern is drainage referenced in photos previously presented to Council, that there is a large amount of water that flows along her property and behind onto another piece of land. She noted a piece of property nearby that had been designated as a floodplain area. She stated that Allison planned to dig a swale along the two property lines and concerned that the water will break and come up to her front door; she would like to see stormwater management in the area. Thurmond explained that an earth change permit would need to be taken out with the City for the proposed changes.

Ms. Dana Archibald, 23420 E. King Court, on lot 17, is in agreement with Shoemaker; that change to the vacant lot raises concerns of diversion of the water to either one of their two houses. She commented on the severity of the drainage flow in that area of the neighborhood. She also raised the issue of burning the items that had been cleaned up; there is poison ivy in the area and she stated she has a child that is highly allergic.

Mr. Larry Allison, 27223 E. Joy Avenue, referenced his discussions with the homeowners regarding the issues. He agreed to mow the lots and inquired as to what is expected of him in regards to the wooded lots. He explained that there is brush piled up and he contacted the Fire Marshall to obtain a burn permit. Allison claimed that others are filling the drainage areas with brush; he claims that the residents next to lot 15 had filled in the natural drainage ditch on the edge of the lot, which diverted the water through the middle of the lot.

In response to Mahan, Stanton explained that what needed to be done is straight forward in State Law; weed lot criteria and harborage of rodents on the lots with piles of rubbish. He referenced the meeting with Tulsa, which concluded that mowing in an orderly manner up to the established tree line will assist with preventing erosion. In Stanton's continued response, he clarified that Allison had been informed of what was to be mowed and the debris to be cleared as they had reviewed during their meeting. There were

discussions between Council Members and Allison regarding the annexation period of the subject subdivision.

Mahan provided Allison with a copy of the list of locations to be mowed and cleaned; he was advised that if he had any further questions regarding those items on the list, Stanton would be available to review those with him. She reiterated that those items would need to be taken care of prior to them returning to Council on October 18th and that if he had any questions regarding items on the top portion of the list, to confer with Stanton. She explained that others dumping on his property would not be an issue for Council to address.

Shoemaker explained that she had planted flower beds on a portion of the lot with Allison's permission and had maintained the lot for eight years. Mayor Carter explained that those issues may not be addressed by Council.

Ms. Fran Smith, 8575 S. Wright Avenue, has been a resident for 17 years and is familiar with the edition. She expressed that the Homeowners' Association Members have been undeniably patient with these issues. She claimed that Allison's sons had been dumping debris on the vacant lots and had set a standard for others to do the same. She expressed concerns that Allison would not rectify the problem; that during the July 12th Homeowners' Association meeting Allison assured the residents that he would have the cleanup completed in 90 days and he didn't start working on it until Sunday, September 19th. Mahan explained that the abatement process would be taken. Smith expressed that Allison had not informed the Fire Marshall regarding the poison ivy located in the area he planned to burn. Mahan suggested that Smith keep in touch with Stanton, as he can keep them informed. Mayor Carter explained that if the lots have not been cleaned up by October 18th then the City will abate and have it cleaned up. Council and Staff discussed the cost being $300.00 an hour for abatement.

No Action Taken.

11. Council Considered Preview Ordinances:

A. An ordinance amending the Broken Arrow Code Section 2-2, changing the time of the City Council meetings to 6:30 p.m., repealing all ordinances to the contrary, and declaring an emergency.
B. An ordinance amending the Broken Arrow Code by amending Sec. 23-79, enabling prosecution for the driving upon a sidewalk by any motor vehicle within the city limits of Broken Arrow, repealing all ordinances to the contrary and declaring an emergency.
C. An ordinance partially closing a roadway and utility easement dedicated to the public, located at Lot 1, Block 10, Bretton Woods, an addition to the City of Broken Arrow, Tulsa County, State of Oklahoma, according to the recorded plat thereof.
D. An ordinance reducing an easement from 17.5' to 11', located at Lot 29, Block 1 Shenandoah Valley II at Battle Creek, an addition to the City of Broken Arrow, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

Vanderburg provided background information. In response to McCaleb, Vanderburg explained that motorized disabled vehicles are not included within item 11B, as they are covered under a different Ordinance. No other discussion.

Motion by McCaleb, second by Chatterton, to approve Preview Ordinance Items 11A-D to move forward to next meeting for possible adoption.

Aye: Mahan, Chatterton, McCaleb, Thurmond, Carter
Nay: None
Motion: Carried

12. Council considered proposed Ordinances.

A. Ordinance No. 2657 - An ordinance amending the Broken Arrow Code by amending Sec. 23-91, enabling prosecution for the driving, operating, or being in actual physical control of a motor vehicle while under the influence of alcohol on private or on public property within the city limits of Broken Arrow; repealing all ordinances to the contrary; and declaring an emergency.

Vanderburg presented the item and provided background information.

Motion by Thurmond, second by Chatterton, to approve Ordinance No. 2657.

Aye: Mahan, Chatterton, McCaleb, Thurmond, Carter
Nay: None
Motion Carried

Motion by McCaleb, second by Mahan, to adopt the emergency clause for Ordinance No. 2657.

Aye: Mahan, Chatterton, McCaleb, Thurmond, Carter
Nay: None
Motion Carried

13. Remarks and inquiries by Governing Body Members;

McCaleb provided an update regarding the Youth City Council Member applicants and that he would like to have the swearing in ceremony during the next Council Meeting.

McCaleb would like to develop more Staff involvement with the Community Pride program to help alleviate deteriorating neighborhoods. McCaleb stated that he would talk to City Manager about this in further detail.

14. Council considered adjournment.

Motion by Thurmond, second by Chatterton, to adjourn.

Aye: Mahan, Chatterton, McCaleb, Thurmond, Carter
Nay: None
Motion Carried

The meeting adjourned at the noted time of 10:33 p.m.

_____
Mayor

_____
City Clerk

BROKEN ARROW MUNICIPAL AUTHORITY MEETING MINUTES
SEPTEMBER 20, 2004

The Broken Arrow Municipal Authority met in regular session in the City Hall Council Chambers on Monday, September 20, 2004, after the Broken Arrow City Council meeting, which began at 7:00 p.m.

1. Chairman Richard Carter called the meeting to order at the noted time of 10:33 p.m.

2. Chairman Richard Carter called for roll:

Present: Chairman Richard Carter
Vice- Chairman Craig Thurmond
Trustee Wade McCaleb
Trustee Tom Chatterton
Trustee Melissa Mahan
Staff Present: James Twombly, City Manager
Gary Blackford, Assistant to the City Manager
Melanie Bolduc, City Clerk
Michael Vanderburg, City Attorney
Jay Heinrichs, Controller
Farhad Daroga, City Planner
Todd Wuestewald, Police Chief
Dave Wooden, Public Works Director
Allen Stanton, Chief Building Inspector

Tom Hendrix, Acting City Engineer
Dale Brooks, Fire Marshal
Scott Esmond, Parks Director
Branon Dodd, Risk and Safety Manager

3. Members considered Consent Agenda:
   A. Approval of regular meeting minutes of September 7, 2004
   B. Approval of bids received and awarding of the most advantageous bid for the purchase of a mechanically-cleaned bar screen for use at the City's wastewater treatment plant
   C. Approval of Claims

Motion by Chatterton, second by Mahan, to approve Consent Agenda.

Aye: Mahan, Chatterton, McCaleb, Thurmond, Carter
Nay: None
Motion Carried

4. Members considered adjournment.

Motion by Thurmond, second by Chatterton, to approve adjournment.

Aye: Mahan, Chatterton, McCaleb, Thurmond, Carter
Nay: None
Motion Carried

Meeting adjourned at the noted time of 10:34 p.m.

_____
Chairman

_____
Secretary