

**MINUTES OF THE
REGULAR COUNCIL MEETING
CITY OF AUSTELL
MONDAY, DECEMBER 6, 2010**

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

Absent: Kirsten Anderson

The regular meeting of the Mayor and the City Council was held on Monday, December 6, 2010 at 7:00 P.M. at the City Hall.

Also present were: Scott Kimbrough, City Attorney; Carolyn Duncan, City Clerk; Sandy Farmer, Deputy City Clerk; General Administration; Randy Bowens, Public Works Director; Jim Graham, Community Affairs Director; Denise Soesbee, Finance Director; Bob Starrett, Police Chief; Tim Williams, Fire Chief.

1. CALL TO ORDER

Mayor Jerkins called the meeting to order. Pastor Bob Neal 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. Ms. Regan stated she would like to add 9C. – Camera Repairs and Equipment Installation.

Mr. Thomas moved to follow the recommendation of Mayor Jerkins to add the item to the Agenda. Seconded by Mr. Green. Motion passed (5-0).

Mayor Jerkins presented Lieutenant Matt Cabrera with a 10 Year Plaque and thanked him for his service and his hard work. Mr. Thomas gave a pin to Lieutenant Cabrera and thanked him for his service and his efforts. Mayor Jerkins presented Fire Fighter Kenneth Strong with a 5 Year pin and thanked him for his service and hard work. Mayor Jerkins presented Melissa Crenshaw with a 5 year pin and thanked her for her efforts and hard work.

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 \$987.50
- C. Approve Minutes of Regular Council Meeting November 1, 2010

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Ms. Reagan moved to follow the recommendation of Mayor Jerkins to approve the Consent Agenda. Seconded by Mr. Thomas. Motion passed (5-0).

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.

6. GAS SYSTEM REPRESENTATIVE

JOE JERKINS

Mayor Jerkins stated he attended the meeting and the gas rate is staying the same. Mr. Kimbrough stated they were able to reduce some of the bond debt prematurely because of how good the financial condition the gas system is in under Mr. Rob Register and this is good news. Mayor Jerkins stated that was a good thing to do.

7. FINANCE DEPARTMENT

VIRGINIA REAGAN, CHAIRPERSON

Denise Soesbee, Director

- A. Financial Report
- B. 5 Year Pin – Melissa Crenshaw

8. GENERAL ADMINISTRATION

KIRSTEN ANDERSON, CHAIRPERSON

Carolyn Duncan, Director

- A. 2011 Directory & City Calendar

Mr. Standard moved to follow the recommendation of the General Administration Committee to approve the 2011 Directory & City Calendar. Seconded by Ms. Reagan. Motion passed (5-0).

- B. Correction on November 1, 2010 Minutes – Page 13 – Mayor’s Report – corrected “seventy-five hundred people to seventy-five to a hundred people”.

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9. POLICE DEPARTMENT

**VIRGINIA REAGAN, CHAIRPERSON
Bob Starlet, Police Chief**

- A. Police Report
- B. Code Enforcement Report
- C. Camera Repairs and Equipment Installation

Ms. Reagan stated the cameras in the Police Department are in need of repair, plus additional cameras and equipment were budgeted for: after an inspection and recommendation by Steve Shields from GIRMA, our insurance company. The cameras and equipment are to be purchased from CCTV Maintenance. This company has serviced our equipment in the past. This is considered a specialty item, and the Police Committee asks that the three bid practice be waived. A copy of the invoice is attached. The amount is \$9,580.00. This is a budgeted expense. The monies will be taken from the Building Fund Account #52.2200 Department 100/3210.

Ms. Reagan moved to follow the recommendation of the Police Committee to approve the Camera Repairs and Equipment Installation. Seconded by Mr. Thomas. Motion passed (5-0).

10. FIRE DEPARTMENT

**SCOTT THOMAS, CHAIRPERSON
Tim Williams, Fire Chief**

- A. Fire Report
- B. Unsafe Building Update

Chief Williams stated the Brooks Drive property is working on closing on all of the Tier 1 property from the flood of 2009. That property will be of the twenty-three homes. Currently, property closings are being negotiated.

Mr. Perry's property located at 5706 Mulberry Street was given six months to complete renovations on this structure. Mr. Perry was cited with a second citation. This will come to our court in January 2011. He will be cited again for unkempt property and other code violations on his property.

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There have been no new developments on the Pine Street property. Mr. Kimbrough stated, just to update everyone on the property next to Burger King, I was finally able to get in touch with his Attorney Mr. Bill Fields and he told me that Mr. Moise and the lawsuit he was involved in were dismissed on summary judgments. He lost on that and his time for appeal has not yet run. I think it will be either this week or next week. If he does not appeal then we will be able to move forward with it however you would like to do with citations or whatever. I will get in touch with Mr. Fields and figure out what Mr. Moise is going to do and let you know. Ms. Causey asked can another citation be given on the Pine Street property or do we have to wait to see who legally owns it. Mayor Jerkins stated we have to know who the property owner is because they have sold it and this is what we were told. Mayor Jerkins stated he would try to see Kent Sheldon because he was her Attorney and see if he has any information. Mr. Kimbrough stated he may have the documents and a lot of the time the documents are filed immediately. Mayor Jerkins stated he is the one that told us it sold and I will try to find out. Mayor Jerkins asked Mr. Kimbrough if he had anything on it. Mr. Kimbrough stated he had not been able to find the new owner of this property but will keep looking. Mayor Jerkins asked Mr. Kimbrough if Mr. Shelton has the documents can't we let Leo run the title on it and see who owns it. Mr. Kimbrough stated yes, a title search would do that. Mayor Jerkins stated he would check with Kent Sheldon and see if he knows who owns the property and if he doesn't I'll call Leo Clifton and he will run a title search. Mr. Standard stated if the property beside Burger King, if they do appeal is that a year or two years or what. Mr. Kimbrough stated probably at least a year. The briefs will be due thirty to forty-five days from the time the notice of appeal is filed. It is usually nine months from that point and time. You can count on about a year. Mr. Standard stated we know he owns that property and is there any reason why we can't write him a citation and have him just be in court on something else at the same time? Mr. Kimbrough stated, well, the issue of why he is not doing anything to that property is still before the courts. When that is settled and it might be settled in his favor eventually, then he would operate his business or do whatever he is going to do with the property. Then we would have grounds to issue him a citation. As long as it is tied up in the courts his hands or tied up as well. Ms. Causey stated so basically we just to wait for the next couple of weeks. Mr. Kimbrough stated, yes. Mayor Jerkins asked Mr. Kimbrough did you say, they rejected it and they didn't try the case.

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Mr. Kimbrough stated it was dismissed because of some judgment and he can appeal that because that was considered a final judgment against him and he can appeal that if he so desires. Mr. Thomas asked if there were any questions on the abatement. Mr. Standard stated the Perry property, it is my understanding the owner is confused about the minimum requirements of what we want him to do. I suggest we kind of think it through and come up with the minimum requirement so he has a set idea of o.k. if I do this will that calm you down for awhile. We need to make it clear for him as to what we want him to do so he can't say he doesn't know what we want. Mr. Thomas stated he didn't know how he could be confused because he has been before us three times and we have made everything perfectly clear to Mr. Perry. Also, he is a previous Councilman and he should have a pretty good understanding of what we are asking of him. But, if not, we can let Chief Williams go over and explain it to him. Mayor Jerkins stated he has done some work and we did get on him pretty good and I told Chief Starrett to go over there and talk to him and he is hard to deal with. He started working on the house some and then he has quit again. Mr. Standard stated he has done a week's worth of work in a year. Mayor Jerkins stated at least he has done some work on it. Ms. Reagan stated she would like to see him put a porch on that house. Ms. Causey stated it needs to be safe. Mayor Jerkins stated safe and decent looking on the outside. I hate to give him something saying you do this and then you have cornered yourself in him not doing the rest of the work. If you say we want to fix the outside of the house then he may not do the inside of the house. Mr. Standard stated I don't think anyone does if you keep the outside clean and safe you don't have to keep the inside clean and safe. Mayor Jerkins stated at some point maybe he would go ahead and finish it but if you give him a letter stating he just needs to do the outside then he would never do anything. Ms. Causey stated this is like the property on Old Marietta we couldn't make him do anything else. Mr. Thomas stated he and Mr. Perry had been friends for a long time and we have discussed this over a lot of years. Mayor Jerkins stated how about fifteen years. Mr. Thomas stated if you would like we will have our two Chiefs go over and talk with Mr. Perry so that he will have a better understanding of what he needs to do. Mr. Standard stated the minimum requirements according to code it needs to be safe which it means it needs a front porch if the door is four foot off the ground and it is not safe. The exterior of the house and mainly the front because he has a fence everywhere else and needs to be clean and neat and structurally finished.

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This would include the eaves, and not necessarily gutters, windows to be painted, etc. The house is on a main street right across from the church and it is just ridiculous. The yard needs to be maintained. Mr. Kimbrough stated Mr. Perry can start by looking at the minutes from the Council meetings and I am not sure which months he was here but I think it would be pretty clear in there and the motions were very detailed. Chief Williams stated it was May 2009. Mr. Kimbrough stated the motions were very clear and what the end goal was what the progress reports needed to show, so you could start there if he is confused. Mr. Standard stated that is all he had.

C. Employee Christmas Package

Mr. Thomas stated the City has taken bids for the Christmas meal. (Please see attached sheets).

Mr. Thomas moved to follow the recommendation of the Fire Committee to approve the total amount of the proposal which is \$17,420.00, using the lowest bid for our Christmas meal which was Pasta Bella at \$1,320.00 The funds will come from the current budget 100/1110, line item 52.3900. Seconded by Ms. Reagan. Motion approved (5-0).

D. Fire Station 1 / Vinyl Siding and Gutter Replacement – Information Only

Mr. Thomas stated Fire Station 1 will soon have new vinyl siding and gutters installed replacing the siding which has been in place for over twenty years. The funding comes from the Fire Department Budget line item 52.2200. We obtained two estimates and will go with the least expensive bid. The total cost to replace the siding and the gutters will be \$4,800.00 We will stay with very similar colors for the installation.

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

A. No Report

12. PARKS DEPARTMENT

RANDY GREEN, CHAIRPERSON

Jim Graham, Director

A. Bids for Replacing Pavilions (2) at Legion Park

Mr. Green stated the Community Affairs Department has received bids to replace two picnic pavilions at Legion Park that were destroyed by last year's flooding. The two are as follows:

| | | |
|------------------------------|-------------------|----------------------|
| Worsham Contracting Inc..... | \$59,385.00..... | Lions Club pavilion |
| | \$ 22,167.00..... | Parking Lot pavilion |
| K&K Buildings..... | \$24,400.00..... | Parking lot pavilion |

Due to a shortage of time we were unable to come up with a third bidder. The Parks Committee recommends acceptance of the low bid from Worsham Contracting.

Mr. Green moved to follow the recommendation of the Parks Committee to approve the lowest bid from Worsham Contracting, Inc. Seconded by Ms. Reagan. Motion passed (5-0).

B. Leasing of Legion Fields

Mr. Green stated he would like to make a recommendation to go with the GSA Lease proposal and I believe everyone has a copy of it. Seconded by Mr. Thomas. Mayor Jerkins stated we need a contract for this and Mr. Kimbrough will have to prepare a contract for this. What has been presented is a proposal and I cannot sign a proposal. Mayor Jerkins asked Mr. Standard if he wanted his list to be added in the proposal. Mr. Standard stated that GSA had addressed everything on his list. I am content with what they have proposed. I can't think of anything on my list that was not addressed or couldn't be addressed in the contract. Mr. Kimbrough asked Mr. Green if his motion was to accept the proposal and then draw up a contract with all of your listed items in the contract. Mr. Green stated, yes, that is correct. Mayor Jerkins asked if the contract would be two year contract and two year renewal option. Mr. Green stated yes, two year with option of renewal. Mayor Jerkins stated anyone who lives in the City of Austell could play free.

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Mr. Green stated, yes, any children who live in the City limits of Austell could play free. Mayor Jerkins asked if anyone had any questions. No one did.

Mr. Green moved to follow the recommendation of the Parks Committee to approve the Leasing of Legion Field to GSA. Seconded by Mr. Thomas. Motion passed (4-1). Ms. Reagan voted against.

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

A. Annexation request from Larry W. Jackson to annex property located at 6140 Highway 78

Ms. Causey stated she would like to turn this over to Mr. Kimbrough, City Attorney for a Public Hearing. Mr. Kimbrough stated at this time I would like to call for a Public Hearing for an Annexation request from Larry W. Jackson to annex property located at 6140 Highway 78 located in LL 206, district 18 of the 2nd section of Douglas County into the corporate boundaries of the City of Austell. Who is present to speak on behalf of the applicant? Mr. Larry W. Jackson stated he was. Mr. Kimbrough asked Mr. Jackson to please come forward. Mr. Kimbrough swore in Mr. Jackson. Mr. Kimbrough asked to state his name. Mr. Jackson did so. Mr. Kimbrough asked Mr. Graham if anyone had signed up to speak in opposition of this request. Mr. Graham stated, no.

Mr. Jackson stated he has a piece of property almost two acres and the front half is in Austell and the back half is in Douglas County and I would like to get it in one jurisdiction. Mr. Kimbrough asked if anyone had any questions of Mr. Jackson. Mr. Standard asked if it was a pawn shop. Mr. Jackson stated, yes, it used to be but not anymore. Mayor Jerkins asked if the zoning was to be changed. Mr. Kimbrough stated there hasn't been a request for rezoning. Mr. Graham stated Douglas County had it listed as heavy commercial and we do not recognize heavy or light. We will be bringing in same as commercial zoned. Mr. Green stated General Commercial. Mr. Graham stated, yes, General Commercial. Mr. Kimbrough stated under the statue the zoning would be Austell's most similar zoning from what it was zoned in the county. Mayor Jerkins stated we need to take it in as General Commercial. Mr. Kimbrough stated, yes, we do.

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Mr. Graham stated we sent the application to Douglas County and we have not received anything back from them after two weeks of notification. Mr. Green asked Mr. Jackson if he understood what General Commercial meant. Mr. Jackson stated, yes he knew. Mayor Jerkins asked Mr. Jackson if he was o.k. with this. Mr. Jackson stated, yes he was. Mr. Kimbrough asked if anyone had any questions. No one did.

Mr. Standard moved to follow the recommendation of Mr. Kimbrough to close the public hearing. Seconded by Mr. Green. Motion passed (5-0).

Ms. Causey moved to follow the recommendation of the Planning and Zoning Commission to approve the Annexation Request from Larry W. Jackson for the property located at 6140 Highway 78. Seconded by Mr. Thomas. Motion passed (5-0).

B. New City of Austell Comprehensive Zoning Ordinance and Zoning Map.

Ms. Causey stated the Community Affairs Committee recommends approval of the new Comprehensive Zoning Ordinance. At this time I would like to turn this over to the City Attorney Mr. Kimbrough for a Public Hearing. Mr. Kimbrough stated at this time I would like to call for a Public Hearing on the issue of the new Comprehensive Zoning Ordinance for the City of Austell. Mr. Kimbrough asked if anyone had signed to speak for or against the proposed Comprehensive Zoning Ordinance. Mr. Graham stated, no one did. Mr. Kimbrough asked Mr. Graham if he would like to speak on this Ordinance. Mr. Graham stated, no, but we do also have the new updated zoning maps and the only thing we need is the Mayor and Council's signatures before you leave tonight to make it official. Mr. Kimbrough asked Mr. Graham if the advertisement for a Public Hearing on the Comprehensive Zoning Ordinance has been in the Marietta Daily Journal for about a month now. Mr. Graham stated, yes, it had. Mr. Kimbrough stated with no comments or questions about the Comprehensive Zoning Ordinance we will need a motion to close the Public Hearing. Mr. Standard stated he had one question. If we have an area that is General Commercial now and we changed it to the CBD the existing businesses there could still be grandfathered in or legal non performing use. As long as they maintain that business they could stay the way they are going. But, if they went out of business and six months later someone wanted to open the same business it would have to fall inside the CBD code. Mr. Graham stated, yes that is correct.

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Mr. Standard stated under that I was just hoping maybe we could open up the CBD a little more so that in the future as it grows and prospers we are not having nice areas right across the road from something that is in a different zoning that would be an eyesore to the central business district. It seems like there are some down the road like up Smyrna and Powder Springs one side is central business district and the other side of the road is general commercial and it can be a car repair shop forever and you have a really nice restaurant over in the central business district. I thought it would be nice to make the other side of the road CBD and in the future if something happened it would already be in that aspect. Mr. Graham asked that would do with the mapping not the book is that correct? Mr. Standard stated, yes. We could go ahead and approve that and start studying that and getting recommendations for the boundaries that you would want. That would be a totally separate thing from this tonight. Whatever you would like to see we can change it. Mayor Jerkins stated it's pretty hard to do. It's like if somebody wanted to change your zoning on your house and you didn't agree it would be very hard to do. Mr. Kimbrough stated you have to send notice and put notice on the property itself. This is normally done by the private citizens. Mr. Graham stated it would be like a forced rezoning. Mr. Kimbrough stated more like an imminent domain. Mr. Graham stated you would have to notify everyone by registered mail that the zoning would be changing and let them have a chance to appeal. This is my understanding and it could be done just like the comprehensive rezoning of the whole City of Austell. Mr. Standard stated I am sure we had to do this at one time. Mr. Graham stated it was done back in the eighties. Mayor Jerkins stated it was in 1989. Mr. Graham stated they didn't realize they were rezoned. The CBD wouldn't change the taxes but if they were light industrial or something like that to CBD it would change the taxes. It would be a lengthy process to enforce a comprehensive rezoning in changing the manual. We can study this and go through legal process and the City Attorney could advise me on the updated procedure and I am sure you have to notify every property within the boundaries that you are changing and give them an opportunity to come and appeal if they don't want it. I am not saying they can stop but they have a right to appeal. We will definitely investigate this and come to our committee meetings and see where the boundaries are that you desire. Mr. Standard stated his other comment was on the Comprehensive Zoning Ordinance on page 80, R80 has in the definition no tractor trailer or heavy equipment. Now R80 is 80,000 square feet and everything under that doesn't have that stipulation in it.

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So, R15 could have a tractor and heavy equipment but R80 could not. I would like to see the tractor trailer and no heavy equipment in everything under R80. Mr. Graham stated I thought that was done. Mr. Standard stated in the definitions because if you say heavy equipment that is very vague. A tractor is not considered heavy equipment. We need to define heavy equipment so we don't have an argument about what is and what isn't heavy equipment. Or commercial heavy/commercial equipment because a residential zone somebody could have commercial equipment that doesn't look really heavy and obviously commercial equipment. Mr. Graham stated if you do not wish to approve this tonight we will have to start all over again. If we make a change tonight we have to start the process all over again. Or we can wait and do an amendment. We will have to go through the whole procedure again if there is a change tonight. This is why we gave it to you about a month ago so you could make the changes in it. I don't mind doing it but just remember it will have to go through the whole process again to make one change tonight. Mr. Standard asked if we make an amendment we wouldn't have to go through the entire process. Mr. Graham stated not if we do an amendment next month. We do amendments from time to time anyway. Mr. Graham asked Mr. Kimbrough if this wasn't true if we make a change tonight we will have to go through the entire process again. Mr. Kimbrough stated, yes, that is correct because this is the ordinance that has been presented to the general public and the Comprehensive Ordinance to be adopted tonight. It can either go one of two ways adopting this and amending it or going through the advertising again and starting the entire process over again. Mr. Graham stated to Mr. Standard we do not mind doing it but all the legal process we have to go through. Mr. Standard stated he had no problem amending it next month. Mr. Kimbrough asked if anyone had any questions or comments for Mr. Graham about the Comprehensive Zoning Ordinance. Mr. Kimbrough stated hearing none we need a motion to close the public hearing.

Mr. Thomas moved to follow the recommendation to close the Public Hearing. Seconded by Mr. Standard. Motion passed (5-0).

Ms. Causey moved to follow the recommendation of the Community Development Committee to approve the City of Austell Comprehensive Zoning Ordinance and Zoning Map. Seconded by Mr. Thomas. Motion passed (5-0).

14. CITY ATTORNEY – DUPREE & KIMBROUGH

A. Update on S.P.L.O.S.T.

Mr. Kimbrough stated I don't know if you have been paying attention to the papers or not but the County Commissioners are having some difficulty with how they are defining the S.P.O.L.S.T. and the projects that need to be done versus those that want to be done. They have really put it on the back burner or actually holding off on the vote which was to take place tomorrow at 10:30 a.m. down at the County at the Commission office for a hearing and then from there potentially have a special called meeting for the county between now and December 15, 2010 to vote on the S.P.L.O.S.T. So we are in a holding pattern and you have already given the Mayor permission to sign the Intergovernmental Agreement so we are just waiting to see what they will do.

Mayor Jerkins stated Chairman Tim Lee called me today and asked me to be there at the meeting. I will be attending the meeting. They are just having some problems putting it together. I will be taking some of the staff to the meeting that is involved.

15. MAYOR'S REPORT

| | |
|----------------|---------------------------|
| A. CMA MEETING | DECEMBER 14, 2010 |
| TIME: | 6:30 P.M. |
| LOCATION: | KENNESAW – HOLIDAY DINNER |

B. A.A.C.I.C. Grant for City Churches

Mayor Jerkins stated we have the A.A.C.I.C. Grant with the City churches and schools. On the churches we donated twenty-five hundred (\$2,500.00) per church. We put down twenty churches but it may be just eighteen. We did have one new church added that didn't receive it last year. We had five schools who we gave ten thousand dollars (\$10,000) to each school. Of that ten thousand dollars, five thousand is distributed to ten needy families (\$500.00) each and the remaining five thousand is placed in a discretionary fund to be used throughout the year. Austell Primary, Austell Immediate, Clarkdale Elementary, Garrett Middle School and South Cobb High School. We approved five thousand dollars (\$5,000.00) for the Truancy Board. Each school can pick ten families and give five hundred dollars (\$500.00) to them.

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The Council and the Board can each pick a family to give to for Christmas which is twelve of them and I think that was six thousand dollars (6,000.00).

There was another fourteen thousand dollars available in case we had to use some more. It ended up one hundred twenty-five thousand dollars all together. I will check the churches out tomorrow and make sure they are all still there.

Mr. Thomas moved to follow the recommendation of Mayor Jerkins to approve the A.A.C.I.C. Grant for the City Churches and Schools. Seconded by Ms. Reagan. Motion passed (5-0).

16. ADJOURN

Mr. Thomas moved to follow the recommendation to adjourn the meeting. Seconded by Ms. Causey. Motion passed (5-0).