

CITY OF CHEROKEE VILLAGE, ARKANSAS

City Council Minutes

August 5, 2002

The semi-monthly meeting was called to order at 2:00 PM Monday, August 5, 2002 by Mayor Marjorie Rogers. The meeting was held at City Hall. The Pledge of Allegiance was recited.

ROLL CALL:

Answer Roll Call: Chuck Bartlett, Marty Betz, Dewey Dark, Scott Paul, Louisa Relyea, Jack Stroup and Ray Torbit.

Also Present: Susan Maynard, City Clerk/Treasurer and Tom Garner, City Attorney

Absent: Tom Paul

MINUTES: Motion to approve the July 15, 2002 minutes as presented was made by Mr. Dark and seconded by Mr. Stroup. With a voice vote of seven ayes, 0 nays, motion carried unanimously.

TREASURER'S REPORT: None

CORRESPONDENCE: Mrs. Maynard summarized a letter from Senator Tim Hutchinson, in which he said in answer to our opposition to S. 952 regarding mandatory public safety labor organizations, "I remain concerned about the consequences of this legislation for volunteer fire departments and the measure's potential to override existing state and local laws. --- I will continue to oppose S.952 should it come before the Senate for consideration by itself or as an additional amendment." Tommy Estes thanked us for the use of our courtroom for Circuit Court. Village Pride donated \$175 towards the hiway signs. Municipal Clerks Education Foundation thanked us for the CV sweatshirt for their Silent Auction. It brought \$21. Janet Rose, Daughters of the American Revolution, thanked us for the use of the courtroom for their meeting.

OLD BUSINESS:

Mr. Torbit read the cover letter of the road contract that SIDS attorney, Kevin King, sent to our attorney. (Attached) In summary, it specified that we return the signed contract by August 15, 2002 or they would terminate their Road Dept. September 1, lay off those road employees and sell the road equipment. No further negotiations would be entertained, and all future correspondence would be between the attorneys. Mr. Bartlett later read from a letter that they would extend the date until August 19. Mr. Garner then gave his opinion of the letter and contract. He had since talked with Mr. King, and feels there would be able to have some negotiations. He is concerned with the dates of payment (would January's payment include the 2002 fall assessment receipts?). He is also concerned that by signing this agreement, the City would assume full legal responsibilities of the roads. At this point, he would not recommend our signing of such an agreement. Normally a city has a millage tax for road improvements. We have no such tax. There is a constant relationship between the taxpayers and SID because they pay the SID assessments. Part of the reason for establishing a SID was for the maintenance of the roads. The taxpayers pay money to SID to take care of the roads. SID has made a statement that a certain percentage of these assessments is spent on roads. This results almost in a

"contract" between the taxpayers and SID. The taxpayer has no relationship to the City as they pay us no taxes. They do elect the city government, but do not pay us an assessment. At this point if there is a problem on any issue of taxation, it's between the taxpayer and SID. The City is not actually involved. Under this agreement, SID would have a contractual agreement with the City to provide road maintenance. This would relieve the SID of any responsibility to take care of these roads. If we knew that all of the agreed upon percentage of the assessments would go directly to the City, that would be fine. If the taxpayers decided that they weren't getting their money's worth of road maintenance, then they might sue SID. As long as there is no agreement between the City and SID, the City does not have any liability. Once the City would enter into this agreement, then we would have contracted to assume all that liability and full responsibility for the maintenance of the roads. So in essence, if the taxpayer would sue SID, then SID would sue the City. We would be the ones on the receiving end of the liability. And again, if we knew that all the money was coming to us there would be no problem. It only becomes a problem when the City enters into a contract with SID to take full responsibility of the roads, but only receives a portion of the money that SID collects for the roads. What the City then is doing is shorting the taxpayer on some of the funds that it is spending on the roads. What Mr. Garner would propose is that if we enter into a contract with SID that language could be put in that says that should a court ever determine that the taxpayer is not getting all he should be, then that agreement would automatically be changed to whatever percentage the court would determine. This way if the taxpayer is happy with this agreement there is no problem, and if there were a problem, the City would be covered. This is the main reason Mr. Garner would not advise the City to enter into this agreement as it is now written. He perceived the September date of dissolution was a "little heavy handed." He said if the City wants to get into the road business, then an agreement is a good idea. Some of the people he has heard from think the City should stay out of the road business and let SID do what it's supposed to do.

Mr. Bartlett read from a prepared statement that the City is accountable to all property owners in the Village, not just the residents. For that reason he thinks we must work together with SID and the Water Company for improvements to Cherokee Village. The City was forced to form a police department before it was ready to do so. He also agrees that we are being forced to take over the roads before we are ready. He thinks we can accomplish the transfer of responsibility for the road department from SID in a way that will be beneficial to both parties. He also had just received a letter from SID which extends the deadline until August 19. Therefore he would like to table this issue until the next Council meeting.

The Mayor asked Ray Maynard, Road Supt., to comment. He expressed concern regarding the timeframe of the takeover. We have no land, buildings or equipment to start a road department. This will take time and much expense. He is also concerned about the timeframe of the payments. As he understands the contract, we would start receiving monies from SID starting with the 2003 assessments, which the bulk of will not be received until November 2003. Roadwork for 2003 therefore would be very minimal, and the bad roads will only get worse.

Mr. Betz understands the agreement to mean that we would begin receiving funds from SID as of January, including any 2002 assessments received after January 2003.

Mr. Stroup asked Mr. Maynard if the start up date of January 1, 2003 would give him enough time to get a department set up. Mr. Maynard replied that this would be very difficult to do as we have to property yet. He feels it will take us most of 2003 to get the facilities set up; therefore postponing any actual road maintenance until after that time.

Mr. Torbit reiterated the concerns of the road committee, one of which is the winter snow removal, as we have neither equipment nor any place to store the salt/sand materials. Mr.

Daggett has said that we could continue to use the storage facilities that SID is using, although this property is for sale and at any given time be taken away. Mr. Torbit then said that as we had heard Mr. Garner's presentation about his legal concerns of the letter/agreement, and things have taken place that the Council is not aware of regarding the "no more negotiations" and the deadline date. In particular, the selling of the road equipment and laying off the employees. He thinks all these things need to be worked out, and cannot be worked out by August 19. Therefore, he made a motion, on behalf of the Cherokee Village Road Committee, that the City Council action of June 17, 2002, approving the negotiated contract with the CV SID to assume road maintenance responsibility on January 1, 2003, for which SID will pay 13% of the SID lot assessments, be rescinded and made null and void. Mr. Stroup seconded the motion.

Mr. Betz asked for clarification – does that mean that we should just forget this latest contract. Mr. Torbit said that based on the attorney's concerns, yes. Mr. Betz said he agreed that further clarification was needed, but not to throw out the whole thing. Mr. Torbit replied that any changes made to this agreement would constitute a new contract. He feels we cannot accept this agreement and should start all over with the modifications Mr. Garner has proposed.

Mr. Stroup tried to clarify that through this motion we were not eliminating the possibility of working with SID to formulate a contract – that this agreement was a bad one, and we wanted to rescind the motion of June 17. Mr. Torbit agreed.

Mr. Betz said that although this contract may have some bad things in it, it also contained good things. Mr. Torbit said that the point was that any modification made would make a new contract. Mr. Garner said that yes, if you take out the bad things and replace with good things, this would make a new contract.

Mr. Torbit called for a vote. Mr. Bartlett made a motion to table this until the next board meeting which is the 19th of August. Mrs. Relyea seconded. Much discussion as to there already being a motion on the floor – which should be voted on first, etc. Mr. Bartlett said according to "Robert's Rules" that a motion to postpone took precedence over a previous motion. With a roll call vote of five ayes, two nays, motion carried. The two attorneys will continue negotiations over a road maintenance contract.

Don Schmitt from the audience read from a prepared statement. His concern is that if the City enters into this or any agreement with SID, does it relieve the SID of its "judicial petition ruling" and responsibilities set forth in Sharp and Fulton Counties? Or does this in fact negate the rulings that the SID was formed under? Also how much of a City Tax will have to be levied to the property owners to cover the short fall? Then what happens after ten years? He concluded with asking how the City would maintain the infrastructure; if turnback revenues will remain the same; if turnback monies go down, what formula will be used to generate revenues for road maintenance; and to give the taxpayers a ten-year plan for the future of the City and the funding concurrent with that plan.

A new resident, Steve (inaudible) expressed his concerns. Mr. Garner replied that it is legal for SID to make contracts with other entities.

Danny Mays said that he hoped the City and SID could work together. He feels it would be a good idea if the 13% could be paid directly to the City. It would be in the best interest of the City to have a better relationship between the two entities. Mayor Rogers has looked into the direct payment process, and our auditor said it isn't allowable.

Leslie Wettstein asked who does own the roads? He feels we have no business taking over the roads and that the property owners should be after SID to do what they are supposed to do.

Steve Thompson is encouraged by the Council's actions, but hopes that no legal actions are taken against the City. He asked that the Council not be distracted by threats – we wouldn't have the City Hall building or city government if we had given into threats.

Tom Henkels said he thought the public comments should have been heard before the vote, per Robert's Rules. Also, does the agreement state that we would not receive SID funds until fall of 2003? What is being done with the percentage of assessments supposedly put aside for roads this year if SID is getting out of the road business? Mr. Stroup stated that these are the areas of the contract which have to be spelled out definitely in a new contract so we all know exactly what is going on and there is no misunderstanding and the taxpayers get the best service they are entitled to, from both the City and SID.

Russ Stokes asked the Council to have everything spelled out in the contract – again so there would be no misunderstandings between the City and SID. Also to take time to do the homework as to where the money will come from and how it will be spent.

Wally Schultz feels the Council is putting the City in harms way if it settles for less than 22%. (Applause) He says SID has said they are taking 22% of the assessments to spend on roads and all he is asking is that they do as they say they are doing.

Bill Tyree asked who would pay for the difference between the 13% and the 22%? The Council has to think about doing what's right for the people, not what's right for SID or the City.

John Soden expressed his feelings that the people, the City and SID are all one entity and all need to work together.

Stan Sellers wanted to know why we don't just contract the roadwork out. Mayor Rogers explained that we have approached both counties, but they don't have the extra time or people. Mr. Maynard also said that he had contacted numerous private contractors to do the chip and seal, but they wanted three to four times the amount of money that it would take for us to do it on our own.

Jim West said that when SID gets a dollar, the Commissioners have to decide where to best spend that dollar, be it the fire department, golf course or roads.

Don Martin feels we should force SID's hand and see if they will break their own law and sell the equipment and lay off their workers.

Ray Torbit pointed out that although SID was aware of the subject of this meeting, none of the Commissioners chose to be present.

Alan Kimber asked why SID hasn't borrowed \$900,000 to fix the roads?

Arlus Kramer is concerned with the overgrown roadsides and ditches. Mayor Rogers expressed her concerns about the abandoned cars, garbage, etc. also. It was said at the Municipal League Convention that if the state doesn't do something soon about this garbage soon, we would be called "The Garbage State". The City is addressing this issue. We have bought a wood chipper and we will continue to work to clean up these areas. She just wants people to know that this is a very serious problem all over the state, and no one has the answer to it. Four different resolutions were brought up at the convention, but none were passed.

Another resident said it was a shame no one knows how to use the chipper we bought because limbs had been cut down on his road and just left there. We believe that was SID or the power company, as we had not done that work.

Ray Torbit stated that anyone who sees anyone dumping illegally should try to get the license plate number and report it to our police department. Also to contact the police department if they find a new dumpsite. If they can examine it and possibly find out who did it, these people will be prosecuted.

NEW BUSINESS:

Sues' Notes:

Quad City Meeting – Chamber of Commerce would like all four cities to have “rack cards” made up instead of maps and brochures to send to prospects.

Government Financial Officers Conference – plea was made to oppose “Grocery Sales Tax Exemption” if it gets on the November ballot. It is estimated municipalities would loose 1/3 of their Sales and Use Taxes. For Cherokee Village this would mean approximately \$72,000 per year.

September meetings – Motion to hold the September Council meetings on the 9th and 23rd was made by Mr. Betz and seconded by Mr. Bartlett. With a voice vote of seven ayes, 0 nays, motion carried unanimously.

Mrs. Maynard reported that an anonymous donation of \$250 had been given to purchase a “Great Seal of Arkansas” for the courtroom.

ANNOUNCEMENTS:

- Wednesday, August 7, 1:00 PM; Planning and Zoning Meeting, City Hall
 - Thursday, August 8, 9:00 AM; District Court Plea Day, City Hall
 - Thursday, August 8, Noon; CVBA Luncheon, Loujo's Deli
 - Thursday, August 8, 4:00 PM; Swim for Health Club Meeting, Omaha Center
 - Thursday, August 8, 6:00 PM; Band Concert and Ice Cream Social, Town Center
 - Saturday, August 10, 7:00 – 1:00; Farmer’s Market, City Hall
 - Monday, August 12, 6:00 PM; Sharp Co. Quorum Court, Ash Flat Courthouse
 - Monday, August 12, 7:00 PM; Fulton Co. Quorum Court, Salem Courthouse
 - Tuesday, August 13, 6:30 PM; Municipal Development & Planning, City Hall
 - Saturday, August 17, 7:00 – 1:00; Farmer’s Market, City Hall
 - Monday, August 19; Circuit Court, possibly all week
 - Wednesday, August 21, 7:00 PM; Sharp Co. Regional Airport Authority meeting, Airport
 - Thursday, August 22, 9:00 AM; District Court Trial Day, City Hall
 - Saturday, August 24, 7:00 – 1:00; Farmer’s Market, City Hall
 - Saturday, August 24, 1 – 5 PM; SRACC 1st Annual Bowling Party
 - Monday, August 26, 2:00 PM; Council Meeting, City Hall
 - Saturday, August 31, 7:00 – 1:00; Farmer’s Market, City Hall
 - Saturday, August 31, 7 – 11 PM; Street Dance – Town Center
- Senior Citizen’s Center open every Monday and Wednesday, 11 – 3,
unless otherwise noted; lunch at 11:30 AM, Thunderbird Center.

ADJOURNMENT:

Motioned to adjourn was made by Mr. Bartlett and seconded by Mr. Stroup. With a voice vote of seven ayes, 0 nays, motion carried unanimously. Meeting adjourned at 4:15 PM.

DATE: August 26, 2001

APPROVED: Marjorie Rogers
Marjorie Rogers, Mayor

ATTEST: Susan E. Maynard
Susan E. Maynard, Clerk/Treasurer