

## **WORK SESSION**

### **MEETING MINUTES AUGUST 2, 2010**

The members of the City Council of the City of Phenix City, Alabama met in a regularly scheduled work session at 4:00 p.m., EDT, Monday, August 2, 2010 in the third floor conference room of the Municipal Building, 601 12<sup>th</sup> Street, Phenix City, Alabama. The following members of council were present: Councilmember Arthur Sumbry, Councilmember Michelle Walker, Councilmember Max Wilkes, Councilmember Jimmy Wetzel, and Mayor Coulter. City Manager Wallace B. Hunter, City Attorney Jimmy Graham, and City Clerk Charlotte Sierra were also present. Department Heads in attendance were: Chief Building Official Gil Griffith, City Engineer Angel Moore, Comptroller Labrita King-Copeland, Finance Director Stephen Smith, Municipal Court Clerk Pam Jarrell, Parks and Recreation Director Todd Hughes, Personnel Director Barbara Goodwin, and Assistant Chief of Police Robert Casteel. Members of the media were also present.

Mr. William Benton, President of the Russell County Historical Commission, came forward to address council, as listed on the agenda to discuss funding for the Historic Fort Mitchell Park. He advised the Historical Commission receives a \$192,000.00 appropriation from the State of Alabama for the facility. He is requesting 1% of the hotel lodging tax from Russell County and Phenix City be earmarked to fund the park. The revenue should total \$80,000.00 to \$100,000.00 per year. He stated that the funds are needed soon to maintain the day to day operations of the park.

Councilmember Wetzel discussed the items addressed by the Planning Commission during their regularly scheduled July 27, 2010 meeting.

City Manager Hunter called on City Engineer Angel Moore to explain a draft of an Ordinance relating to utility cuts. She explained the Ordinance sets out the policy for utility companies making cuts in city streets, requiring them to obtain permits and pay fees for such

cuts. Council was requested to review the draft and advise if they agreed to the terms as set out in the Ordinance.

City Manager Hunter called upon City Engineer Angel Moore to explain a Resolution before Council for consideration regarding drainage repairs on Stadium Drive at Cloverleaf Apartments North, owned by Mike Bowden. She reviewed the proposed plans and estimated costs for construction materials. She advised the problem is excess storm water runoff and is a result of the improvements made to the storm drainage system on the apartment complex property. The plan proposed changes be made to a portion of the city right-of-way being affected by the excess run-off, estimated cost of up to \$15,000.00. Council concurred with the proposal in which the city would pay \$7,500.00 for one-half ( $\frac{1}{2}$ ) of the material cost only with the work to be performed by Bowden crews, Dirt Dobbers. The city would not be responsible for any labor including costs associated with the repairs.

City Manager Hunter asked City Engineer Angel Moore to update council on the meeting with Mr. Ed Kinner, the Whitewater Project Engineer. She reviewed the scope of the project with council, stating the project had an estimated budget of \$23 million and only included one stairway to the river near 13<sup>th</sup> Street, and a short walking path between 14<sup>th</sup> Street and the railroad bridge with a viewing area about 6 feet that would allow people to watch the river. The proposed construction plans for the project would interrupt construction on the new phase of the Riverwalk and it would damage recent improvements made to Broad Street. She advised that the city would have to provide alternate routes for access on the Riverwalk for the duration of the project, which should be about 12 months. She further advised that the city would need to have a feasibility study done, for access points on the Phenix City side of the river; and there were issues regarding sediment at the mouth of Holland Creek on the river, studies and permits for dredging would be required. City Manager Hunter informed council that the project design is over 50% complete and Phenix City is not included. The project coordinators are requesting a \$500,000.00 commitment from Phenix City without access on the Phenix City side of the river.

He also reminded council that the city spent \$600,000.00 on acquiring the City Mills Dam property that the city has already donated to the project. Council advised that the city would not make any commitment without first discussing the project in detail with its coordinators.

City Engineer Angel Moore asked for any comments on the presentation by Sain and Associates at the previous work session on the Summerville Road Resurfacing Project. Sain and Associates would like to complete the construction plans.

Mayor Coulter reviewed agenda items with council.

City Attorney Jimmy Graham reviewed claims with Council.

City Attorney Jimmy Graham stated council needs to go into Executive Session for 15 minutes to discuss mediations on legal matters.

Councilmember Walker made a motion to go into Executive Session for approximately 15 minutes to discuss mediations on legal matters, at the conclusion of which the work session will adjourn until August 16, 2010. Councilmember Wetzel seconded said motion. All were in favor upon a show of hands. Said motion thus passed.

Council moved into Executive Session at 5:50 pm.

The Executive Session adjourned at 6:30 pm and therefore the work session adjourned until August 16, 2010.

**MEETING MINUTES**  
**JUNE 14, 2010**

The members of the city council of the City of Phenix City, Alabama met in a called meeting on Monday, June 14, 2010 at 1:30 p.m., EDT, in the third floor conference room of the Municipal Building located at 601 12<sup>th</sup> Street, Phenix City, Alabama. Upon roll call the following members of council were present: Councilmember Arthur L. Sumbry, Councilmember Michelle E. Walker, and Councilmember James A. Wetzel. Councilmember Max E. Wilkes arrived shortly after the meeting began. Mayor H.S. Coulter was not present. City Manager Wallace B. Hunter, City Attorney James P. Graham, and City Clerk Charlotte L. Sierra were also in attendance. City personnel present were Angel Moore, Director of Engineering and Public Works, Stephen Smith, Finance Director, and Raymond Smith, Chief of Police. The purpose of the meeting was to discuss the Phase IV of the Riverwalk Project. Others present for the discussion were Mr. Gerald Brooks of Gerald Brooks Construction, Inc., and General Contractor for the project, and representatives from AECOM Engineering Firm, the engineering firm contracted by the City of Phenix City for the project: Ms. Christy Cahalan, Project Manager, Jimmy Ingram, Project Inspector, and Adam Patterson. Present on behalf of the Alabama Department of Transportation was Mr. Dee McDaniel, Assistant Division Engineer.

Mayor Pro Tem Sumbry called the meeting to order.

City Manager Hunter called upon City Engineer Angel Moore to begin discussion on the current issues regarding this project. City Engineer Moore stated that Mr. Brooks outlined concerns he had regarding the project in a letter to the city manager and council (undated). City Engineer Moore stated a packet of information had been prepared in response to the concerns Mr. Brooks stated in his letter and the concerns he expressed when he met with council at the previous work session (June 1, 2010). The meeting was arranged to address any questions Mr. Brooks may still have.

Mr. Brooks responded that he did not have a chance to review the documents just presented prior to the meeting. He began discussing his concerns with the project stating first that he was not aware that AME Engineers were no longer associated with the project prior to submitting his bid. He remarked that

had he been informed of the change prior to submitting his bid, he would have increased his bid by at least \$300,000 or simply would not have bid on the project. He stated he was not familiar with AECOM or their work. City Attorney Graham advised Mr. Brooks that the City was not required to inform Mr. Brooks of the change in project engineers, citing that the project would have to be constructed according to specifications as set out by ALDOT regardless of the engineering firm contracted for the project. City Manager Hunter questioned Mr. Brooks about why a different engineering firm would make a difference in his bid. Mr. Brooks replied the bid he submitted and is now working under does not include any profit for his work on this project. He stated that he had built the other sections of the Riverwalk and this section was being built different than the other sections. The other phases were constructed on an as-built basis. He continued stating that his bid was lower because he had dealt with AME Engineers on the previous phases of the Riverwalk and knew how they operated.

The parties discussed this phase of the Riverwalk project being a unit price job. Mr. Brooks stated that he has done unit price jobs in the past. He explained that he was not informed of the change in engineers until the preconstruction meeting and expressed that two months had lapsed since awarding the bid and no mention had been made to him about the change. He stated that on previous unit pricing jobs, his concerns were with the project inspectors requiring changes that were in his opinion costlier than necessary. He commented that an inspector should not tell him how to run his job. Mr. Brooks stated he would build the project and once it was inspected, if there was a problem, he would fix the problem. He stated it was not the inspector's job to tell him what to do. Mr. Brooks further explained his concerns with the project inspector with Ms. Cahalan after several run-ins with Mr. Ingram.

City Manager Hunter stated that if the project specifications were being followed there shouldn't be a problem. City Manager Hunter continued by stating that AECOM was overseen by ALDOT. Everyone involved on the project had specific guidelines to follow as set out by the ALDOT specifications. He advised that the project was being funded through a federal grant the City received and if the guidelines were not adhered to it could jeopardize the grant and result in the City losing the job. City Manager Hunter advised that the City and AME had experienced differences on the project which

led both parties to mutually agree to end the contract. Mr. Brooks replied that he was unaware of any problems with AME and his concern was that he was not notified.

City Manager Hunter requested Mr. McDaniel (ALDOT) to explain the project and how adhering to the guidelines was beneficial to all the parties. City Engineer Moore stated that in a previous meeting involving Mr. Brooks, AECOM representatives and City personnel, Mr. McDaniel reviewed the specifications and all agreed that it was an ALDOT job and an inspector had to be on site full time because federal money was funding the project. Mr. Brooks advised that he was aware of that and that he had inspectors on site on past projects. City Engineer Moore stated that in the previous meeting, Mr. Brooks stated he was unaware that he had to follow the ALDOT 2008 specifications book. Mr. Brooks commented that during that meeting he was advised by ALDOT that the City Engineering Department had a copy of the storm water management plan and that the plan would be transferred to him. AECOM replied that he was instructed the storm water permit was in the city's name and had to be transferred to him. Mr. Brooks stated he was unaware that he had to prepare the storm water management plan, and the cost to prepare such a plan would be \$25,000 which was not included in his bid. Mr. Brooks said that AME told him they had asked for the storm water plan previously and never received it. Ms. Cahalan requested Mr. Brooks refer to a section of the ALDOT specification book Section 108.04(b)3, (copy of the section was included in the handout presented at this meeting) regarding the guidelines and requirements for the storm water management plan, and asked why there was a problem. He said when he received a set of the specifications everything ALDOT related was to be in the blue pages in the spec book. Mr. Brooks and Ms. Cahalan discussed what the supplement to the specs was and what the actual specs were. Ms. Cahalan stated that the blue pages were supplements to the ALDOT specs, when there is a change in the ALDOT specs, and then it becomes a special provision which have to be included in the contract documents. If there is no change then you refer to the 2008 ALDOT spec book. Mr. Brooks stated that he has gone by the ALDOT spec book in the past and has never had to refer to anything else. Mr. McDaniel stated that the special provisions were changes to the specifications since the last spec

book was issued. Mr. McDaniel continued adding the bid proposal sheet references the specifications for special projects and the information regarding the storm water management plan was in that book.

Mr. McDaniel stated that he has worked with Mr. Brooks on several enhancement projects and Mr. Brooks did outstanding work on all projects he knew of and hoped that the issues could be resolved and the project move forward. Mr. McDaniel stated that the contract was between the city and Mr. Brooks and was a cost reimbursement contract, meaning that the city would be reimbursed by ALDOT for project. He asked if Mr. Brooks had been required to perform any work that was not in the contract specifications. Mr. Brooks stated that he had not been.

Mr. Brooks stated he was handed the specifications at the preconstruction meeting and thought the information should have been distributed prior to that meeting. Mr. McDaniel stated that the handouts given at that meeting were summaries of what the city's responsibilities were and what the contractors were on the project. He continued stating everything on the lists was listed in the specification book and if not, please advise him. Mr. Brooks stated they were not in the spec book and mentioned the handouts listed a bar graph being required of him that he could not find in the spec book. Mr. Brooks was advised the bar graph was required per the contract and was advised of where it was listed in the documents. Mr. McDaniel stated that there was language inserted by Mr. Eichelberg in the project management portion of the contract that instructed the parties that when the word "State" was listed in the documents, to substitute the City of Phenix City in its place, and when the word "engineer" was listed in the documents to replace it with the Engineering Firm hired by the City as a Consultant to the project or the Engineer employed by the City of Phenix City. Mr. McDaniel continued by stating that the spec book was written primarily for projects where the contractor is contracting with the State of Alabama, and Mr. Eichelberg did this for ease of reference by the parties. Mr. McDaniel confirmed to Mr. Brooks that this stipulation did apply to this project. Mr. McDaniel offered to meet with Mr. Brooks separately to review any issue. Mr. Brooks replied that he was familiar with the contract; the problem was the inspector giving him advice on how to build the project. Mr. McDaniel informed Mr. Brooks that there was language in the project documents specific to the roll of the inspector and superintendents on the project that was

established to ensure the project was constructed to the requirements for the federal grant. The City of Phenix City is the Owner on the project and ALDOT was the authority appointed to distribute the funds for the grant and oversee the project.

There was a discussion between City Attorney Graham and Mr. Brooks regarding AME Engineers separating from the project. City Attorney Graham stated that AME was not terminated, but rather both parties mutually agreed to rescind the contract. Councilmember Wetzel commented that the decision regarding the engineering firm was solely the responsibility of the City and should not be an issue for the contractor.

Mr. Brooks discussed with Council his problem was with the firms being changed without notification, problems with AECOM's inspector, and the amount of documentation required for the project. City Manager Hunter expressed to Mr. Brooks that the paperwork he referred to was the documentation now being required for unit priced projects. Mr. Brooks replied that he was familiar with unit pricing, to which Mr. McDaniels agreed.

The discussion next turned to the studies required for the shop drawings for the MSE Wall. Mr. Brooks stated that when he inquired why the alignment plan was needed he was informed that it was in the project plans. City Engineer Moore stated that it was for the MSE Wall and that per ALDOT specs the contractor was to provide the detail and design calculations for the MSE Wall. Mr. Brooks stated the only thing not in the plan was the design calculations and he had asked for them previously. City Engineer Moore stated Mr. Brooks wanted to build an as-built wall and not prepare an alignment plan. Mr. Brooks discussed the fact that there were about 10,000 large granite rocks on the riverbed that needed to be removed from the site. He referenced a statement in contract documents prepared by Mr. William Jones citing that when building similar project and having to move 10 to 30 ton rocks, topo studies were done and the wall was raised and lowered. He added that what wasn't done in the contract he was referencing was the fact that strips 10-18 ft in length had to be placed back in the MSE wall horizontally forcing up everything on river wall and that the other issues were addressed as they were reached. He had done this in the past and now it was not what was needed and didn't understand the problem. He again

referred to the to the statement quoting “engineer to make minor grade adjustments in construction as best fits the local conditions, to be called as built”. Ms. Cahalan stated that is a shop drawing and that he has to have design calculations for the internal and external stability of the wall approved and stamped by a PE licensed in the State of Alabama; if it were to be called as-built it would have had to be listed in the special provisions portion of the specifications. Mr. McDaniel advised that shop drawings were still necessary and changes could be made for field conditions as needed. The parties discussed the specifications, allowing field changes as conditions warrant, but still requiring shop drawings, referring to page 8 of documents presented at the meeting. Mr. Brooks informed the group that all of the walls he has done on the previous sections of the Riverwalk, on both the Georgia and Alabama sides have been as-built. He stated on those projects he was advised he could build the walls as built as long as he left the quantities as they were listed in the project documents. He explained that Mr. Jones toured the past project sites with Mr. Brooks and told Mr. Brooks to turn in a letter stating that he agreed to fill in the project with the unit amounts listed in the specs and would not request any changes in quantity. Ms. Cahalan advised that Mr. Brooks had to submit shop drawings first with the required calculations first, changes could be made when construction begins and field conditions require the changes. ALDOT agreed that changes will have to be made as the project proceeds, but the necessary studies and documents needed to be submitted as required and submit the changes as seen needed as the project continues. Mr. Brooks was instructed that he would have to hire an engineer to review and stamp the plans as approved to meet the specifications.

City Manager Hunter, requested Mr. Brooks to review the specifications, and allow AECOM an opportunity to work with him and the city on building the Riverwalk. Methods of construction of the previous phases of the Riverwalk were no longer valid and didn't need to be continued in this phase of the Riverwalk. The issues with AME were between the City and AME and did not involve Mr. Brooks. He was to work with AECOM now. He advised that the City did everything it was supposed to and had problems with AME and changing engineers was the best option for the project and the City.

Mr. Patterson stated that AECOM is not a construction management firm. Their firm was hired to make sure that the ALDOT and Federal requirements were met to receive the grant for the project and reimbursement for city.

Mr. Brooks said he realized the city had invested money on the project that would be lost if he were to leave the job, and there would be a lawsuit to follow, but that didn't bother him. He continued by saying, however, let's do it, and advised City Manager Hunter that when he said he was done to the City Manager he meant that he was done with the project and could do no more with it. Mr. McDaniel's stated he wanted to attend this meeting to make sure that everyone knew what was being required of them by the specifications, the contractor, engineer, and city.

City Manager Hunter stated it was the city's opinion that project was not headed in the right direction with AME, and the city was being asked to pay more money than was required by the contract. He advised that Mr. Brooks and AME were not considered as a group or tied together in any way and neither were Mr. Brooks and AECOM. It is better if the two companies are not linked because it offers a better set of checks and balances for the City.

Councilmember Wetzel commented that at the time AME was released from their contract, the project had not been awarded to Mr. Brooks, and that there shouldn't be a concern with the different engineering firm if the specifications were being followed. Mr. Brooks replied the difference was that he was familiar with the AME and their thought process and they knew how he worked. City Manager Hunter advised that if the previous firm (AME) had allowed Mr. Brooks to build the Riverwalk, without inspections and not according to the specifications as required, then they should not have be involved in the project to begin with. He added that that was in no way a reflection on Mr. Brooks and the work he performed. He hoped that all parties could put problems in the past, and come to terms.

Mr. Brooks advised he needed notice to proceed with different date because of the amount of time that had elapsed without actual work being performed; the original notice was dated May 13, 2010. He said it would protect him from liquidated damages being assessed against him since there was the delay from the issuance from the notice to proceed and the time actual work was started. Both ALDOT

and AECOM advised time would be suspended to address the days lost to protect the 210 contract days Mr. Brooks had to work under per the contract. Mr. Brooks agreed to suspending time.

The parties discussed Mr. Brooks providing a storm water management plan which had to be approved by the City and copied to ALDOT. He was advised he needed to submit MSE wall studies, shop drawing, and that he would have to provide a 10 day notice to begin construction.

The parties began a detailed discussion on performing cross section studies, calculations for the center line of the wall and centerline of the walk. Mr. Brooks was advised that he needed to do centerline of the wall. There was a discussion of the center line of walk study being converted to the center line of wall and that could done by Mr. Brooks and submitted if he so chose. It was the contractor's responsibility to provide the center line of wall. The parties discussed the centerline of wall and the differences that will be incurred when the actual construction began because of the granite rock on the riverbed that would have to be moved. He was advised that he would have to submit shop drawings, but obviously accommodations would have to be made for the conditions faced during the construction of the wall. There was a discussion between Mr. Brooks, AECOM, and Mr. McDaniel regarding performing cross section studies, the centerline of walk, and the center line of wall calculations. Mr. Brooks advised that it would be at least six weeks before he can begin installing the MSE wall when he is allowed to begin work.

City Engineer Moore asked if Mr. Brooks was approved to manufacture the MSE wall; that he had to be ALDOT approved to manufacture the walls. Reinforced Earth stated they would not certify wall panels if Mr. Brooks poured them because he is not on the approved ALDOT list. The group discussed ALDOT list of buyers of the walls and companies to certify panels. Reinforced Earth will only certify panels if they are poured on Reinforced Earth's yard. Mr. Brooks advised he would have to get back with everyone on that, this was a new situation to him.

City Manager Hunter asked if Mr. Brooks was satisfied with the terms reached at this meeting. Mr. Brooks advised that he would give it a try.

AECOM and ALDOT agreed to suspend time and waive charges. ALDOT and AECOM discussed procedure for waiving charges. AECOM requested Mr. Brooks write a letter to them requesting the time suspension. This will allowed Mr. Brooks to work, but he won't be able to get paid for the work until he begins working on the ground. Six weeks from the date of this meeting would be approximately July 26, 2010.

Council concurred with the outcome of the meeting.

The meeting adjourned.

**CALLED MEETING MINUTES  
AUGUST 6, 2010**

The members of the City Council of the City of Phenix City, Alabama met in a special called meeting at 10:00 a.m., EDT, on Friday, August 6, 2010 in the third floor conference room the of the Municipal Building located at 601 12<sup>th</sup> Street, Phenix City, Alabama. Upon roll call, the following members were present: Councilmember Arthur L. Sumbry, Councilmember Michelle E. Walker, Councilmember Max E. Wilkes, Councilmember James A. Wetzel, and Mayor H.S. Coulter. City Manager Wallace B. Hunter, City Attorney James P. Graham, and City Clerk Charlotte Sierra were present. J. W. Brannen, Shaun Culligan, and Jennifer Lowman of the Economic Develoment Department were also present. The purpose of the meeting was to discuss matters of trade and commerce in Phenix City.

Mayor Coulter called the meeting to order.

City Attorney Jimmy Graham recommended Council go into Executive Session for the purpose of discussing matters of trade, commerce, and Economic Development in Phenix City for approximately one and one half hours, after which the meeting would adjourn.

Councilmember Sumbry made a motion to go into Executive Session for one and one half hours to discuss matters of trade, commerce, and Economic Development in Phenix City from which the meeting would adjourn. Said motion was seconded by Councilmember Wetzel. All were in favor. Said motion passed.

Council went into Executive Session at 10:15 a.m., EDT.

Council came out of Executive Session at 11:50 a.m. EDT.

There being no further business to discuss, the meeting adjourned.