

City of Dyer  
Special Council Meeting  
04/20/2021

It is 6 pm on April 20th, 2021 were going to call the meeting to order by Recorder Treasurer Lynn Hubbard in the absence of Mayor Paul Brown. The Pledge of allegiance was said, and roll was called by Recorder Treasurer Lynn Hubbard.

Present were:

Alderman Rhonda Rowell

Alderman Donna Staton

Alderman Jeff Baxter

Alderman Katherine Fry

Alderman Myrna Burns

Alderman Richard Swearingen

No Public Forum

First order of business is to introduce an Ordinance 2021-04-20-01

AN ORDINANCE ESTABLISHING VARIOUS POLICIES AND PROCEDURES OF THE DYER, ARKANSAS WATER DEPARTMENT AND FOR OTHER RELATED PURPOSES.

**WHEREAS,** the City of Dyer owns and operates sanitary sewer collection and pumping facilities; and

**WHEREAS,** the City Council acknowledges that specific policies and procedures should be adopted to provide fair and equitable treatment of sewer customers.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF DYER, ARKANSAS, AS FOLLOWS:

**SECTION 1:** The following policies and procedures shall govern the operation of the Dyer Water Department; said policies and procedures are attached hereto as Exhibit A.

**SECTION 2:** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 3:** This ordinance is deemed important for the immediate protection and preservation of the public peace, health, safety, and welfare of the citizens of Dyer, Arkansas, because of the need to adopt uniform water policies applicable to all customers to facilitate their fair and equitable treatment. Therefore, an emergency is hereby declared, and this ordinance shall take effect and be in full force after its passage, approval, and publication.

Exhibit A: Sewer tap fee \$500.00

Next item for business is Legal Counsel between the city of Dyer and The Morrells to discuss a possible settlement for the lawsuit. The proposed settlement paperwork was distributed to the council for review and discussion.

Council Debby Ferguson started by stating Sean has his computer and I have mine and we can copy and or edit in this negotiation. It was requested that the council read the proposed document and then we would discuss it point by point.

Alderman Donna Staton asked how big the lots in River Vista were and Mr. Morrell answered they are about  $\frac{3}{4}$  acre which is standard because city lots can be as small as a quarter of an acre. Alderman Staton clarified that Mr. Morrell wanted to change the lot size from 5 acres to 3 acres or greater and he stated yes.

City Attorney Sean Brister stated he does not have any problem with the Whereas paragraphs. He moved along to paragraph 1 and 2 and on to the area that they edited. The part of paragraph was edited that states the parties agree the annexation ordinance 2019-11-26-01 is invalid and they agreed to. Paragraph 3 is where you all would want to discuss if ever you would like to annex them into Dyer. Alderman Staton asked about the statement being added that the Morrells would not seek annexation into Alma. Mr. Morrell stated he felt if Dyer just got thru voting not to annex them in, he thought it was a moot point. Alderman Jeff Baxter asked why that statement was even in the proposal and Mr. Morrell explained that if in a year the annexation comes up again with a different council. This has been going on for 2 years and has taken away a lot of our quality of life and we do not want to go thru this again. City Attorney asked if the council wanted the statement added about not annexing into Alma. Mr. Morrell stated that their asking not to be considered for annexation until 2030 had to be in there because he felt the Mayor was not on his side and if he has the ability to annex them into the city, he would do it and that is certainly why it has to be in there. City Attorney states that we could also add that they would not seek annexation into another City as well. Mr. Morrell said to be fair I came back and tried to be fair, I fought you for 2 years on the annexation because it was illegal, if it had been legal, I could have lived with it. Paragraph 4 is essentially trying to roll back the water increase where we did it by living unit basis to what it was before. Alderman Donna Staton asked if the Morrells had a copy of the water surveys from 2020 and he said yes. Mr. Morrell asked Brenda Morrell to pass out color copies they brought that are water rates of surrounding cities. Alderman Donna Staton asked if they had copies of the water study. Yes, they do. Council Ferguson stated yes 2019 and 2020 Rural Water works are in possession of Mr. Morrell. Alderman Donna Staton wanted to make sure that they had the same thing they were given to justify why we had to raise the water rates. One of the attorneys at Council Ferguson firm is over Rural Water association and he noticed that the actual operational costs were less in 2021 than they were in 2019, possibly due to less leaks or whatever and yet your still short of revenue and the increase came in it doesn't make sense, one study shows no public debt, and another study shows public debt. There was some misinformation there someway or another. FHA Bond Account monthly payment discussed. Debby Ferguson said we were just trying to figure out why the total amount of revenue is down, and operational expenses are down, and fees got increased. Alderman Baxter clarified operational expenses and revenue both were down and was told yes that was correct. Debby Ferguson stated If you are not having to repairs and your fees have been increased you would think your revenues would be up because you are not having to spend money for repairs and you have increased

fees. Page 2 shows that short fall for revenue for 2021 is \$53,505 and in 2019 you had an excess in revenue of \$8378. It looks to us like something wasn't right with it. Alderman Donna Staton said Part of what might be the difference was the last half of 2019 we went to a new bookkeeping system. There was 9 months in QuickBooks and 3 months in CSA. Debby Ferguson stated she has looked at it thru the FOIA request and has seen how it is documented. I am not sure what to rely on with these. It seems there should be an increase in revenue and yet there is a \$50,000 shortfall, I don't know if someone was stealing or what.

Brenda Morrell passed out copies of one of their water bills and for 48 doors at \$25.00 it is \$1200.00, we used 263,000 gallons and the water bill was over \$4179.90. I called every place listed on the attachment here and compared what we paid for our water to what we would have paid if we lived in one of those towns. Mulberry does charge per door and they produce their own water and Dyer does not make their own water. Mulberry water will be a little bit more because they make their own water. This shows you the water difference we have been paid. Then on the sewer we have been charged the \$16.01 on every door. Every month we are charged \$768 extra on sewer. There are 30 units that are not even hooked up to sewer that we are being charged for. There should only be 18 units billed for sewer. We are not able to locate an ordinance where this charge could be added to us per door. This has just been added arbitrarily. When we had the sewer line agreement with Dyer, we would pay sewer charges on the whole master meter water amount. We have been trying to be fair with all this and we feel like we have been attacked terribly.

Paragraph 4 is essentially a repeal of another Ordinance. So, it is more expensive for the city to provide services of water and sewer that are further away. So, you are wanting to do away with a per door charge and go back to the way it was charged which was just for 1 master meter. Brenda and Mike state that the Master Meter is within 10 feet of the water tank and there is not really any real distance that water has to be sent to service us. The city has to pump water to the tank to have enough pressure to service the city. Debby Ferguson offered packet of all historical information in the suit over this time and the council had declined when this was offered. 2019 there was an Ordinance stating water would be \$15.06 base and \$7.14 after and sewer \$16.01 for first thousand and \$2.20 thereafter. No one recalls an increase in sewer rates. Sewer rates changed for the Morrell's in March 2020 "when someone took it upon themselves to add a per door charge to 48 units".

A member of the audience asked if they could ask a question. No Public Forum explained but Alderman Jeff Baxter stated he would take questions. A motion was made to allow audience to ask questions in this meeting and seconded by Alderman Richard Swearingen.

Roll Call:

Alderman Rhonda Rowell. yes

Alderman Donna Staton yes

Alderman Jeff Baxter yes

Alderman Katherine Fry yes

Alderman Myrna Burns yes

Alderman Richard Swearingen yes

Lee Jones the State Landlord association president introduced himself and stated he has testified with the legislators for municipalities and landlords and is not being paid by anyone here, I do not have a dog in this race. I am just here for information. My question is could it be

possible under the new rate structure could the exorbitated amount of usage causes every additional \$1000 gallons of sewer to be an exponential charge and you might reconsider re-negotiating the position with the city. Does the sewer rate increase with every 1000 gallons of usage? The answer was it raises after the first thousand. He asked is the person who administers billing in this room. The answer was not the one who did it at the time we were referring to. All this is being introduced to give you background for example number 5. Requesting the repeal of the per door charge on that ordinance. If we back up to 2017, they bought water thru the master meter and bought sewer based on that even though they were not using that much sewer, what they are asking for is to only get charged for the sewer they have been using. What we would do is read the master meter for water and that building on sewer would have its own meter and sewer would be calculated on that. A new water meter at the 18 plex would be better able to track sewer. Alderman Donna Staton clarified I see where they are wanting to have the same rate as is in the city for water and sewer. Answer was yes. It was brought up that if we changed their water rate, we would have to do it for all out of city customers. Debby Ferguson said I will have to say Kathy was super helpful when I came into the office. Alderman Katherine Fry said I do my best.

Discussion of Ordinance 2019-11-26-01 regarding the water rates and per door fees. Alderman Donna Staton states if we do away with section 3 that would do away with the door fees, and we could leave the water rates the same. The question is who will have the per door fee applied to them, it would be the Hackler and the Alamo areas. We could do away with section 3 and forget the per door on the multiple units and keep the outside city limits rates for anyone in the town. Alderman Donna Staton states she feels the \$16.01 was billed in error. I feel like we owe you that money back for sewer. Therefore, if we could keep in and out rates. You would be getting some back. Mr. Morrell said I just don't think that is fair because we have been fighting this for 2 years ok and it has cost us a lot of money and cost us a lot of grief. Debby Ferguson stated hold on here she isn't finished. Mr. Morrell said we offered to allow you all to annex us into the city and the drop of water rates to in city was some incentive. Alderman Donna Staton states she does not remember us voting to put the 16.01 on all units nor do other council members present nor the City attorney. Alderman Katherine Fry spoke to clarify the \$16.01 has been charged to your doors since March 2020. Brenda Morrell stated yes it has. Roughly that is \$9200 can we credit it to your bill monthly. This will be discussed with the other changes. City Attorney states Paragraph 6 discusses the addition of more meters when they develop, and the big issue here is that we include they are not able to exceed the system capacity. Discussion about size of lots was brought up again by Alderman Donna Staton comparing River Vista and River Chase. Do our Ordinances have anything to do with governing the sizes of your lots? City Attorney, Sean Brister stated That is called extraterritorial jurisdiction and it was originally set up as 5 miles and it has been reduced to 1 mile. The whole idea about this is if a subdivision were developed outside of town, it could be regulated because it would eventually be brought into town. Alderman Donna Staton asked so you are not going below 3 acres? Mr. Morrell said no we might go larger 5 acres or 10 acres. As we develop, we would hook up to Dyer Water as and it would gain more revenue. Water with fire flow speaks about fire hydrants. We have 3 stainless steel pumps to pump water and a dry hydrant to cover for fires. We will add a fire hydrant for River Chase. The pumps give you the pressure for the hydrants.

Alderman Donna Staton asked what does everyone else feel about streets curbs and guttering? Discussion taking place about parcels and size of acreage. Alderman Staton stated I think it should be up to the people buying there if they have curbs and gutters etc. Alderman Rhonda Rowell clarified so we agree to add a hydrant, to supply a particular number or a hydrant within a certain radius?

Number 8 is just in there explaining the cost incurred by the Morrells.

Number 9 is just to make sure it is a licensed appropriate inspector. The Morrells shall propose 3 suitably licensed inspectors.

Number 10. No elected or employees shall harass or discriminate or unlawfully cause harm.

Number 11. Legal Mumbo jumbo.

Alderman Jeff Baxter said I have nothing after this. City Attorney brought attention to the paragraph 14 that statement about the year 2046. The council will sign it and or direct the mayor and recorder treasurer to sign it.

A motion to take recess was made by Alderman Rhonda Rowell and seconded by Alderman Katherine Fry.

Roll Call:

Alderman Rhonda Rowell. yes

Alderman Donna Staton yes

Alderman Jeff Baxter yes

Alderman Katherine Fry yes

Alderman Myrna Burns yes

Alderman Richard Swearingen yes

A motion to call the meeting back into session was made by Alderman Katherine Fry and seconded by Alderman Donna Staton.

Roll Call:

Alderman Rhonda Rowell. yes

Alderman Donna Staton yes

Alderman Jeff Baxter yes

Alderman Katherine Fry yes

Alderman Myrna Burns yes

Alderman Richard Swearingen yes

Debby Ferguson asked if the council still wanted to include that the Morrells not attempt to annex into alma and it was said any City, Mulberry included.

As an exchange on section 5 Alderman Staton discussed a \$9200 credit on sewer and to also retro back and credit the water bills approx. \$14,400 for a total of \$23,600 in credits, are you ok with that. It was discussed that we talked about was striking section 3 in the water rate ordinance which is the per door part and they are ok with keeping the rates as they are if we retro back on the water as well to February 2020. This would be a \$500 per month credit on the water bills. Debby Ferguson stated the following to clarify understanding of negotiation Paragraph 3 & 5. You are asking the Morrells not to annex into another city until 2030 and in exchange for that. You all had agreed to refund \$9200 in credit back in sewer and we are adding a credit for a per door water amount that was added in the amount of \$14,400.

Alderman Donna Staton and city attorney discussed a new ordinance removing the section 3 paragraph talking about per door charge. Discussion about voting on this tonight and it was

asked, without the Mayor being present and it was said you have the recorder treasurer acting on his behalf when he is out. You all can approve this tonight and take care of ordinance at regular council meeting April 27, 2021.

Both Counsel discussing and editing changes in settlement agreement as discussed with council. A question was proposed by Aldermen what would the timeline be had we annexed the property into the city to begin making repairs on the water and sewer? 30 days 3 years? It was explained that you would not be required to go and start digging up line and repairing, it would be done when there was new development or something broke. Some Aldermen did not understand that, states it appeared it was introduced a bit differently.

After reviewing the revised settlement agreement, the city attorney read the Resolution 2021-04-20-01

**A RESOLUTION APPROVING THE SETTLEMENT AND CONSENT DECREE FOR RESOLVING THE OUTSTANDING CONTROVERSIES AND LITIGATION INVOLVING THE CITY AND MIKE AND BRENDA MORRELL.**

WHEREAS litigation is currently pending wherein the City of Dyer is a Defendant facing potential monetary liability and other costs.

WHEREAS the City Council believes that it is in the best interests of the citizens of Dyer to resolve and settle the dispute.

WHEREAS, after intense scrutiny and due diligence including a lengthy special meeting involving the city council and the Plaintiffs the City Council desires to settle the litigation on negotiated terms.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DYER, ARKANSAS, AS FOLLOWS:

**SECTION 1:** After intense scrutiny, careful consideration, and due diligence, it is the opinion of the majority of the City Council of Dyer, Arkansas, that the attached Consent Decree (*attached Exhibit A*) shall be duly adopted and approved for submission to the Crawford County Circuit Court.

**SECTION 2:** The Dyer City Council hereby authorizes and directs the City Attorney, Mayor, and Recorder/Treasurer to execute any additional documents and take any additional actions necessary to implement the consent decree and fully resolve the pending litigation.

PASSED AND APPROVED THIS 20<sup>TH</sup> DAY OF APRIL 2021.

A motion was made by Alderman Jeff Baxter to adopt Resolution 2021-04-20-1 and seconded by Alderman Donna Staton.

Roll Call:

Alderman Rhonda Rowell. yes

Alderman Donna Staton yes

Alderman Jeff Baxter yes

Alderman Katherine Fry yes

Alderman Myrna Burns yes

Alderman Richard Swearingen yes

Council signatures obtained on agreement. Recorder Treasurer signed Resolution as Acting Mayor and Recorder Treasurer.

A motion was made to adjourn meeting by Alderman Jeff Baxter and seconded by Alderman Katherine Fry.

Roll Call:

Alderman Rhonda Rowell. yes

Alderman Donna Staton yes

Alderman Jeff Baxter yes

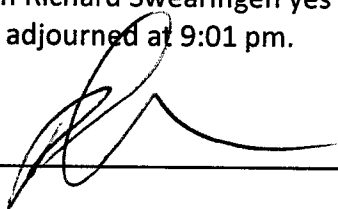
Alderman Katherine Fry yes

Alderman Myrna Burns yes

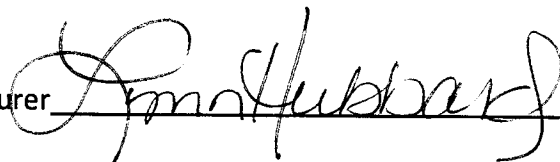
Alderman Richard Swearingen yes

Meeting adjourned at 9:01 pm.

Mayor

A handwritten signature in dark ink, appearing to be 'R. Rowell', written over a horizontal line.

Recorder Treasurer

A handwritten signature in dark ink, appearing to be 'J. Hubbard', written over a horizontal line.