

UNAPPROVED MINUTES
Earlham City Council Special Session Meeting
May 18, 2020

The Earlham City Council met in special session, on Monday, May 18, 2020. Due to Covid-19 precautions, the meeting was held electronically. Mayor Lillie called the meeting to order at 7:00 p.m. and the following answered roll: Baskin, Fredericksen, Petersen, Swalla. Absent: Payne. Also present: Clerk Hibbs, Police Chief Heimdal, and Officer Sand.

1. Approval of Agenda
Motion by Swalla, second by Baskin, to approve agenda.
Roll: Ayes – unanimous. Motion passes.

2. Consider approval of Resolution No. 20-24, Appointing Paying Agent, Note Registrar, and Transfer Agent, Approving the Paying Agent and Note Registrar and Transfer Agent Agreement and Authorizing the Execution of the Agreement for Water Revenue Capital Loan Notes, Series 2020B
Motion by Fredericksen, second by Swalla, to approve Resolution No. 20-24, Appointing Paying Agent, Note Registrar, and Transfer Agent, Approving the Paying Agent and Note Registrar and Transfer Agent Agreement and Authorizing the Execution of the Agreement for Water Revenue Capital Loan Notes, Series 2020B
Roll: Ayes – unanimous. Motion passes.

3. Consider approval of Resolution No. 20-25, Approving and Authorizing a Form of Loan Agreement and Authorizing and Providing for the Issuance of Water Revenue Capital Loan Notes and Providing for a Method of Payment of the Notes; Approval of Tax Exemption Certificate for Water Revenue Capital Loan Notes, Series 2020B
Motion by Baskin, second by Swalla, to approve Resolution No. 20-25, Approving and Authorizing a Form of Loan Agreement and Authorizing and Providing for the Issuance of Water Revenue Capital Loan Notes and Providing for a Method of Payment of the Notes; Approval of Tax Exemption Certificate for Water Revenue Capital Loan Notes, Series 2020B
Roll: Ayes – unanimous. Motion passes.

4. Consider approval of Resolution No 20-26, Appointing Paying Agent, Note Registrar, and Transfer Agent, Approving the Paying Agent and Note Registrar and Transfer Agent Agreement and Authorizing the Execution of the Agreement for General Obligation Capital Loan Notes, Series 2020A.
Motion by Petersen, second by Swalla, to approve Resolution No 20-26, Appointing Paying Agent, Note Registrar, and Transfer Agent, Approving the Paying Agent and Note Registrar and Transfer Agent Agreement and Authorizing the Execution of the Agreement for General Obligation Capital Loan Notes, Series 2020A.
Roll: Ayes - unanimous. Motion passes.

5. Consider approval of Resolution No. 20-27, Approving and Authorizing a Form of Loan Agreement and Authorizing and Providing for the Issuance, and Levying a Tax to Pay the Notes; Approval of the Tax Exemption Certificate for General Obligation Capital Loan Notes, Series 2020A.
Motion by Swalla, second by Baskin, to approve Resolution No. 20-27, Approving and Authorizing a Form of Loan Agreement and Authorizing and Providing for the Issuance, and Levying a Tax to Pay the Notes; Approval of the Tax Exemption Certificate for General Obligation Capital Loan Notes, Series 2020A.
Roll: Ayes – unanimous. Motion passes.

6. Hearing with discussion and possible action on May 8, 2020 dog attack – owner Rhonda Bowers. Mayor explained how the meeting would proceed using Zoom and gave the order of speakers. Officer Justin Sand stated on May 8, 2020 he was notified at 4:00 p.m. (not 4:30 p.m. as stated in his report) about a dog attack at 1031 Hull Court, which is out in the country, and he was to call the owner, Mr. Doug Reynolds. Mr. Reynolds called the Madison County Sheriff’s Department and he was told to call Earlham Police Department. Officer Sand informed him there was nothing he could do about

the goat and he had to check City Code regarding an in-town dog attacking animal out of town. He checked the Code and contacted Chief Heimdal, and then went to Reynolds property. There he found a dead goat. His best guess it dies from a broken neck. He told Webers the sheriff's department has jurisdiction. In speaking with the Sheriff's department, Sand was told Earlham had jurisdiction. Sand gave a witness statement to Mr. Reynolds. He attempted to contact Mrs. Bowers that evening, but couldn't reach her. He contacted her the next day. She stated their dog got out of the door and ran off. Said they chased it for 30-40 min. He asked about rabies vaccine. Bowers stated she wasn't sure if they were current. He advised her there would be a hearing regarding a vicious dog determination. He stated it is his understanding that Mrs. Bowers gave a \$500 check to Reynolds to cover the cost of the goat.

Doug Reynolds stated there were two incidents where this Bowers dog was on their property. The first time was last October. The Bower's dog came and chased his cattle for 30-40 minutes. They tried to contain it. The dog would not obey commands. He finally used a John Deere gator contain it. The second time was as Officer Sand described. They could not capture or contain the dog. Did not obey commands. He finally found an opening in the goat pen and killed a goat. This is how the dog's owner was finally able to get the dog after attack. Swalla asked if he called the sheriff department. Reynold said he did but they told him they didn't feel they could do anything. Told him to call the Earlham Police Department. Fredericksen asked if he called anyone on the first incident back in October. Reynolds said he did not. The owner came and got the dog

Brenda Bowers stated last Friday afternoon her mother was at her house to get her special needs daughter. The daughter accidentally let the dog out. They couldn't catch it. After chasing it through town, they finally caught it at the Reynolds property. She did not see the dog actually attack the goat. When she got to the goat it was under the feeder and moved the goat to get it away from the dog. She spoke with Reynolds who stated the goat was worth approximately \$400. Bowers gave him a check for \$500. She said it was a horrible accident. She stated this is an emotional support dog for her daughter. She brought paper work from her daughter's doctor regarding this. She has since taken the dog to get the shots updated. Mr. Bowers stated the nipping and growling is not typical behavior. Dog follows command when on a leash. When the dog gets loose, he runs. They are looking how to train the dog not to run. Huskies running is a trait. Mrs. Bowers stated they have a 5-foot tall chain link fence with locks on gates. A door got left open and he got out. They are looking front porch gate as a second line of protection. Baskin asked if the dog has gotten out other than the two times mentioned above. Mr. Bowers said he gets out maybe one to two times a year, but they have always been able to catch him. Fredericksen asked if the dog did indeed go out to Reynolds property last October. Mr. Bowers stated yes, and had to chase him for 30-45 minutes. He also added chasing is a game to the dog. He will go up to others not them as that will end the game.

Destiny Moneysmith, sister-in-law, said the dog never shows any aggression or growls at anyone. She is a dog owner and states her dogs get out sometimes. Brenda Dhabalt, Bowers neighbor, said the Bower's dog plays with her dog, and her grandkids play with him, and he is not aggressive. There have never been any problems. Dave Pritchert also mentioned his dogs and kids play with the dog with no problems. He agrees this was just an unfortunate incident. Mr. Reed stated they have husky. They are runners not attackers and are loveable.

Swalla said he is worried that it happened two times. If it killed once, it will go there again. If they need a therapeutic dog, perhaps they should consider a smaller dog. Baskin agrees about this already happening twice. He has a beagle himself and said if he gets a scent, he's gone. His big concern is the dog will get out and go back to the Reynolds property again. He understands a pet can be loveable, but if it can't be controlled, if he goes back, or somewhere else – that is his biggest fear. Fredericksen also agreed. He said everyone always says this never happened or that never happened, but it happened now. He does not want it to be on his conscience if it happens a third time. It seems to have a habit of going out there, as it has gone out there twice.

Mayor asked for addition comments or questions from council. He called for a motion to either declare the dog vicious or to declare it not vicious. Dhabalt asked to say something further. Stated code says you

cannot call it vicious unless it attacked on 3 separate occasions in a 12-month period. Swalla and Fredericksen clarified the definition of vicious dog. Moneysmith asked if there are other options such as muzzling, and they are going to put in another gate for further protection. Mayor state council is bound by city ordinances, which states, the animal must be sold or give to someone outside of town, or put down. If not deemed vicious the council can discuss alternatives. But if deemed vicious, those are the only options.

**Motion by Swalla, second by Fredericksen, to deem the Bowers dog to be vicious.
Roll: Swalla-aye; Fredericksen-aye; Petersen-aye; Baskin-aye. Motion passes.**

Mayor ordered the animal to be removed from city limits or be destroyed. Owners have 72 hours to provide proof to one of the police officers that the order has been followed. Mayor said, and he knows the council agrees, this is the toughest type of meeting to have. Mayor told Mrs. Bower the city will get paperwork to her tomorrow regarding appeal. The 72 hours will not start until she has been given the paperwork for the process. Mr. Bowers thanked council for their consideration and said they will appeal.

7. Hearing with discussion and possible action on May 11, 2020 dog attack – owner Robin Reed
Police Chief Justin Heimdal stated that on May 11, 2020 at 18:17 hours, he responded to NE 2nd Street for a report of a dog bite. Dan Weber told him he was walking his dogs by 125 SE Plum Avenue when a large brown dog came out and attacked his dog. Robin Reed, 125 SE Plum Avenue, the owner of the brown labradoodle, stated she was letting her dog out and when he saw the other dog, it broke away from her. Heimdal noted the leash was still attached to the Reed dog. The Weber dog had an L-shaped laceration on its rear leg. Baskin asked if there were any reports of other instances regarding this dog. Heimdal said none that he knew of. Swalla asked if the Chief got a look at the dog that was attacked? Yes, he saw the L shaped cut on back of its hind leg. Swalla asked if anyone stated how long the attack lasted. He replied that no one said how long the attack lasted. Petersen asked if Chief checked on the rabies shot. Chief replied he has seen the records and they are current.

Dan Weber stated he was walking his dogs north on Plum Avenue when the dog came out and went straight towards his dog, flipped her over and went for her neck. Said he picked up the dog, went home, and then took her to the vet clinic where she had 14 staples to the L-shaped laceration. Said there were several other puncture wounds which were smaller and did not require treatment. Lisa Weber said you could see the other bite marks. Swalla asked if Mr. Weber felt threatened. He replied it was really quick. There was no sniffing, the dog just came with mouth open and went straight to the bite

Jeff Reed said he was sorry for the incident. His dog jerked the leash out of Robin's hand. He questioned the multiple bits as he only saw one. Noted his dog just wanted to sniff and play, and he did not flip the other dog over. Mrs. Reed stated she went to take him outside. It's happened before where he sees another dog gets excited and sniffs. She said the other dog jumped on her dog and that's when her dog turned around and bit. She mentioned her dog has never had a problem with other dogs. They take him to dog parks, doggie day care and never has a problem. Mr. Reed added their dog does not run loose.

Baskin asked if there were other witnesses. Reeds stated their 13-year old son. Mr. Weber said they had a vet report showing the wounds, and as to discrepancy of the bite marks, they were revealed when the blood was cleaned off and coat shaved. Again, Mrs. Reed stated it was the Weber dog that attacked their dog. Baskin also asked if there has been any discussion on an offer to pay for the vet bill or anything. Mr. Weber said there had not been, but he was waiting for tonight's meeting. Baskin asked if Reed's son would like to say something. Khelton Reed stated his dog sniffed the first dog and then the other dog nipped at Banner and then Banner pounced. Mr. Weber replied his dogs were on leashes, and his dog did not attack. There was no sniffing, and that the dog just bit. Said his dog is 13 years old and has no teeth. Disagrees with Reed account that their dog just wanted to play. Swalla said the Reed dog did have his leash on and they got it contained quickly. He is concerned the dog bit another dog. He doesn't want to see this happen again. Mentioned a few months ago Council heard a similar case, and he wanted to be consistent. Stated he was torn. Baskin also said this was tough because of the previous situation. The Reed dog was dragging his leash. Weber dog was injured with a pretty good-sized laceration. Baskin stated also had an old dog that couldn't even nip. Said this was tough. Fredericksen asked how long the Reed's had their dog and they responded 7-8 years, and again said she had no history of violence. Fredericksen said, as he did

earlier, nobody does anything until the first time they do it. This is different from last hearing because that dog did something twice and an animal was killed. The case in October is similar to this, both owners agreed it was just an incident. He is leaning towards not vicious, but if it happens again, it will be different. Lisa Weber stated the City Code says a dog is vicious if it bites another dog. She said luckily their son was not with them or it could have been worse. Mayor stated according to the ordinance there are four items which council abides by to determine if animal is vicious. To clarify the definition of a vicious animal, Mayor read Earlham Code of Ordinances Chapter 57.01(2):

“2. “Vicious animal” means any animal, except for a dangerous animal per se, as listed above, that has bitten or clawed a person or persons while running at large and the attack was unprovoked, or any animal that has exhibited vicious tendencies in present or past conduct, including such that said animal:

(i) has bitten or clawed a person or persons on two separate occasions within a 12-month period; or

(ii) did bite or claw once causing injuries above the shoulders of a person;

(iii) could not be controlled or restrained by the owner at the time of the attack to prevent the occurrence; or

(iv) has attacked any domestic animal or fowl on three separate occasions within a 12-month period.”

Comments were exchanged between the owners. Swalla said it could go under number 3, however, it still had a leash on and it was contained quickly. They’ve had it for a number of years and this was the first instance. This was a terrible thing to happen. Petersen stated he appreciated the gravity of the situation and agrees with what the other council members have said.

Since there was no further discussion or comments, the Mayor called for a motion.

Motion by Petersen, second by Swalla to declare the Reed dog not to be vicious.

Roll: Baskin – aye; Fredericksen – aye; Petersen – aye; Swalla – aye. Motion passes

Mayor stated he wanted it on record that the attack did occur. Code states, if a dog “has attacked any domestic animal or fowl on three separate occasions within a 12-month period.” This attack in on record in case of future incidences. He also mentioned, if the two parties could work out the issue over the vet bill, that might help mend fences.

8. Adjourn

Motion by Fredericksen, second by Swalla, to adjourn.

Mayor said speaking for both himself and the council, no one enjoys these meetings. This is not something they signed up for when they decided to run for council or mayor. He thanked everyone for their patience through the process.

Roll: Ayes – unanimous.

Being there was no further discussion, meeting was adjourned at 8:11 p.m.

Jeff Lillie, Mayor

Attest: _____
Mary Sue Hibbs, Clerk