

MINUTES OF MEETING, ATHENS CITY COUNCIL, FEBRUARY 20, 2007

The Athens City Council met in regular session on Tuesday, February 20, 2007, at 6:00 P.M. with Mayor Proffitt presiding. The invocation was given by Council Member Alvey; and upon roll call, the following members were present:

Alvey, Buttram, Pelley, Perkinson, Proffitt

The following decisions were made and ordered made a part of the records of the Athens City Council.

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MINUTES

The Minutes of the regularly scheduled meeting on January 16, 2007, as well as the Called Meeting on February 1, 2007, were submitted and approved by unanimous consent.

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COMMUNICATIONS FROM THE MAYOR

MISCELLANEOUS CORRESPONDENCE

Mayor Proffitt acknowledged receipt of a letter from the International Institute of Municipal Clerks announcing Becky Leamon's designation as a *Certified Municipal Clerk*. The letter states Ms. Leamon, an Accounting Assistant in the City of Athens Finance Department, receives this designation upon completion of vigorous education requirements and solidifies her record of significant contributions to local government, to the community, and to the surrounding state. Also, the City Council reviewed other letters/notes of appreciation for services performed by city staff members.

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PETITIONS AND REQUESTS

AUDIENCE

Mayor Proffitt opened the meeting for petitions and requests from the audience. The following individuals addressed the City Council in response to the recent ISO Investigative Report: Sheree Hutson, 812 Oakland Drive; Becky Mullen, 629 Haley Street; Bill Bennett, owner of city property on Washington Avenue in Athens; and Gil Sherlin, who owns undisclosed property inside the city limits of Athens. Expressing their dissatisfaction with the recent council action stemming from the ISO investigation, these individuals requested more stringent action by the City Council and in so doing, called for the resignation of both the City Manager and the Mayor.

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REPORTS

FINANCE DEPARTMENT REPORT

City Manager Moore presented the Finance Department Report for the month of January 2007. It was noted that former Finance Director Mike Keith accepted a position with the City of Cleveland. Mr. Moore advised he is presently conducting interviews and hopes to fill this position in the near future. After brief discussion and comments, the report was accepted as presented.

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POLICE DEPARTMENT REPORT

Chief Chuck Ziegler presented the Police Department Report for the month of January 2007. After brief discussion and comments, the report was accepted as presented.

FIRE DEPARTMENT REPORT

Chief Bob Miller presented the Fire Department Report for the month of January 2007. During the presentation of his report, Chief Miller invited council members to view the Quint fire apparatus, which will be displayed at the Athens Municipal Building Fire Station after 11:30 a.m. on Friday, February 23. After additional discussion and comments, the report was accepted as presented.

CONSENT AGENDA

Mayor Proffitt advised that the following items were discussed during the recent work session and are presented as a part of the Consent Agenda:

- 1.) Accept Hiwassee Utilities Commission Progress Report for 2006 as presented by City's representative, Doug Harrod, during recent work session;
- 2.) Approve Resolution No. 2007-06 to ratify the amended McMinn County Growth Plan entitled *McMinn County Growth Plan, McMinn County, Tennessee, January 2007* as recommended by the McMinn County Coordinating Committee;
- 3.) Accept transfer of property located behind existing Ingleside pool by the Athens City School Board to the City of Athens for use as a future skate park;
- 4.) Approve Resolution No. 2007-07 to authorize certain revisions and to extend the terms of the agreement between the City of Athens, TN, and the McMinn Regional Humane Society, Inc.;
- 5.) Approve proposal to declare paper shredder as surplus property and authorize its disposal as deemed appropriate by city staff;
- 6.) Approve Budget Amendment No. 1 for FY 2006/07 dated February 5, 2007;
- 7.) Accept Consolidated Financial Audit (City of Athens, Utilities Board, Athens City Schools) as submitted by Neal, Scouten & McConnell for period ending June 30, 2006;
- 8.) Approve audit proposal as submitted by Neal, Scouten & McConnell for period ending June 30, 2007;
- 9.) Appoint Russell Thress to fill unexpired term (Don Schultz) on Board of Adjustments & Appeals, term expires June 3, 2008;
- 10.) Reappoint Natosha Ledford for 2nd three year term on Keep McMinn Beautiful, term expires March 3, 2010;
- 11.) Reappoint Mike Dannel to the Athens Housing Authority with term expiring March 6, 2012;
- 12.) Reappoint Brian Heatherly (Proffitt), Ruth Malone (Alvey), Charles Clark (Proffitt), Chris Bindrim (Pelley), and Robert Tennyson (Buttram) to Council Advisory Committee with terms expiring March 21, 2010;
- 13.) Reappoint Kenneth Grubb to Tax Equalization Board for 5th two-year term expiring April 1, 2009.

On motion by Council Member Pelley, seconded by Council Member Buttram, the Consent Agenda as stated above was approved by the following roll call vote:

AYES: Alvey, Buttram, Pelley, Perkinson, Proffitt
NAYS: None

ORDINANCE NO. 952 - SECOND READING – PUBLIC HEARING

“AN ORDINANCE TO AMEND ‘THE ZONING ORDINANCE OF THE CITY OF ATHENS, TENNESSEE,’ SO AS TO AMEND THE OFFICIAL ZONING MAP TO ZONE PROPERTY AT THE CORNER OF ATLANTIC AVENUE AND INGLESIDE AVENUE FROM R-2 (MEDIUM DENSITY RESIDENTIAL DISTRICT) TO P-1 (PROFESSIONAL DISTRICT) SAID AREA BEING LOCATED WITHIN THE CORPORATE LIMITS OF ATHENS, TENNESSEE.”

Upon the reading of the caption by the recording clerk, Mayor Proffitt opened the Public Hearing on Ordinance No. 952. There being no one present wishing to discuss the Ordinance, Public Hearing was closed. **Motion was made by Council Member Pelley and seconded by Vice-Mayor Perkinson to approve Ordinance No. 952 on Second and Final Reading, and upon roll call, Ordinance No. 952 was approved by the following vote:**

AYES: Alvey, Buttram, Pelley, Perkinson, Proffitt
NAYS: None
ABSENT: None

ORDINANCE NO. 953 - SECOND READING – PUBLIC HEARING

“AN ORDINANCE TO AMEND ORDINANCE NO. 914 ENTITLED THE ZONING ORDINANCE OF THE CITY OF ATHENS, TENNESSEE, SO AS TO AMEND VARIOUS SECTIONS OF THE ZONING ORDINANCE.”

Upon the reading of the caption by the recording clerk, Mayor Proffitt opened the Public Hearing on Ordinance No. 953. There being no one present wishing to discuss the Ordinance, Public Hearing was closed. **Motion was made by Council Member Buttram, seconded by Council Member Alvey, to approve Ordinance No. 953 on Second and Final Reading, and upon roll call, Ordinance No. 953 was approved by the following vote:**

AYES: Alvey, Buttram, Pelley, Perkinson, Proffitt
NAYS: None
ABSENT: None

CONSIDER BMX PROPOSAL

For their information and review, council members received a copy of a letter from City Attorney Chris Trew in reference to an executed agreement between the City of Athens and the Mid-East TN Regional Fair. It was the City Attorney’s opinion that the City of Athens can locate the proposed Bicycle Moto-cross (BMX) track at any site within the Regional Park within the discretion of the Athens City Council without any breach of the agreement with the Mid-East TN Regional Fair. **As consideration began, Council Member Pelley opened the discussion with a motion, seconded by Council Member Alvey, to place the BMX track behind the red brick building at the entrance to the Athens Regional Park.** In support of this motion, Council Member Alvey referenced an informational memorandum from Parks and Recreation Director Austin Fesmire regarding Mr. Clayton John’s visit to Athens to review potential sites for a BMX track. (As noted in the memorandum, Mr. John is President of the American Bicycle Association.) It was Council Member Alvey’s opinion that the best fit would be behind the red brick house instead of a location where the city already had an agreement (fair site). She also stated the track would be more visible at the front of the park, and it was her belief that Mr. Preskitt could build a track that would not detract from the aesthetics of the park. As discussion continued, Council Member Buttram stated he was in favor of the BMX track being in the regional park; however, he questioned what the Master Plan for the park had designated for the area behind the red brick house. In response, Parks and Recreation Director Austin Fesmire

advised the Master Plan, as approved by the City Council on July 18, 1989, called for a community center to be located in that area of the park. Mr. Fesmire further acknowledged the existence of two pipelines on that site, of which the city has received an easement approving the use of this property as an overflow parking lot for special events. Upon questioning Mr. Preskitt about the pipelines and how their existence could affect the project, he assured the Council that BMX has dealt with pipeline companies before and he did not anticipate a problem. He acknowledged the fair site would be easier to develop; however, he reemphasized the BMX group had raised the money and they just wanted a place to put the track. When questioned by Vice Mayor Perkinson if campers would be allowed at that site, Mr. Fesmire stated that overnight camping was not permitted in the park because the city did not have a dump station. Mr. Preskitt indicated that tents were only used during the race as a source of shade, not for overnight use. As discussion continued, Vice Mayor Perkinson expressed his support of the BMX track being located in the regional park, but he acknowledged being driven by the Recreation Advisory Board's unanimous recommendation to place the BMX track on the existing motor cross site. Mayor Proffitt too acknowledged his support for both the Fair and the BMX project but expressed concerns regarding the side entrance to this proposed location and the appearance of the park for years to come. While alluding to a comment by Mr. John in Mr. Fesmire's memorandum that the BMX track did not fit into this site, Mayor Proffitt suggested a joint meeting between the Fair Board, BMX, and City Council in an effort to resolve these issues. In reply, Mr. Preskitt advised that Mr. John's comment did not mean size when he referred to "fit" but rather that the BMX track should be a right fit for the community and should not force the issue on people. (Representing the Mid-East TN Regional Fair Board, Mr. Jim Pitt was present to provide input into the discussion, as needed or as requested by council members.) As discussion continued, Council Member Buttram confirmed he would be inclined to be in favor of the motion if he could be convinced that the pipeline was not a problem and the drainage issues would be taken care of. In further describing the master plan layout, Mr. Fesmire stated an engineering study will have to be completed before knowing if the BMX plan will fit into the area behind the red brick house. Additionally, in response to Vice Mayor Perkinson's question concerning the City's ability to obtain future grant funds, Mr. Fesmire stated the proposed changes to the Master Plan as it relates to an executed agreement with the Department of the Interior will be presented to TDEC for their response. **At the conclusion of the lengthy discussion, the motion on the floor was restated by the recording clerk and upon roll call, was approved by the following vote:**

AYES: Alvey, Buttram, Pelley
NAYS: Perkinson, Proffitt

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NEW BUSINESS

RECOMMENDATION FROM PLANNING COMMISSION – REZONING REQUEST

Mayor Proffitt presented Minutes of the Planning Commission, meeting in regular session on February 5, 2007, unanimously recommending the rezoning of Lot Nos. 69, 70, 73, 74, 75, 76 and 77 (as shown on Plat No. 5927) from R-2 (Medium Density Residential) to B-3 (Central Business District). The Minutes reflect the rezoning petition was submitted by the Keith Memorial United Methodist Church. As consideration began, Vice Mayor Perkinson and Council Member Buttram acknowledged publicly their membership with the Keith Church. After brief comments, the following ordinance was presented for consideration:

ORDINANCE NO. 954 – FIRST READING

“AN ORDINANCE TO AMEND ‘THE ZONING ORDINANCE OF THE CITY OF ATHENS, TENNESSEE,’ SO AS TO AMEND THE OFFICIAL ZONING MAP TO ZONE PROPERTY ALONG MADISON AVENUE OF KEITH MEMORIAL UNITED METHODIST CHURCH FROM R-2 (MEDIUM DENSITY RESIDENTIAL DISTRICT) TO B-3 (CENTRAL BUSINESS DISTRICT) SAID AREA BEING LOCATED WITHIN THE CORPORATE LIMITS OF ATHENS, TENNESSEE.”

The caption of the above-described Ordinance was read by the recording clerk. **Motion was made by Council Member Pelley, seconded by Council Member Alvey, to approve Ordinance No. 954 on First Reading, and upon roll call, Ordinance No. 954 was approved by the following vote:**

AYES: Alvey, Buttram, Pelley, Perkinson, Proffitt
NAYS: None
ABSENT: None

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COUNCIL ADVISORY COMMITTEE APPOINTMENTS

As discussed during recent work session, several terms on the Council Advisory Committee will expire on March 21, 2007. The upcoming vacancies are as follows: Ruth Atkins (Perkinson) – four term limit; Lou Pascarella (Perkinson) – declined reappointment due to his inability to attend evening meetings; Vacancy (Perkinson) – Hal Buttram’s election to City Council; Ester McCowan (Alvey) – four term limit; Pat Adams (Pelley) – four term limit; and Stan McKee (Buttram) – declined reappointment. After brief comments, the following appointments were offered for consideration: Council Member Alvey nominated David Hutson, a resident of 812 Oakland Drive; Council Member Buttram nominated Joseph Noble, a resident of 1416 Chilhowee Street. These appointments will expire on March 21, 2010. Both Vice Mayor Perkinson and Council Member Pelley advised they would submit their nominations at a later date. **Upon motion by Vice-Mayor Perkinson, seconded by Council Member Pelley, the appointments of David Hutson and Joseph Noble to the Council Advisory Committee were unanimously approved by the following roll call vote:**

AYES: Alvey, Buttram, Pelley, Perkinson, Proffitt
NAYS: None

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ATTORNEY FEES/EXPENSES – ISO INVESTIGATION

Upon opening the floor for discussion, **motion was made by Council Member Pelley, seconded by Council Member Alvey, to pay the court reporter fees out of the City Manager’s Contingency Fund.** During discussion, Council Member Pelley stated that this portion of the attorney’s fees/expenses should be treated as any other business expense and the city needed to take care of the court reporter’s fees in the amount of \$4,225 until such time that it may be decided to have these funds taken out of the city manager’s salary. Council Member Alvey asked Council Member Pelley if he was alluding that the City Manager would have to reimburse the city as part of his probation. Council Member Pelley affirmed his statement and stated that this could be decided as a continuation of this meeting at a later date. After other comments and in response to Council Member Buttram’s request for clarification regarding the Contingency Fund, City Manager Moore explained that the Contingency Fund is a line item in the City Manager’s budget that funds unplanned events or circumstances. After further comments and upon roll call, the motion was unanimously approved by the following vote:

AYES: Alvey, Buttram, Pelley, Perkinson, Proffitt
NAYS: None

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MOTION TO RECESS MEETING

As alluded to during the previous discussion, **motion was made by Council Member Pelley, seconded by Council Member Alvey, to recess this meeting at its conclusion until Wednesday, February 28, 2007, at 5:00 p.m. to discuss payment of the attorney fees as well as other outstanding ISO investigative expenses and the City Manager’s probation.** After brief discussion, the motion was unanimously approved by the following roll call vote:

AYES: Alvey, Buttram, Pelley, Perkinson, Proffitt
NAYS: None

MANAGER'S REPORT

City Manager Moore presented the Manager's Report. In reviewing current and pending projects, City Manager Moore acknowledged the receipt of updated cost information for the installation of the new crosswalk lights on Green Street. The project includes the purchase of equipment by TWC, with the City funding the estimated installation costs by an outside contractor in the amount of \$16,600. City Manager Moore indicated additional details on this project will be made available during the March work session. As discussed during recent work session, City Council confirmed its intention to reschedule its work session from Monday, March 12, to Friday, March 16, at 5:45 p.m. This change was necessitated due to a scheduling conflict with the NLC Congressional Cities Convention to be held in Washington on March 10-14. After additional discussion, the report was accepted as presented.

RECESS

There being no further business to come before the meeting at 8:03 p.m., Mayor Proffitt declared the meeting recessed until *Wednesday, February 28, 2007*, at 5:00 p.m. for the purpose as stated above.

MINUTES OF RECESSED MEETING, ATHENS CITY COUNCIL, FEBRUARY 28, 2007

The Athens City Council met in reconvened session on Wednesday, February 28, 2007, at 5:00 p.m., with Mayor Proffitt presiding. Upon roll call, the following members were present:

Alvey, Buttram, Pelley, Perkinson, Proffitt

The following decisions were made and ordered made a part of the records of the Athens City Council:

ISO INVESTIGATION – COMPENSATION TO COMMITTEE MEMBERS

As a result of the recent ISO investigation, a proposal was made to consider compensation of \$2,000 each to committee members Chris Trew, Randy Ayres, and Richard Newman. **As consideration began, motion was made by Council Member Buttram, seconded by Vice Mayor Perkinson, that the City pay the three committee members \$1,000 each.** Upon discussion, Council Member Buttram stated the City Council during its called meeting on November 28, 2006, *asked* that these gentlemen serve on the investigative committee and *were not hired to serve*. He advised there was no mention of remuneration at that time, noting they were selected because of their involvement in the community and their integrity, not because of their legal backgrounds. He further acknowledged that at the time of the appointments, the Council did not know the length of time (in excess of 50 hours) nor the effort that would be expended by the committee. Based on the 50-hour calculation, Council Member Buttram stated this motion would allow for compensation of each committee member at a rate of \$20 per hour. Responding to a question by Vice Mayor Perkinson, City Attorney Trew clarified he would not submit a bill as City Attorney. He further stated his intent to decline payment if the other committee members were not going to be compensated. However, he did request reimbursement to the law firm (Higgins, Biddle, and Trew) for duplicating costs of \$1,700 and payment for secretarial staff time of \$300. Speaking in opposition to the motion, Council Member Pelley and Council Member Alvey spoke in favor of remunerating the committee members in the amount of \$2,000 each. Council Member Alvey further added that the expenses associated with the ISO investigation should not be a liability of the City but should be paid by the City Manager.

After further discussion, it was moved by Council Member Pelley, seconded by Council Member Alvey, to amend the motion to read \$2,000 instead of \$1,000. After discussion and upon roll call, the motion to amend was defeated by the following vote:

AYES: Alvey, Pelley
NAYS: Buttram, Perkinson, Proffitt

As discussion continued, motion was made by Vice Mayor Perkinson, seconded by Council Member Pelley, to amend the motion to read \$1,500 instead of \$1,000. After other comments, a Call for the Question, being duly made by Council Member Buttram and seconded by Vice Mayor Perkinson, was unanimously approved by the following roll call vote:

AYES: Alvey, Buttram, Pelley, Perkinson, Proffitt
NAYS: None

Upon consideration, the amended motion substituting the amount of \$1,500 was unanimously approved by the following roll call vote:

AYES: Alvey, Buttram, Pelley, Perkinson, Proffitt
NAYS: None

After other comments, motion by Council Member Pelley to close debate was unanimously approved by the following roll call vote:

AYES: Alvey, Buttram, Pelley, Perkinson, Proffitt
NAYS: None

In response to the previous vote, Mayor Proffitt called for consideration of the Main Motion to authorize payment of the ISO investigative committee members in the amount of \$1,500 each. Upon roll call, the motion, as amended, was unanimously approved by the following vote:

AYES: Alvey, Buttram, Pelley, Perkinson, Proffitt
NAYS: None

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ISO INVESTIGATION – REIMBURSEMENT OF EXPENSES

In consideration of other expenses associated with the ISO Investigation, **motion was made by Council Member Pelley, seconded by Council Member Buttram, to reimburse the law firm of Higgins, Biddle & Trew for duplicating expenses in the amount of \$1,700 as well as for reimbursement to the firm for secretarial support in the amount of \$300.** After brief comments, the motion was unanimously approved by the following roll call vote:

AYES: Alvey, Buttram, Pelley, Perkinson, Proffitt
NAYS: None

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CITY MANAGER’S PROBATION

As discussed in recent work session, Vice Mayor Perkinson alluded to possible choices for the City Council in terms of further defining the City Manager’s probation. Acknowledging his desire to seek compensatory as well as punitive action against the City Manager as a result of the ISO investigative findings, **Council Member Pelley moved that the City Manager’s pay be cut 15% for the next 12 months. The motion was seconded by Council Member Alvey, and discussion ensued.** Council members questioned City Attorney Trew regarding potential legal ramifications as a result of this action. Mr. Trew acknowledged the City Manager’s contract, which was approved by the City Council in 1999, identifies a base salary of \$77,000, *with adjustments to the employee’s base salary and other benefits in such manner as the*

employer may determine on the basis of an annual salary review of the Employee. Regarding reduction of benefits, the contract further states, “Employer shall not, at any time during the term of this Agreement, reduce the salary, compensation or other financial benefits of the Employee, except to the degree of such reduction across the board for all employees of the employer, or otherwise agreed to between the parties.” It was Mr. Trew’s opinion that the City Manager’s salary could not be reduced below the \$77,000 that was approved in 1999. When considering the possibility of litigation as a result of this action, Mr. Trew stated, “If the majority of the Council wants to do what is being proposed, I think it could be defended, but the language could be interpreted another way.” Upon discussion, Council Member Pelley spoke in support of this motion and urged approval because it addresses the punitive part of Mr. Moore’s probation. Vice Mayor Perkinson acknowledged the Investigative Committee’s findings have been very upsetting and disappointing to him, but he expressed real concerns about going down the path of reducing salaries. Citing the definition for punishment as *cause to suffer for an offense*, it was Council Member Alvey’s belief that probation is not punishment. She suggested if the Council cannot come to an agreement in regard to this motion, it should consider having Mr. Moore reimburse the City for the expenses incurred as a result of the ISO investigation. In response, Council Member Buttram stated that probation is a period of rehabilitation and urged council members to visit with Mr. Moore in his office to improve the flow of communication between the City Manager’s office and the City Council. Vice Mayor Perkinson agreed that an occasional one-on-one is sometimes beneficial. However, council members Pelley and Alvey spoke in opposition to meeting with the City Manager, except in a public forum. Speaking in opposition to the motion to reduce the City Manager’s salary, Mayor Proffitt and Vice Mayor Perkinson both expressed concerns regarding future litigation as a result of such action. After further comments from council members, the motion was denied by the following roll call vote:

AYES: Alvey, Pelley
NAYS: Buttram, Perkinson, Proffitt

As discussion continued, motion was made by Council Member Pelley, seconded by Council Member Alvey, that the cost of the investigation including payment to committee members (\$4,500), duplicating fees (\$1,700), reimbursement for committee secretary (\$300), and court reporter’s fees (of which payment in the amount of \$4,225 was approved during the regular meeting on February 20, 2007) be billed to the City Manager and asked that he reimburse the City in the amount of \$10,725.

Council Member Pelley encouraged passage of this motion which precludes possible litigation and puts teeth in the probation. In support of the motion, Council Member Alvey encouraged Council to make sure Mr. Moore is given punishment as well as probation. Vice Mayor Perkinson inquired of the City Attorney regarding the questionable enforcement of this motion. Mr. Trew indicated if the City Manager is asked to pay the expenses and doesn’t, it was Mr. Trew’s feeling that the City could not sue for payment because Mr. Moore has not agreed to pay this. He further advised if Mr. Moore doesn’t pay, the Council would then look at the contract to determine if it is the desire of the Council to terminate him for not following the wishes of the governing body. Mr. Trew further stated that Mr. Moore would still be entitled to his severance benefits, as provided for in the contractual agreement between the City Manager and the City Council. After further comments, the motion was denied by the following roll call vote:

AYES: Alvey, Pelley
NAYS: Buttram, Perkinson, Proffitt

As discussion continued, motion was made by Mayor Proffitt, seconded by Council Member Buttram, to split the costs, with the City paying \$5,362.50 and the City Manager paying \$5,362.50. Upon discussion, Council Member Pelley expressed his objections to putting the bill on the citizens when the bill is the City Manager’s. Council Member Alvey opposed the motion by stating the ownership of the investigation lies with the City Manager and voting in favor of this motion would result in the Council taking ownership of something that it should not. Council Member Buttram felt that each council member had an opportunity to know about the ISO rate increase and the passage of this motion will allow both the Manager and the City Council to participate and to live up to the responsibility set before the governing body. After other comments and upon roll call, the motion failed by the following vote:

AYES: Buttram, Proffitt
NAYS: Alvey, Pelley, Perkinson

ADJOURNMENT

There being no further business to come before the meeting and upon motion duly made and seconded, the meeting adjourned at 6:25 p.m.

JOHN M. PROFFITT, Mayor

MITCHELL B. MOORE, City Manager