



**Meeting Minutes - Final
City Council**

Monday, October 5, 2015

5:30 PM

Council Chambers

Council Meeting

Public Hearing

[15-0590](#)

Public Hearing to consider Planning Commission's recommendation to adopt an ordinance approving initial zoning of 1+/- acres being annexed into the corporate limits. The proposed zoning is R-1B (Residential Single Family) located at 18228 US HWY 98 West. The property is owned by Dovie Stephens.

Council President Wayne Trawick open the public hearing at 5:30 p.m. to consider Planning Commission's recommendation to adopt an ordinance approving initial zoning of 1+/- acres being annexed into the corporate limits. The property is owned by Dovie Stephens. President Trawick asked for comments from the public. Hearing no comments, he closed the public hearing.

[15-0591](#)

Public Hearing to consider the revocation of a business license.

President Trawick opened the public hearing at 5:31 p.m. to consider the revocation of a business license for All Ways Towing and Recovery. President Trawick asked for comments from the public.

City of Foley Police Chief David Wilson reported Council will be hearing from Police Captain David White, who is the Case Agent on this matter as well as City Prosecutor Mike Dasinger.

Mr. Dasinger introduced himself to the Council. He reported Chief Wilson asked him to assist with the preparation of the business license revocation public hearing for All Ways Towing and Recovery. Captain White distributed handouts with various complaints the Police Department has received against All Ways Towing and Recovery. Captain White reported in August of 2015, Chief Wilson asked him to investigate the complaints against All Ways Towing and Recovery and the owner/operator Tim Rogers. At the time, there were a total of eight (8) complaints, seven of which were from citizens and one was a complaint from a police officer. The complaints ranged from over charging to unprofessional conduct. Captain White set up a meeting with Mr. Rogers on August 10, 2015 at the Foley Police Department. Captain White went over each complaint with him. Mr. Rogers was very defensive and explained that none of the complaints were his fault and that he had issues with other tow companies

and that he was trying to move his tow yard. The Police Department tried to work with him to resolve these issues. After the meeting, the Police Department received four (4) more complaints against All Ways Towing and Recovery. Mr. Dasinger interjected and asked how many total complaints and in what time frame are they. Captain White explained the Department inspected Mr. Rogers's trucks in December of 2014 to add him to the towing rotation, the first complaint was received in March of 2015 and there are now twelve (12) total complaints in the span of ten (10) months. Mr. Dasinger asked Captain White if there had ever been any other businesses who received this many complaints in the same time span. Captain White reported there was a daycare business approximately three (3) years ago that received approximately 16 complaints. The daycare's business license was revoked; however, the business became a 501c3 business, which made the owner exempt from having to have a business license. Mr. Dasinger asked if there were any complaints for any other tow companies for last seven (7) months or the last year. Captain White reported there were no complaints within the last year on any other tow companies. Captain White submitted a written report of each complaint received against All Ways Towing and Recovery to the Council, which is attached as back to the minutes.

Mr. Dasinger introduced Braxton Blake Lowe, an attorney in Gulf Shores, Alabama. Mr. Lowe reported he has had dealings with All Ways Towing and Recovery through his clients. Mr. Rogers had a vehicle in his possession that he towed on July 2, 2015 belonging to his clients and fifty-nine (59) days later, Mr. Rogers sent a certified letter demanding storage fees in the amount of \$3,500.00, a towing fee of \$100.00 and an administrative fee of \$150.00. The certified letter was given to the Foley Police Department. According to the City of Foley Ordinance, Mr. Rogers is only entitled to \$85.00 for the towing unless he can prove he stayed on site for over an hour. The vehicle was stopped, not wrecked. Mr. Rogers sent certified mailed to citizens demanding more money than what he is entitled to. The ordinance also allows him to charge \$20.00 per day for storage, which should be \$1,180 not \$3,500.00. Mr. Lowe reported he could not find in the ordinance where Mr. Rogers is entitled to charge an administrative fee. The vehicle was being driven by an acquaintance of the owner during the time it was stopped by police, at which time, the owner was in the hospital dying. Once the owner learned his vehicle was towed, he sent his ex-wife to retrieve it but Mr. Rogers denied her access to it. Before the owner passed away, he hand wrote and notarized a statement giving his ex-wife permission to pick up the vehicle but Mr. Rogers again denied her access to the vehicle. Mr. Lowe reported the vehicle is a 2013 F100 4-door, black pickup truck valued at approximately \$25,000. The vehicle had a loan on it through Bank of America, but Mr. Rogers knows that the law in the State of Alabama says if he can ever get to auction, he can sell it free and clear of the loan that is on it, to whomever is the highest bidder. Mr. Rogers tried to sell the vehicle at public auction on a Saturday after being served with civil pleadings regarding the vehicle out of Circuit Court on the Thursday prior. Mr. Rogers denied his identity at the time he was served by the Process Server but later admitted who he was. A part of those pleading, was an order signed by Judge Floyd to have a hearing on the proposed sale of an abandoned vehicle that belonged to Mr. Lowe's clients. The hearing is scheduled for November 17, 2015.

Mr. Lowe's clients attended the auction to bid on the vehicle in order to protect it from being sold. Mr. Rogers began the auction by reading aloud the auction

rules and once he noticed Mr. Lowe and his clients recording the auction, he decided not to go forward with the auction. Mr. Rogers ordered Mr. Lowe to leave the premises for being disruptive to the sale, which Mr. Lowe denied. Mr. Rogers stated he would have Mr. Lowe removed, which prompted Mr. Lowe to call the police. While Mr. Lowe was speaking with the police, his clients stayed close to the auction to hear what was going on. At some point during the auction, instead of announcing he is now starting the bids for this vehicle and stating an opening bid, he started talking on his cell phone and went to the other side where no one could see him and then he came back and yelled out that the vehicle was sold and shortly thereafter, he ended the auction. The vehicle was not on Mr. Rogers's lot at the time of the auction and had not been there since the Thursday prior to the auction and no one knows who was on the phone with Mr. Rogers at the time he claims the vehicle sold. Mr. Lowe reported that either through the City of Foley's criminal investigation or the civil process, the whereabouts of the vehicle will be found out. Mr. Lowe reported that Mr. Rogers has no business being in business in this community and he cannot be trusted.

Mr. Dasinger introduced Richard Springsteen, who is a Corporal with the Administration Division of the Orange Beach Police Department. Corporal Springsteen reported the Orange Beach Police Department received complaints against All Ways Towing and Recovery for over charging for rotation calls as well as direct calls to his office. Corporal Springsteen reported the Orange Beach Police cannot regulate what he charged for direct calls to his office; however, if he is contact by the Orange Beach Police Department, he is only allowed to charge \$90.00 per tow unless he is on site over two (2) hours. The complaints were investigated and there was a public hearing at the Orange Beach City Council meeting on August 4, 2015. Evidence was presented at the public hearing that Mr. Rogers charge \$780.00 for one (1) towing, which should only had been \$90.00 on May 7, 2015. There was a \$190.00 charge on May 15, 2015 that should have only been \$90.00. A citizen also testified at the Orange Beach public hearing that Mr. Rogers also over charged him for a tow. The business license for All Ways Towing and Recovery was revoked in Orange Beach. Corporal Springsteen submitted documentation from Orange Beach to the City council, which is attached as back up to the minutes.

Mr. Dasinger introduced Officer Sellers of the Foley Police Department, who gave a synopsis of complaints he worked against All Ways Towing and Recovery, which is part of the report submitted by Captain White, which is attached as back to the minutes.

Mr. Dasinger introduced Officer Jon Ashworth of the Foley Police Department, who gave a synopsis of complaints he worked against All Ways Towing and Recovery, which is part of the report submitted by Captain White, which is attached as back to the minutes.

Mr. Dasinger called upon Foley Fire Chief Joey Darby to give testimony. Chief Darby reported on August 27, 2015 the Fire Department responded to a vehicle and grass fire on the South East Corner of Foley Beach Express and County Road 12. The vehicle was on fire and the fuel tank was leaking fuel, which was also on fire making it a very hazardous situation. The fuel continued to leak after the fire was extinguished causing extreme precaution to be taken while the vehicle was towed. Chief Darby asked the vehicle owner if he had a preference for a towing company, which he did not. All Ways Towing and

Recovery was the next towing company on the rotation record. Foley Police Officer Clevenger dispatched All Ways Towing and Recovery to the scene. Mr. Rogers arrived on scene driving a sling type tow truck. Chief Darby advised Officer Clevenger that he will not allow that type of truck to tow away the vehicle giving the hazardous circumstances of fuel still leaking from the vehicle and a rollback wrecker truck will be required to safely tow the vehicle. Mr. Rogers disputed the safety concerns of using his truck expressed by Chief Darby and he accused Chief Darby of discriminating against his company. Chief Darby explained to Mr. Rogers why a rollback wrecker was needed for the situation but Mr. Rogers claimed Chief Darby's concerns were not valid. Chief Darby explained that it is his decision and responsibility for the safety of the scene. Mr. Rogers informed Chief Darby that he was not in charge of the scene and then attempted to prove otherwise. Chief Darby instructed Mr. Rogers to report back to his truck and leave the scene. Mr. Rogers proceeded to take photos of all sides of the vehicle before leaving. At this time, the owner of the vehicle advised Chief Darby that he contacted his insurance agent and the agent advised him to have the vehicle towed by Freeman's Collision Towing to the Freeman's Collision Center. Officer Clevenger then contacted Freeman's Collision and informed them it was at the request of the vehicle owner. After leaving the scene, Mr. Rogers drove back and forth passing the scene several times. He then parked his truck on the side of the road in sight of the scene. He remained there until Freeman's Collision left the scene with the vehicle on a rollback wreck. Mr. Rogers then proceeded to closely follow the Freeman's Collision truck as it slowly made its way north on the Foley Beach Express towards Freeman's Collision Center. Chief Darby reported it is his opinion Mr. Rogers acted in an unprofessional manner and revoking his business license should strongly be considered.

Mr. Dasinger asked Captain White to speak about other incidents involving other Police Officers and All Ways Towing and Recovery, which is part of the report submitted and is attached as back up to the minutes.

Mr. Dasinger asked Captain White if he is asking Council to consider revoking the business license of All Ways Towing and Recovery on behalf of the Foley Police Department. Captain White confirmed that he is asking for the business license to be revoked. Captain White also reported when the Police Department calls a towing company on the rotation record, the City of Foley is basically endorsing that business. A business with this many complaints does not look good for the Police Department or the City as a whole. The City does not need a business with unprofessional manners and unfair business practices.

Branch Manager of Alabama Title Loans Joyce Burns reported Mr. Rogers towed one of their vehicles from Trax Tires in Gulf Shores. Mr. Rogers told Alabama Title Loans that he had their vehicle for three or four weeks on his lot. Ms. Burns reported she told him she wanted an invoice and she told him he did not have it for three or four weeks because she confirmed with Trax Tires as to when the vehicle was towed. Ms. Burns reported Mr. Rogers told her she was stupid and did not know the law of Alabama.

Mr. Rogers's attorney Richard Perry from Birmingham, Alabama reported Mr. Rogers is in the process of getting his business license back in Orange Beach. Mr. Perry reported he spoke with the Orange Beach City Attorney last week and he felt confident that they could come to a resolution in order for Mr. Rogers to get his license back in Orange Beach. Mr. Perry reported Mr. Rogers advised

him that when he obtained his business license in the City of Foley, he was not given a copy of the City Ordinances pertaining to towing companies and he was unaware of a cap on the towing charges. Mr. Rogers does not deny that over charging happened. Mr. Perry asked Council to consider not immediately revoking the business license and to allow Mr. Perry to work the issues out with Orange Beach to get Mr. Rogers's license back and then try to resolve the issues in the City of Foley. Mr. Perry reported the towing business is how Mr. Rogers earns a living and revoking his business license will create a hardship for him and his family. He again asked for a little time to work things out before a decision is made. He also pointed out that the hand written, notarized statement that was presented to Mr. Rogers in order to obtain the F100 pickup truck, could have been written by anyone and that is why Mr. Rogers would not allow the owner's ex-wife access to the truck. He reported that Mr. Rogers is also being represented in the civil case by Attorney Christine Burns.

Captain White reported when a towing company requests to be on the rotation list, they are asked to come to the Police Department and produce proof of insurance, they are put through back ground checks and the trucks are inspected. On December 22, 2014, Mr. Rogers completed all the requirements. At the time, Officer Clevenger gave a copy of all the rules and regulations. Captain White reported Mr. Rogers should want to know what the maximum tow fees are.

Council Member Hellmich asked how many companies are currently on the City of Foley wrecker rotation. Captain White reported he believed there are five or six and that includes All Ways Towing and Recovery.

Mr. Lowe reported he wanted to call Council's attention to the copy of the certified letter Mr. Rogers sent to his clients and to consider the horrendous over charge that he put in the letter, which is an attempted theft to charge someone \$3,500.00 when you are only entitled to \$1,200.00.

Council Member Quaites asked if there were any complaints on any of the other tow companies. Captain White reported there were no complaints against any other tow companies during this time period.

Ms. Burns reported when Mr. Rogers informed her their vehicle was on his lot, the Alabama Title Loan repo person went to pick the vehicle up from his lot and Mr. Rogers would not let him have it and on this same day, the Mr. Rogers had the vehicle listed on Craig's List for sale for \$3,500.00.

Hearing no further comments, President Trawick closed the public hearing.

Call to Order

President Trawick called the meeting to order at 6:20 p.m.

Roll Call

All Council Members were present with the exception of Council member Rick Blackwell, who was absent due to being out of town. Also present: Mayor John Koniar, City Administrator Mike Thompson, City Clerk Vickey Southern, Katy Taylor, Steve Smith, Thurston Bullock, David Wilson, Chad Christian, Meg Hellmich, Daisha Barnes, Joey Darby, Mike Dasinger, Randy Kurtts, David

White, Daniel Sellers, Jon Ashworth, Otis Miller, Richard Springsteen, John Jackson, Annie Smith, Braxton Blake Lowe, Gregg Knight, Sharon Knight, Tim Rogers, Richard Perry, Larry Morgan and Toni Morgan.

Present: 4 - President Wayne Trawick, Council Member Vera Quaites, Council Member Ralph Hellmich and Council Member Charles Ebert III

Absent: 1 - Council Member Rick Blackwell

Pledge of Allegiance

Additions/Removals

A motion was made by Council Member Ralph Hellmich to add item 15-0601 to the agenda. The motion was seconded by Council Member Vera Quaites and carried by an unanimous vote.

Approval of the Minutes

[15-0598](#) 9-21-2015 Work Session Minutes

Attachments: [09-21-2015 Work Session Minutes Draft.pdf](#)

A motion was made by Council Member Ralph Hellmich to approve the September 21, 2015 Work Session Minutes. The motion was seconded by Council Member Vera Quaites and carried by an unanimous vote.

[15-0584](#) Council Meeting Minutes of September 21, 2015.

Attachments: [09-21-2015 Council Meeting Minutes](#)

A motion was made by Council Member Charles Ebert, III to approve the September 21, 2015 Council Meeting Minutes. The motion was seconded by Council Member Ralph Hellmich and carried by an unanimous vote.

Report

[15-0581](#) Finance Director's report on submission of 2014 Comprehensive Annual Financial Report to the Government Finance Officer's Association. Report attached to this file.

Attachments: [A Report from the Finance Director](#)

This Agenda Item was presented

Ordinances, Resolutions and Other Business

[15-0150](#)

Vacation of right of ways on two separate areas of Beck Road.

Attachments: [Beck Road ROW Vacation Map](#)
[BC Foley, LLC. Declaration of Vacation](#)
[PASFCD Declaration of Vacation](#)
[Letters to Property Owners](#)

A motion was made by Council Member Ralph Hellmich to approve the first reading of a vacation of right of ways of two separate areas of Beck Road. The motion was seconded by Council Member Charles Ebert, III and carried by an unanimous vote.

Enactment No: 15-2358-RES

[15-0412](#)

AN ORDINANCE APPROVING PETITION FOR ANNEXATION AND BRINGING PROPERTY INTO THE CORPORATE LIMITS OF THE CITY OF FOLEY (18228 U.S. HWY 98 West)

Attachments: [DOVIE STEPHENS PETITION FOR ANNEXATION](#)
[DOVIE STEPHENS MAP](#)
[Annexation Report for M&C Stephens Revised](#)
[Stephens Pictures](#)

A motion was made by Council Member Charles Ebert, III to approve an ordinance annexing property into the corporate limits of the City of Foley located at 18228 U.S. HWY 98 West. The motion was seconded by Council Member Vera Quaites and carried by an unanimous vote.

Enactment No: 15-1021-ORD

[15-0537](#)

Revoking a Business License

A motion was made by Council Member Ralph Hellmich to revoke the business license of All Ways Towing & Recovery. The motion was seconded by Council Member Charles Ebert, III and carried by an unanimous vote.

Enactment No: 15-2318-RES

[15-0549](#)

A Resolution Declaring Primary Source Vendors for the Public Library

A motion was made by Council Member Ralph Hellmich to declare Ingram, SYNCB/Amazon, Children's Plus, Rainbow Book Company, Baker & Taylor, Baker & Taylor Entertainment, Over Drive, Recorded Books, and Gale/Cengage Learning as Primary Sources for materials purchased by the Foley Public Library in an amount not to exceed \$63,000.00. The motion was seconded by Council Member Vera Quaites and carried by an unanimous vote.

Enactment No: 15-2319 - RES

[15-0575](#)

No Outlet Sign for Hickory Bend Phase II Subdivision

Attachments: [No Outlet Sign](#)

A motion was made by Council Member Charles Ebert, III to approve the installation of one (1) No Outlet sign to be posted on the street name sign post within public right of way near the entrance of Hickory Bend Phase II. The motion was seconded by Council Member Vera Quaites and carried by an unanimous vote.

Enactment No: 15-2320-RES

[15-0578](#)

Accept Award from Walmart Community Grant Foundation

Attachments: [Walmart Foundation letter](#)

A motion was made by Council Member Ralph Hellmich to accept the award of \$500.00 from the Walmart Community Foundation; to appoint John Jackson to serve as the grant manager, who will be responsible for submitting all required reports to the Granting Agency and to the City's Grant Administrator and to amend the budget accordingly and approves the expenditure of grant funds. The motion was seconded by Council Member Vera Quaites and carried by an unanimous vote.

Enactment No: 15-2321-RES

[15-0579](#)

A resolution requesting the closure of streets in downtown Foley for Uptown Halloween on Oct. 29, 2015

A motion was made by Council Member Charles Ebert, III to approve the closure of the following streets on Oct. 29, 2015 from 5:15 p.m. until 8:30 p.m.: West Laurel Ave. (U.S. 98) from Hwy 59 to Alston Ave., and West Orange Ave, from Hwy 59 to Alston Street and Alston Street, from U.S. 98 to Orange Ave and to approve a hay ride (a people mover wagon with hay and pumpkins pulled by a tractor) for the children again this year. We are coordinating this with the Foley Police Department and have their approval. The proposed route for the hay ride is: Ride begins at parking spaces on east side of Alston Street, just south of Gill's Automotive. The hay wagon will travel down S. Alston to W. Verbena, where it will turn right and continue one block to S. Pine Street. There it will turn right and proceed north on S. Pine Street for two blocks, where it will turn right on W. Orange Ave. From here, it will travel one block east to return to the start position on S. Alston Street. The motion was seconded by Council Member Vera Quaites and carried by an unanimous vote.

Enactment No: 15-2322-RES

[15-0580](#)

Approve Library Collection Development Policy

Attachments: [COLLECTION DEVELOPMENT 9 28 15](#)

A motion was made by Council Member Ralph Hellmich to accept the City of Foley Public Library Collection Development Policy. The motion was seconded by Council Member Charles Ebert, III and carried by an unanimous vote.

Enactment No: 15-2323-RES

[15-0582](#)

E-J Builders' Change Order No. 1 for Dog Park

Attachments: [Dog Pk E-J CO#1](#)

A motion was made by Council Member Ralph Hellmich to carry this item over to the Council Meeting of October 19, 2015 in order to obtain more information prior to taking action. The motion was seconded by Council Member Charles Ebert, III and carried by an unanimous vote.

[15-0583](#)

Request a Resolution for Capital Purchase of a Tractor for Environmental

Attachments: [Elberta Hardware Tractor](#)

A motion was made by Council Member Ralph Hellmich to approve the purchase of the 2012 used (76 hours) Yanmar/Cub Cadet EX 2900 tractor with a front end loader and used 48" Big Bee power tiller and Big Bee 48" box blade from Elberta Hardware at a cost of \$12,000.00, in lieu of a wagon. The motion was seconded by Council Member Vera Quaite and carried by an unanimous vote.

Enactment No: 15-2324-RES

[15-0585](#)

A resolution to amend Resolution 15-2297 amending Resolution 14-0577 appointing members to the Graham Creek Advisory Board.

Attachments: [Res. 15-2297](#)

A motion was made by Council Member Vera Quaite to amend Resolution 15-2297 to reflect the correct resolution number 14-0356. The motion was seconded by Council Member Charles Ebert, III and carried by an unanimous vote.

Enactment No: 15-2325-RES

[15-0586](#)

Accept donation of drainage easement from BC Foley, LLC for the Juniper pond.

Attachments: [BC Foley LLC Right of Way Deed](#)

A motion was made by Council Member Ebert, III to approve and accept the donation of the permanent drainage easement as attached and accepts the same as right of way and easements for the Juniper pond. The motion was seconded by Council Member Quaite and carried by the following vote: Council Member Vera Quaite, aye; Council Member Ralph Hellmich, abstained; Council President Wayne Trawick, Aye and Council Member Charles Ebert, III, aye. Of those present, the vote passed by a unanimous vote.

Aye: 3 - President Trawick, Council Member Quaite and Council Member Ebert III

Abstain: 1 - Council Member Hellmich

Enactment No: 15-2326-RES

[15-0587](#)

A resolution to amend Resolution 15-2305 Request to purchase Field Striping Equipment and Paint

Attachments: [Resolution 15-2305](#)

A motion was made by Council Member Ralph Hellmich to amend Resolution 15-2305 to state the purchase price of the field striping equipment and shipment in the amount of \$12,509 be transferred into Account No. 01-628-7010 and to approve the remaining balance of \$3,391.00 from the transferred \$15,900 from Account # 01-628-8075 Event Operations to Account No. 01-628-5010 Small Tools to remain in that Account. The motion was seconded by Council Member Charles Ebert, III and carried by an unanimous vote.

Enactment No: 15-2327-RES

[15-0588](#)

REQUEST FROM BECKY HOOVER TO USE MAX GRIFFIN PARK FOR HER ANNUAL PUBLIC ROSARY RALLY

Attachments: [2015 Rosary Rally](#)

A motion was made by Council Member Vera Quaites the use of Max Griffin Park requested by Becky Hoover for the Rosary Rally on October 10, 2015 at 12:00 noon. The motion was seconded by Council Member Ralph Hellmich and carried by an unanimous vote.

Enactment No: 15-2328-RES

[15-0599](#)

**A RESOLUTION AUTHORIZING CERTAIN ACTION
WITH RESPECT TO REVENUE BONDS, SERIES 2015, TO BE ISSUED
BY THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT**

A motion was made by Council Member Ralph Hellmich to engage Fraser Lanier to refinance a Series 2009 Bond and Authorize the Mayor to sign the disclosure letter contingent upon approval of the Public Facilities Cooperative District. The motion was seconded by Council Member Charles Ebert, III and carried by an unanimous vote.

Enactment No: 15-2329-RES

[15-0601](#)

Set a public hearing to consider the vacation of right of way on Beck Road.

Attachments: [Beck Road Vacation Map](#)

A motion was made by Council Member Ralph Hellmich to set a public hearing on November 16, 2015, in accordance with the Code of Alabama, 1975 Section 23-4-2 to consider the vacation of a Right of Way on Beck Road. The motion was seconded by Council Member Vera Quaites and carried by an unanimous vote.

Enactment No: 15-2330-RES

Mayor's Comments

No comments to report.

Visitor's Comments

No comments to report.

Adjourn

A motion was made by Council Member Ralph Hellmich to adjourn the meeting. The motion was seconded by Council Member Vera Quaites and carried by an unanimous vote.

The meeting adjourned at 6:40 p.m.