

**TOWN OF BRIGHTON  
BOARD OF MAYOR AND ALDERMEN MEETING  
SPECIAL CALLED MEETING**

October 30, 2017

7:00 PM

**ROLL CALL**

**Present**

Sarah Crocker, Mayor  
Stephanie Chapman-Washam, Alderwoman  
Jason Dittrich, Alderman  
George Smith, Alderman

**Absent**

Kenny Hall, Alderman

**Others Attending:** Tammy McKinney, Town Recorder; William Wooten, Town Attorney; David Braden, Poplar Grove Utility

**Guests:** Lisa DeLancey, The Leader; Kristin Wanser; Shane Greer; Madison Bunnell; Raven Darby

**ACKNOWLEDGEMENT OF GUESTS**

**NEW BUSINESS**

**Alderman Dittrich made a motion to approve the Second Reading of the FY 2017-2018 Budget Ordinance No. 2017-10-30. Alderwoman Chapman-Washam seconded the motion. All approved. Motion carried.**

**Mr. William Wooten, Atty - Storm Water Ordinance**

Mr. William Wooten, Town Attorney, discussed the Memorandum emailed to the Mayor on 10-20-17 pertaining to the Storm Water Ordinance Options and Potential Liability. He previously spoke with not only the State but also the local engineer that handles Storm Water for all small municipalities throughout West Tennessee. His name is John Chlarson. Mr. Chlarson sent him some additional information other than what he had prepared. There are a few different options that the Town has. One option is what he has outlined which is a Storm Water Ordinance. Mr. Wooten said "you don't have to do that though. The question becomes whether or not the issue that is on private property...is it only related to the private property? Or is for the betterment of the public in general? If it is, then you have the authority to go onto that property and take whatever action is necessary for the benefit of the potential Town or more than just one person's property. Because you as the Town of Brighton have the power over that municipality or for any of the streets. The streets under the law include the ditches, what's underneath it...so the law is very clear that the Town has the municipal power to maintain its streets, maintain its water flow, and take those actions. The problem is that becomes a case by case basis for the Town to determine if the specific issues that you're facing in different areas are meeting the requirements under just the State Law which is the right to do that. It's called descriptive easement. You have the authority to maintain the city and to take that action. Mr. Chlarson recommends and I do agree with him. He is willing and he does this on behalf of municipalities...to come down and look at each specific issue that you are facing to make that

determination. To give the Town coverage if you will and that's what he does for all the municipalities. So my recommendation after speaking with him, is if he is willing to come and do that is that we should allow him to come and do that and look at; from what I understand there are some specific issues to that need to be addressed. If we can not address to everyone's benefit and liking the issues that are currently present, then I would suggest that we consider passing a Stormwater Ordinance which gives you additional authority where we can then speak with the different private parties; get their approval to go onto their property and then make sure they would give up any liability that they would have against the Town. My memorandum is more so referring to the Storm Water Ordinance. From my understanding in actual practice, Mr. Chlarson has found that it's usually better on a case by case basis to look at the specific issues and see if that will resolve the problem. I told him that it was something that I was presenting to you tonight and that he is aware of it. He is a licensed engineer so that's what he does for the municipalities. He gets paid by the State to do that. It doesn't cost anything for that to occur and potentially that could resolve a lot of the issues and if not we will talk together. I am working with MTAS to prepare you a potential Storm Water Ordinance. If you decide to pursue that avenue, then you can do that."

**Alderman Dittrich:** So does he come out and just make a determination that yes the Town should do something or no it's the private party's responsibility?

**Mr. Wooten:** Yes that's basically what he does.

**Alderman Dittrich:** So he doesn't prepare like plans or anything? Or say yes you should do something and you should do "blank".

**Mr. Wooten:** My understanding is he is basically coming on your behalf as the Town paid by the State to come and determine if it is within the prescriptive easements rights of the Town to take that action on behalf of the benefit of the whole good. It cannot be for just one potential property owner. It has to effect more than one so it will be for the Town's benefit. If that's the case, then you the authority to do whatever and you have the protection to do that. If it's for one specific owner or person, you're needing to have to potentially do the Storm Water Ordinance because it's then going to have to become more of a sewage issue than it is just a water flow issue.

**Alderman Dittrich:** So for the Town's benefit would property values falling due to drainage issues be considered a Town issue or is it a personal issue?

**Mr. Wooten:** When you are dealing with the law, it could go either way. I will tell that you that from my understanding after talking with Mr. Chlarson today, a lot of issues are usually Town issues. That you will have the authority to do that. It's also my understanding that large municipalities; they usually go the Storm Water Ordinance route. What he says you already have the authority to do it, if it's deemed to be a prescriptive easement or you have the right to do it. So it may be unnecessary to take that additional step. So that would be my advice based upon that...getting a better determination of what are the actual issues; how it's going to effect the potential property owners versus the Town's benefit. In water flows, are big issues and potentially liability issues. In my personal practice, I have sued in different reasons for that purpose. It is something that needs to be addressed and we should take action one way or the other. The other token I would think you guys would have to determine is how much money is going to be spent correcting those issues. That's a whole other issue you would have to face. Just because you have the right to do it doesn't necessarily mean you are going to be willing to pay for it.

**Alderman Dittrich:** The procedure then would be to contact this individual. He comes out and make a determination. If he says yes, then we go to our Town Engineer, Ken King Engineering, have him develop a plan of action I guess and/or be able to do it "in house". It probably depends upon the severity of the drainage issue.

**Mr. Wooten:** It's basically a case by case basis. That's what most every issue under these issues comes down to. You would have to make that determination each time.

**Alderman Dittrich:** Well thank you for presenting that. That's some useful information.

**Mr. Wooten:** The only thing I would add and it was news to me was that if you do the Storm Water Ordinance and or even if you go on civil property, we have model letters that we would provide to the

homeowner. Basically you will ask the private property owner if we have the right to go on there, they will disclaim any potential liability against the Town and we would then take action or at least the right of entry for that easement to do that. So, we've got all that documentation. I'll provide that to you as well as another outline so that you can see legally what I'm talking about when I say prescriptive easement and right of entry and those sort of issues.

**Mr. Greer:** In 2008, Mr. Chlarson came down I think with an attorney. They just came out and looked around. They said all of the water from this block drains down into this drain so it benefits the public so it's the Town's responsibility. It was just a matter of him looking at it. He provided then his opinion on how it needed to be repaired and what not to do and what not repair. Unfortunately, the Town did what he said do not do.

**Alderman Dittrich:** 2008 you say?

**Mayor Crocker:** He came back though. He's been back.

**Mr. Greer:** Oh yeah, he's been back twice.

**Mayor Crocker:** And we did what he said...the second time. Under new people, we did what we were supposed to. I just want to point that out because people keep saying we aren't doing what we are supposed to do.

**Alderman Dittrich:** That's why I said 2008.

**Mr. Greer:** Well it's a new problem.

**Mr. Wooten:** And that's what he's paid to do and also for legal purposes if you've got a state actor giving an engineering opinion also in my opinion protects the Town if they decide to follow that opinion. So, keep that in mind as well.

**Mr. Braden:** Mr. Chlarson work for???? TDOT? Or?

**Mayor Crocker:** He works for MTAS. So I'm assuming y'all do want to get him out?

**Alderman Dittrich:** Do we have a list of addresses that we can provide him when he gets here?

**Mayor Crocker:** We could really just go by streets...Woodshire, Bloomington....

**Mr. Braden:** Wouldn't it also be wise to have Mr. Chlarson prioritize?

**Alderman Dittrich:** Absolutely right. That way we have an independent third party, a professional engineer, coming in and telling us this is the one that is an immediate threat above this one. I'm telling you right now I have a hole in my front yard and it will not be at the top of the list.

## **ADJOURNMENT**

Alderman Dittrich made a motion to adjourn the meeting. The motion was seconded by Alderwoman Chapman-Washam. All approved. Motion carried. The meeting adjourned at 7:15p.m.

---

**Sarah Crocker, Mayor**

---

**Tammy McKinney, Recorder**