

December 30, 2008

CALLED MEETING 1

The City Council of the City of Sherwood met for a called meeting on December 30, 2008, at 12:30 p.m. in the Council Chambers. Those present were Mayor Virginia R. Hillman, City Attorney Steve Cobb, City Clerk Angela Nicholson, Aldermen Rankin, Fender, Davis, Sulcer, Henry, Brooks and Harmon. Alderman Vassar absent.

Mayor Hillman asked Ellen Norvell, City Engineer to update the council on the consent order from ADEQ. Mrs. Norvell gave each council member a copy of the consent order from ADEQ and advised there were representatives from ADEQ available for any questions.

The following is transcript of the discussion on the consent order:

Cindy Garner: (Manager of ADEQ): The administrative consent order is in front of you. What happened is we had a couple of inspections over the years that are covered in this administrative consent order. All the information in those, all the violations that were found during those inspections is listed in this order. On page two and three, four, five, all the way through page eight. Not only do you have some repeat violations from one inspection to another, but you also have effluent violations. Of course this order covers both treatment plants, the north and south plant, with various violations in each plant. As well as, that also includes the effluent limits that you have for some type of performance violations problems with your plant. We proposed this order, and initially it had quite a bit higher penalty in it, and we met with Mrs. Hillman and Ellen and talked about it, the history of Sherwood. Some things that have happened in the past here, some things that are planned. Because of those talks we did lower the penalty to \$15,500.00. I think the initial was \$23,300. So once we did that, the Mayor signed the consent order, Ms. Mark, our director signed the order. It went to print on December 9th and it will become effective January 9th. That means that some of your schedules, you will see it in the order, some that are due 30 days, 90 days, some as far as two years. That is pretty much the update I can give you. *Mayor Hillman:* Can you give us an update as to how the plants have run in compliance in the last six to eight months? Are we back on track from what you can see? *Ms. Garner:* This is Ann Roberts, she is the Enforcement Administrator that has been working on this. She is a lot more familiar with it than I am. *Ann Roberts:* Since, the last violations that were placed in the order were from June of this year. But since then no violations. There was that last frequent pond water violation, you would not have had that violation if the company that had the lights did not have to backorder it. I did not see that as indignant of the ongoing. *Mayor Hillman:* But in the past we have had numerous. *Ms. Roberts:* Oh yes. There are a significant number of effluent violations. Two-year period to have had this many, is significant. *Ms. Garner:* When we write an order we normally go back three years. Or unless there has been an administrative order in the past, then we go back from that time and pick up from there. Some of these actually go back to August of 2005, when some of the violations started. *Mayor Hillman:* Is that when we had a previous inspection? *Ms. Garner:* These are based on your discharge monitor reports that you send in every month. The effluent violations are completely from that report that you send in. The only violations that would come from the inspection reports are actual ones from the inspections. *Mayor Hillman:* But you feel comfortable that we are on track this past six months? *Ms. Roberts/ Ms. Garner:* Definitely. *Ms. Roberts:* I think that the staffing increases that you have done, I think that is... *Mayor Hillman:* And training. *Ms. Roberts:* Yes. To institute some... *Mayor Hillman:* Policy and procedures. *Ms. Roberts:* Yes. I think that with the right attitude, and this will get you back on track. *Ms. Garner:* We feel like we got full corporation from the city to make the effort to make these things work. Which is why we reduced the penalty. If we did not get that feeling from our meetings and conversations the penalty would not have been lowered. That is just how it would have been. So because we really think the city is on track now and in compliance, you know. Of course we have not had any more inspections since these two, I do not believe. So, we really feel like the city is on track, going move the right way from what we have heard, what we have seen, we think you are going in the right direction. *Mayor Hillman:* That is what we need to do. *Ms. Roberts:* I would like to make a comment that the (inaudible) that you all presented to us, we took into consideration when we were considering reducing the penalty amount. It did not negate any of the violations that existed, but your proactive measures were the

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reason we reduced the penalty. *Alderman Harmon:* You mentioned that the consent administrative order included schedules, some of them 30 days, 6 months, as long as two years. Does that mean that basically this consent administrative order is a document that we are under, of course as long as the next two years, while you continue to inspect and monitor, and if we follow the schedule and adhere to the order, at the end of the two year period is there going to be some follow up document that says, okay, you have done everything that you are required to do and the consent administrative order is now released, or something of that nature? *Ms. Garner:* All through the time that the order is in effect, you will send us pre-op reports, as laid out in the order, and different schedules. As we receive those and that makes it better, it makes it, if you are complying, then that part you are adhering to it, it does not go away, but we do not have to worry about it. Because as long as you are doing what you say you are going to do and things are going along okay, then that is going to be, that is where we go from there. But remember regardless of whether you have an order or not, we still do inspections and you will still do your monthly reporting, your DMR's, if there are problems with that them, then we will come right back. We can always make an addendum to this order. Our feeling is that you are going to go from here and do good. If the future proves that is not the case, then we will be right back. *Ms. Roberts:* When we feel that all of the conditions in the order have been met, then we do go through and do a closeout order. *Alderman Harmon:* Close the order. *Mayor Hillman:* Can I ask this question, is it common to get under a consent order, you come out and do the inspections and we are in violation, do you usually do a consent order at that point or is it because we have repeated violations? Is that what gets the consent order usually? *Ms. Garner:* The consent order is if we have two inspections, and whether they are repeat violations or additional violations. If we see that SSO's, sanitary sewer overflows are big issues right now with the EPA, if we see that the town is having problems with sanitary sewer overflows, which is covered in this order as well, then that is included in the order. That is a good question, yes. If we have repeat violations, or if we have an inspection and are not responded to and we never are responded to, then we will write the order, in those cases we will go to a notice of violation, which is the formal part of the enforcement. The next step is worse than this. *Ms. Roberts:* The existence of repeat violations, especially a big flag that goes up, because almost always initially you would have said we will correct this. Then we go out there again and it has not been corrected. We cannot be there all the time, so we have to rely on your reports to us for much of our information. If we cannot rely on that then...*Mayor Hillman:* Are you saying that we told you we had fixed those, or you assumed that we would? *Ms. Roberts:* Actually, it is in the order. *Ms. Garner:* Any responses we received are in the order. *Mayor Hillman:* But we did not get the order based on the last six months? I mean it is something that is ongoing? *Ms. Roberts:* No. *Ms. Garner:* I think, when was the last inspection done? *Mayor Hillman:* December of 2007. *Alderman Fender:* I have a comment to make and I want to make this clear to you. That now that we are aware that we have some problems, we are not going to be ambivalent about this. We are going to address the problems and try to fix them. The reason we are here today is to vote on a resolution to hire an engineering firm to come in and tell us what we need to do. So like, I said, we just got this a few minutes ago. I have not read through this and I am not sure I will understand it, but I want you to know clearly that we are going to address the order and we are going to try and fix whatever problems we have. But, in saying that, I am hoping that you will cooperate with us, and give us the appropriate time that we need to do it. That is working with the engineering firm and letting them guide us in what we need to do. If we rush into this and make the wrong decisions, we may unnecessarily waste a lot of money. I really do not want to do that. We do want to address the order, we do want to conform, and we do want to fix the problems that we have. I am speaking and I want you to clearly understand that. *Ms. Garner:* That is very good. That is the feeling we have gotten so far in dealing with the city. We do work with people. That is our job. Our ultimate job is to protect the water quality. Get you into compliance. Your engineering firm, and you guys are going to set the time line, it is going to have to be realistic because we have to agree to it. It is going to have to be something achievable, but not way out ten years from now, depending on the situation, but we want you to have long enough to fix the problem but not too long. We work with people all the time. *Ms. Roberts:* We work with a lot of engineering firms all the time. We get these plans, and we have engineers on staff also, we have somewhat

of a good idea of what a reasonable time is. In my experience, it has been we are lenient whenever we can be. We are not going to try to get you to do something that you cannot do. *Alderman Rankin*: So our last inspection was December 2007? *Ms. Roberts*: Yes. *Alderman Rankin*: And everything, everybody has been cooperating with you guys. *Mayor Hillman*: Well we have the last six or seven months. *Ms. Roberts*: Once the order came out. *Mayor Hillman*: Once we became aware of what is going on. *Alderman Brooks*: How often do you inspect? *Ms. Roberts*: We inspect if there is a complaint since there is an order that will trigger another inspection. Usually for major facilities they try to inspect it once a year. Sometimes with the staffing that does not occur exactly. *Alderman Sulcer*: So this came about through the inspection, or was it the reports that we sent in, and you all noticed the reports were totally out of line, or something like that? That is when all of this started back in 2005. *Ms. Roberts*: The inspection that started this was a routine inspection. Actually a person from EPA came down and joined in with us. They do that from time to time. That inspection definitely was the biggest part for the order. Also, the red flags, you all were already on our radar screen because of the number of effluent violations. We keep up, the effluent violations, you all would test the water and report to us every month and when we see the ongoing violations we know something is up, there is a problem and something needs to be done. *Alderman Davis*: After you do your inspections, where do you send the paperwork? Any particular person or body? *Ms. Roberts*: Yes, the inspector writes a letter getting the findings from the inspection and sends it to the.. *Mayor Hillman*: Whoever signs the DMR's (discharge monitoring report). *Ms. Roberts*: Yes, whoever signs the permit. Whoever is authorized. *Ms. Garner*: Typically the Mayor. *Mayor Hillman*: I was not the one at the time. *Ms. Garner*: You were not the Mayor at the time. *Alderman Davis*: My point is going to be Ms. Ellen whenever you get a report from them, could you give one to this council? *Ellen Norvell*: Absolutely. *Alderman Davis*: I have been quite ignorant, blissful not knowing about all this stuff. Now it is at point where the bottom is dropping out. I think we (council) need to know too, before hand. *Alderman Sulcer*: Because we are going to be voting on an engineering firm, so what if this engineering firm does not meet up to your expectations? *Ms. Garner*: If we get a schedule and we do not think it is realistic, then we will tell you. If this is not good enough, then you all will need to come up with something different. *Alderman Sulcer*: Okay. *Alderman Rankin*: Was this after the preliminary report from the engineering firm. Is that when you guys get involved? Or is this at the end? *Ms. Roberts*: We have to approve everything that you submit. *Alderman Rankin*: So before we do anything, the engineering report that we receive, you guys will receive and review it and say yes or no. *Ms. Roberts*: Right. *Ellen Norvell*: That is one of the reasons for the special meeting today to get this contract approved because now it is official and our time has started. Our official date is January 9th. *Alderman Sulcer*: Does it start January 9th or end January 9th? *Ms. Roberts*: It starts January 9th. *Ellen Norvell*: In our first item we have thirty days to submit something to them to let them know our plan we have scheduled. Which we will be working with the engineer and he will be working with our staff to get what we feel is a reasonable schedule. But even though I am saying thirty days, we do not want to wait thirty days because they still need to approve it. *Alderman Sulcer*: Yes. *Ellen Norvell*: We would like to get it to them in two to three weeks and we have time, if they feel like we need to make some changes, then we have time to work things out. *Alderman Rankin*: So more or less this is a survey, preliminary schedule? *Ellen Norvell*: It is a schedule that will be put in with this consent order. Whatever we tell them we are going to do. *Alderman Harmon*: It's in stone. *Alderman Rankin*: So whatever happens now... *Mayor Hillman*: It is a plan of action. *Alderman Rankin*: It is going to be abided by. *Ms. Roberts*: You submit the plan; we approve the plan with deadlines in it. The deadlines are incorporated into the order, and they are... *Alderman Rankin*: Okay. I have a question on that as far as the engineering goes. They have deadlines too, and if they do not meet the deadlines, does that come back on us or does that come back on the engineer? *Ellen Norvell*: That comes back on us. *Ms. Garner*: The engineering firm will give you the plan. Then the city will have to follow through on what to do with that plan. *Alderman Sulcer*: Okay, do we have the personnel now to follow through? What I understand from Ellen is that before we did not have the personnel, or Ms. Garner that we did not have the personnel in the past to keep up with all of our sewer plants and stuff like that. *Mayor Hillman*: We are using the personnel we have now. We only spent \$1200-\$1500 to do some training that was very beneficial

to them that they had never had. This has really helped them do some of their testing. *Ellen Norvell*: We need additional assistance from an engineering firm that is staffed to help us with the studies and reports that we need to do. We will be working, actually Larry Gaddis with Crist Engineering is here, he is the engineer that will be working with us, and he has already been working with us without a contract right now to help us. We have done some preliminary things. But we really need to get the contract in place. I think the sewer committee, and I hate to speak for the sewer committee, there are several members here today. We feel very comfortable. Crist Engineering has been doing water/wastewater work for over fifty years. *Mr. Gaddis*: Since 1938. *Ellen Norvell*: 1938. I know ADEQ is familiar with their firm. We feel very fortunate that they put in for the proposal. Four of the five-committee members ranked them number one on their ranking sheet. We feel that we have a very good engineering firm and we feel comfortable. We have talked with clients of theirs in the past. They have not had scheduling problems, meeting schedules and deadlines in the past. We have done some, through the proposal process those were some of the things we looked at. *Alderman Sulcer*: So, Ellen and then the Mayor, you are recommending them also, with the council approval? *Mayor Hillman*: We have got to get a plan in action and we have got to outside help. *Alderman Sulcer*: I know that. *Mayor Hillman*: I feel very comfortable. I think they have a good history with ADEQ. Our engineer can talk to other people that have used them and they have had good response. They come highly recommended. You do want someone that has a good working relationship with the entity you are trying to get back in with. *Alderman Fender*: I do not know if you all know the history of Sherwood, but we have some unique situations here in Sherwood that you are not going to see in any other city in Arkansas. A lot of our citizens here get electricity from North Little Rock. A lot of our citizens here inside the city limits of Sherwood get their sewer from the City of North Little Rock. *Ms. Roberts*: It is very convoluted. *Alderman Fender*: It is. And we passed a sewer tax that went on for five years, it sunset out. We have ten million dollars in an account and now we are having a hard time accessing because of the way the ballot title was written. We are having trouble getting to the money to be able to use it legally. So we have some unique situations going on here. Overlapping problems that, and when we bought these sewer systems and tried to consolidate them we have had a mess for quite some time. None of us, I think on the council, knew to the extent of what you all are bringing to our attention. *Mayor Hillman*: I did not either until January 29th. *Alderman Rankin*: Is there any other cities that are out of compliance at this time? *Alderman Davis*: Yes. *Ms. Garner*: Yes. *Alderman Rankin*: I mean numerous. This is not anything out of the ordinary here? *Ms. Roberts*: There are. *Mayor Hillman*: It is just not a place you want to be. *Alderman Rankin*: I understand that. *Alderman Sulcer*: Could this have added any health hazards to our citizens in Sherwood? That is my concern and we did not know anything about it. *Ms. Garner*: I'm sorry? *Alderman Sulcer*: Could this have been some health hazard to our citizens in Sherwood? I mean, you know. *Ms. Garner*: If you have sanitary sewer overflows that means you have raw sewage running out on the ground, into a ditch. *Alderman Sulcer*: And that could get into the water supply somehow? *Ms. Garner*: Not normally. *Alderman Harmon*: But it goes into creeks and streams where kids play. *Ms. Garner*: Because your water is going to be under pressure in the water lines. But if there is a leak or break somewhere, which would be the only way it could get cross-contaminated. *Alderman Sulcer*: Like I said, I think we are all surprised that this has come up. But now we have the personnel, we have the training. *Mayor Hillman*: This has been one of Ellen's top priorities, I would say, since she has come on board. She has spent many hours, and I think the sewer committee will attest to that, this has been a priority. We had just found out about it when she came on board. *Alderman Sulcer*: So our personnel did not have a test then? *Alderman Harmon*: No, they tested it because that is how they got the reports. They knew how to test. *Mayor Hillman*: There are some other things that have been put into place that will help. *Alderman Sulcer*: If they knew how to test, then why was it not corrected at that point? *Alderman Harmon*: I do not know that answer. One thing that Butch pointed out, we did not know, and he is right, the Mayor has pointed out as well. I think one thing I would like to ask from Ellen, is on our regular monthly agenda when we have our reports from department heads. I think as long as we remain under this consent order, I think under the reports from the department heads at the regular monthly meetings from now on it would be a regular monthly part of your report. That you make a report of the status

of the consent order, the status of our progress of this consent order. Just have something prepared every month at our regular monthly council meeting, where we are, what the progress has been, let us know something. This is serious stuff and we were not aware of it. And just give us a monthly report at every council meeting and keep us updated. And in addition to giving us copy of things, and I also noted, and this would be for Mr. Gaddis from Crist Engineer, that it mentioned at section 2.18 that they are going to present planning results and some sections here it says "and appear before committee and city council if requested." I am making my formal request now. That any reports that you make, any formal reports that you make before the sewer committee, I would like to have those reports made as well before the council so that can stay fully informed. *Alderman Davis*: Just a carbon copy. *Alderman Sulcer*: What I was talking about awhile ago Charlie, is when these reports that were out of line and sent to ADEQ, if someone in our city knew it was out of line, why was it not corrected then? *Alderman Harmon*: I think the Mayor has indicated we did not have the training. *Alderman Sulcer*: That is what I am saying.... *Mayor Hillman*: It was not all training. To be honest with you, it was not acknowledged. *Alderman Sulcer*: Okay. So if we get out of line now.... *Mayor Hillman*: We have been negligent and now it is time to just move forward. *Alderman Sulcer*: Our employees will know it is even out of line before it goes to ADEQ. When they do the testing. *Ellen Norvell*: Our employees know, cause we are actually, the wastewater manager is the one that submits the reports. We do contract with an outside laboratory that actually does the testing. We get the results from those tests, and we submit the reports in to ADEQ. Staff knows, we have had some operational problems. We did provide some additional training. Starting the first of the year we are going to make sure that we have staff, we have a very, very small staff, I know I keep saying that, but we do operate two plants. We are going to have to get to the point where our plants are manned at least eight hours a day. They are getting called of on sewer calls and things like that. We are making some operational changes that are making significant differences in our.... *Alderman Sulcer*: My concern is that when it comes up and it is out of line, they can do whatever they need to do, and we are not under another consent order. So that is with just the training and everything. *Alderman Harmon*: Did I read where Jacksonville has thirty-five in their sewer department? *Alderman Davis*: Yes. *Alderman Harmon*: How big is their sewer system compared to ours? *Ellen Norvell*: I really do not know. *Alderman Harmon*: It couldn't be that much larger. *Mayor Hillman*: We have got so much that is not under our jurisdiction. *Ellen Norvell*: We are operating two wastewater plants. *Alderman Brooks*: With how many employees right now? *Bill Miller*: Charlie, they have got half the number of line, I mean they have double the amount of line that we do. They are only operating one plant, and we are operating two. *Ellen Norvell*: Bill, is there six or seven employees now? *Bill Miller*: Six. *Alderman Brooks*: Does that includes the manager, which is the whole operations system? *Bill Miller*: Absolutely. *Alderman Harmon*: Six employees operating two plants and half as many lines as Jacksonville, which has one plant with thirty-five employees. *Ellen Norvell*: Charlie, how many calls did you have yesterday for stoppages? *Charlie Cadie*: Seven. *Ellen Norvell*: Seven calls, two plants. *Alderman Sulcer*: One plant is at Indianhead, and the other plant is where? *Bill Miller*: Stafford Road. *Ellen Norvell*: I do want to make sure we are real clear on that. It is easy to say the operators the personnel. Our small staff has done an excellent job. *Alderman Harmon*: That is what I wanted to point out. *Ellen Norvell*: An excellent job keeping us, in the last six months they have kicked in and some of the repairs that our individuals have made, the clarifier and things at the plant have saved us a lot of money, a lot of time. They will get in and do anything that is asked of them. They have done a huge job, and it is amazing... *Alderman Sulcer*: I have heard a lot of compliments about Charlie Cadie around town. That he is... *Mayor Hillman*: I think we are on track to do what we need to do here. If there is not anymore questions of ADEQ.... *Alderman Rankin*: ADEQ is satisfied with the direction the city is going at this time? *Ms. Garner*: So far. *Alderman Sulcer*: We appreciate you all coming today.

Resolution No. 30-2008, entitled, "A RESOLUTION ACCEPTING THE RECOMMENDATION OF THE SHERWOOD WASTEWATER UTILITY COMMITTEE AND AUTHORIZING THE ENTERING OF A CONTRACT BETWEEN THE CITY OF SHERWOOD AND CRIST ENGINEERS, INC., FOR

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ENGINEERING CONSULTING SERVICE” was read. Alderman Sulcer, seconded by Alderman Henry, made a motion to adopt the resolution. Alderman Rankin stated he had more comments on the resolution. His concern was with Section 4 of the contract. He asked Mr. Gaddis if the engineering services were based on an hourly rate. Mr. Gaddis stated that Section 4 describes the work involved, it does not discuss payment. Alderman Rankin stated there is no monetary value. Mr. Gaddis advised this had not been determined yet. This section applies to projects that are envisioned immediately and cannot determine future projects. Alderman Rankin asked if we were voting on something that had no monetary value. Ellen Norvell, City Engineer, stated the vote was to enter into a contract to get through the planning and scheduling phases. Alderman Harmon stated Section 5.5 states that the price of Section 3.3 and 3.4 in writing at the time the services are provided. Alderman Rankin asked what the purpose was of this. Mrs. Norvell stated that when the consent order came out the city was given two choices. The city had 30 days to let ADEQ know that the city was in compliance and would stay there. Nobody felt comfortable making the statement that within 30 days the city could make all the improvements. The second thing would be to provide a mile stone schedule. The comprehensive plan informing ADEQ what the city is doing. ADEQ has agreed to allow the city to put into place a master plan. Alderman Rankin asked if Sections 1.1, 1.3, 1.4, 1.5, and 1.6 is all that is approved at this time. Mrs. Norvell confirmed that these sections including section 1.2 are to be approved. In section 2 the approval is 2.1, which is in the master plan. The contracts will be entered into as needed with the improvements. Alderman Davis asked Mrs. Norvell if she were comfortable with the contract. Mrs. Norvell stated yes. The contract is not binding the city to anything. At any point if the city decides services are not working out, the city can terminate the contract. Alderman Davis asked if Crist Engineering was comfortable with the contract. Mr. Gaddis stated that if the city was not happy with his services he does not need to be working. You need to be happy with your engineer. The master plan that Mrs. Norvell mentions is extremely important for the city’s growth. The contract does not bind the city to anything the city is not comfortable with. Alderman Harmon stated that the council is authorizing the mayor to enter into an agreement with the engineering firm. The engineering firm will have to come back before the council with a contract asking for the money at a later date. Ellen Norvell stated she is used to seeing a one-year warranty on contracts where the engineer is very involved. There were improvements made on the north plant and immediately the city was out of compliance. Michael Clayton approached the council to protest the procedure for the selection on the engineering firm. The statute AR State Code 19-11-803 specific guidelines on selection engineering firms. The scoring sheet did not have the firm’s proximity to and familiarity with the area in which the project is located as stated in AR Code 19-11-803. Ellen Norvell stated the sheet did ask for the firm’s background and office location. The roll call vote was 7 ayes, Alderman Vassar absent.

Alderman Brooks made a motion to adjourn.

ATTEST:

Angela Nicholson, City Clerk

Virginia R. Hillman, Mayor