

CITY COUNCIL MEETING
April 14, 2005, 8:30 a.m.

CITY COUNCIL OF THE CITY OF ABILENE, TEXAS
COUNCIL CHAMBERS, CITY HALL

The City Council of the City of Abilene, Texas, met in Regular Session on April 14, 2005, at 8:30 a.m. in the Council Chambers at 555 Walnut Street. Mayor Archibald was present and presiding with Councilmen Sam Chase, Anthony Williams, John Hill, Stormy Higgins, Kris Southward (arrived at 9:00 a.m.) and Councilwoman Laura Moore. Also present were City Manager Larry Gilley, City Attorney Sharon Hicks, City Secretary Jo Moore, and various members of the City staff.

Councilman Chase gave the invocation.

Mayor Archibald introduced Robbie Walker a 5th grade student from Lee Elementary who led the Pledge of Allegiance. Robbie's principal Andy Blessing was also present.

EMPLOYEE SERVICE AWARDS

Mayor Archibald, assisted by City Secretary Jo Moore, presented Employee Service Awards to the following individuals for their years of service:

35 Years	Pat Harris	Human Resource Specialist Human Resources
35 Years	Robert T. Pribble	Professional Engineer I Design Services
25 Years	Anna L. Johnson	Program Worker Senior Citizens
25 Years	Marie O. Noe	Librarian II Library
20 Years	Larry D. Jones	Firefighter Fire Department
20 Years	Donald L. Ostrander	Fire Lieutenant Fire Department
20 Years	Roy D. Parks	Building Maintenance Specialist II Maintenance Services
20 Years	Terry Prado	Recreation Center Coordinator Recreation Division
20 Years	Jack G. Wills	Construction Inspector II Inspection Services

PROCLAMATIONS

Mayor Archibald presented the following proclamations:

- “National Public Safety Telecommuters Week” April 10th – 16th – Donna Littlefield
- “National Crime Victims Rights Week” April 10 – 16th – Diane Dotson

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Mayor Archibald recognized the following individuals: retired Brigadier General Jerry Strader, Joy Hedges, Training & Employee Development Manager and thanked her for her work on the Mayor's Roundup 5K Walk/Run that was held on Saturday, April 9th, and Andy Anderson, Director of Public Works who will be leaving Abilene for a position with the City of Fort Worth.

Mayor Archibald noted that item 4.10 "City Council Budget Workshop for discussion and possible action on 2005 Capital Improvements – Annual Certificates of Obligation Sale" has been postponed and will be considered at a called Council meeting to be held at 8:00 a.m. April 21st.

The Mayor also noted that at 11:00 a.m. the Council would recess until 11:15 a.m. to attend the "Hands Around City Hall" ceremony being held on the front lawn of City Hall and at 12 Noon, if the Council meeting has not concluded, Council would recess until 1:15 p.m. to attend the "I-CAN" luncheon at the Abilene Civic Center.

DISPOSITION OF MINUTES

2.0 There being no corrections, additions, or deletions to the March 24, 2005 Regular Council Meeting Minutes Councilman Chase made a motion to approve the minutes as printed. Councilman Southward seconded the motion, and the motion carried.

AYES: Councilmen Chase, Williams, Hill, Higgins, Southward, Councilwoman Moore, and Mayor Archibald.

NAYS: None

CONSENT AGENDA

3.0 Councilman Higgins made a motion to approve consent agenda items 3.1 through 3.4, first reading of items 3.5 through 3.9, and items 3.10 and 3.11 as recommended by staff. Councilwoman Moore seconded the motion, and the motion carried.

AYES: Councilmen Chase, Williams, Hill, Higgins, Southward, Councilwoman Moore, and Mayor Archibald.

NAYS: None

Resolutions:

- 3.1 Oral Resolution authorizing the City Manager to execute a contract extension for one year at the current fee to Kincaid Auction Service House, Inc. for auctioneer services.
- 3.2 Oral Resolution approving a request from Tom Dupree of the Abilene Dragstrip, 5601 W. Stamford, for a fireworks display to be held April 16, 2005, at approximately 9:00 p.m.
- 3.3 Oral Resolution approving a Street Use License request from ATC Associates, Inc. for installation of environmental test borings adjacent to property at 4234 Oil Belt Lane.
- 3.4 Oral Resolution authorizing the City Manager to execute Task Order 12 of the Airside

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Engineering Services Contract with HNTB Corporation for construction administration and observation services associated with Runway 17L RSA Grading, Taxiway D Extension Phase I, Taxiway C Lighting Rehabilitation, G.A. Ramp Taxilane Reconstruction and Taxiway D Homerun Rehabilitation project.

Ordinances:

- 3.5 **Z-2005-7** – Rezone 1.93 acres from O (Office) and RS-6 (Residential Single-family) to GC (General Commercial) and LC (Limited Commercial) zoning district, property located in the 1400 block of Ballinger Street; and set a public hearing for April 28, 2005 at 8:30 a.m.

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, SUBPART E, “ZONING”, OF THE ABILENE MUNICIPAL CODE, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

- 3.6 **Z-2005-9** – Rezone approximately 65 acres from AO (Agriculture Open Space) to RS-8 (Residential Single-family) zoning district, property located near the intersection of Old Forrest Hill and Forrest Hill Road; and set a public hearing for April 28, 2005 at 8:30 a.m.

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, SUBPART E, “ZONING”, OF THE ABILENE MUNICIPAL CODE, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

- 3.7 **Z-2005-10** – Rezone approximately 70 acres from AO (Agriculture Open Space) to RM-3 (Residential Multi-family) and RS-6 (Residential Single-family) zoning district, property located east of Maple Street; and set a public hearing for April 28, 2005 at 8:30 a.m.

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, SUBPART E, “ZONING”, OF THE ABILENE MUNICIPAL CODE, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

- 3.8 **Z-2005-11** – Rezone approximately 32.5 acres from AO (Agriculture Open Space) to RS-6/PH Overlay (Residential Single-family with Patio Home Overlay) and RM-3 (Residential Multi-family) zoning district, property located at State Hwy 351 and Liberty Boulevard; and set a public hearing for April 28, 2005 at 8:30 a.m.

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, SUBPART E, “ZONING”, OF THE ABILENE MUNICIPAL CODE, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES;

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CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

- 3.9 **Z-2005-12** – Rezone approximately 24.5 acres from AO (Agriculture Open Space) to RS-6 (Residential Single-family) zoning district, property located west of Buffalo Gap Road and south of Chimney Rock Road; and set public hearing for April 28, 2005 at 8:30 a.m.

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, SUBPART E, “ZONING”, OF THE ABILENE MUNICIPAL CODE, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

Bid Awards:

- 3.10 **Bid #CB-5046** – Elm Creek Bank Restoration, Phase II. The bid was awarded to Austin Filter Systems, Inc., Austin, TX in the amount of \$992,472.95.
- 3.11 **Bid #CB-5033** – Metal Open Top Roll-off Refuse Containers. The bid was awarded to Roll Off USA, Durant, OK in the amount of \$37,591.00.

Mayor Archibald polled the audience to determine the number of individuals present for the various public hearing items.

REGULAR AGENDA

- 4.1 Jon James, Director of Planning & Development Services briefed the Council on an ordinance considered on second and final reading to amend sections 23-306.4 (Permitted Uses), 23-306.5B (Accessory and Incidental Use), and 23-363 (Definitions) of the City of Abilene Zoning Ordinance regarding the placement and screening of Freight Containers.

Mr. James stated the proposal provides a recommendation for the definition of freight containers, not to include trucks, trailers, or rail cars. Mr. James further stated the staff recommended ordinance would permit freight containers only in HI (Heavy Industrial), LI (Light Industrial), and HC (Heavy Commercial) zoning districts, and also requires opaque screening (fencing, masonry walls, berms, and/or landscaping) of equal or greater height from any street right-of-way, or other properties zoned differently than HI, LI, or HC. Mr. James further stated the ordinance would require a building permit for a freight container and they must meet all building and development regulations. Mr. James noted if used for storage only, the freight container would be considered a “temporary structure” regardless of the length of time it is in use. Mr. James noted the following matrix summarizes the different regulations that would apply depending on how they are regulated (i.e., permanent structures, temporary structures, or outdoor storage):

Options for Regulation of Freight Containers

	Permanent Structure	Temporary Structure	Outdoor Storage*
Building Code Requirements	Yes	Yes	No
Permit Required	Yes	Yes	No
Foundation Required	Only if greater than 400 sf or 10 ft height	No	No
Accessible	Yes	No	No
Ventilation Required	Yes	No	No
Lighting Required	Yes	No	No
Electric Required	No	No	No
Tiedown or other electrical safety mechanism required	Only if connected to electricity	Only if connected to electricity	Only if connected to electricity
Wind Load Requirements	Yes	No	No
Minimum Building Separation	Yes	Yes	No
Can Locate in Floodplain	Yes, with restrictions	Yes, with restrictions	Yes
Setbacks	Bldg Setbacks	Bldg Setbacks	Storage Setbacks (typically less)
Screening	Yes	Yes	Yes
Zoning Districts	Heavy Industrial, Light Industrial, and Heavy Commercial. P&Z also recommends General Commercial		
<i>* Treating Freight Containers as outdoor storage would require additional ordinance changes. What is reflected on this chart is based on preliminary review of other communities that regulate freight containers as storage.</i>			
<i>Note: Portable buildings are currently regulated as either a Permanent Structure (if present greater than 6 months) or a Temporary Structure (if present less than 6 months).</i>			

The Planning and Zoning Commission recommends approval of the ordinance as follows: approval of the definition of Freight Containers; approval of Section 23-306.4 Permitted Uses (with the addition of allowing freight containers in GC zoning); approval of Section 23-306.5b (with the provision that freight containers be allowed in GC zoning, and must be located in the rear of the property and be screened). Staff recommends that freight containers not be allowed in the GC (General Commercial) zoning district, but if allowed should only be allowed in the rear and fully screened, as recommended by the Planning and Zoning Commission.

Council and staff discussion included: 1) the draft ordinance before Council is for “temporary structures”; 2) the building, zoning and aesthetic issues on freight containers; 3) Abilene’s ten peer cities plus Amarillo’s freight container regulations were reviewed; 4) the equability between portable buildings and freight containers; 5) where within general commercial zoning freight containers could be located (i.e., much of the area around the Mall, commercial area on North and South 1st Streets, and South 14th Street); 6) under the current recommended ordinance portable building regulations would not change; 7) the difference between temporary and outdoor storage; 8) location, screening and limiting number of freight containers; 9) freight containers being used as a storage facility (primary business); 10) regarding permitting/inspection determining ongoing use as storage

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(enforcement issues); 11) permanent use versus temporary use; 12) definition of rear of building; 13) treating portable buildings as outdoor storage; 14) wind load requirements; 15) the possibility of staff evaluating portable buildings as a separate issue for the purpose of equity with the freight container issue, allowing staff time to research implications to building codes and other issues relevant to portable buildings; 16) the structural difference by definition between portable buildings and freight containers; 17) freight containers in AO zoned areas being prohibited; 18) permit/fee charges (per container, per placement – building permit fee); 19) what portable buildings are really used for; 20) requiring fee to track use of containers; 21) equal or greater height screening requirements may not be realistic (match/paint more pleasing for screening requirement); 22) separating storage and garbage issues and regulating garbage use, and; 23) use of containers on construction sites.

Following Council and staff discussion Mayor Archibald opened the public hearing and the following individual addressed the Council:

- Steve Sitzes – Owner of Abilene Portable Buildings. Mr. Sitzes stated appreciation to Council for considering portable buildings and freight containers. Mr. Sitzes noted the restrictions on portable buildings versus freight containers are too stringent. Mr. Sitzes stated he feels a simple solution would be to create an ordinance where a portable building (to be used for storage) has to meet a certain criteria, since being permanent units they are inspected anyway.

There being no one else present and desiring to be heard the public hearing was closed.

Council and staff discussed possibly tabling the freight container issue for further research.

Councilman Chase made a motion to table the ordinance considered on second and final reading to amend sections 23-306.4 (Permitted Uses), 23-306.5B (Accessory and Incidental Use), and 23-363 (Definitions) of the City of Abilene Zoning Ordinance regarding the placement and screening of Freight Containers. Councilman Higgins seconded the motion.

City Attorney Sharon Hicks noted on the two issues discussed relevant to portable buildings and to freight containers being located in AO zoned areas, that change for consideration would require a Planning and Zoning Commission recommendation.

Mr. James noted if Council is seriously considering treating freight containers as outdoor storage that significant change in the ordinance would also need to be considered by the Planning and Zoning Commission. Staff would also further research the three cities that treat them as outdoor storage to develop draft ordinance language.

Mayor Archibald stated this item could be brought back to Council by July 2005 following further staff review and Planning and Zoning Commission consideration. Councilman Higgins requested the issue of the freight containers for storage use versus garbage use also be reviewed to avoid businesses possibly having a fee increase.

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The motion carried.

AYES: Councilmen Chase, Williams, Hill, Higgins, Councilwoman Moore, and Mayor Archibald.

NAYS: Councilman Southward.

Items 4.2 through 4.9 were considered in the following order:

Item 4.6, Item 4.9, Item 4.4, Item 4.8, Item 4.2, Item 4.3, Item 4.5, and Item 4.7

4.6 Jon James, Director of Planning & Development Services briefed the Council on **Z-2005-4**, an ordinance considered on second and final reading to add Patio Home Overlay (PH) zoning to property zoned RS-8 (Residential Single-family) and CU (College University), property described at Lots 16-33 on Pemelton Drive.

Mr. James stated the applicant, Abilene Christian University, desires to build patio homes on these lots and currently, as the City of Abilene Zoning Ordinance is written, the development of patio homes is permitted in College University (CU) zoning. However, this type of home would not be permitted in Residential Single-family (RS-8) zoning. Mr. James further stated the applicant desires to rezone the 18 residential lots to keep the zoning consistent and would replat the lots to accommodate the higher density of homes. Mr. James noted the Patio Home Overlay (PH) states the individual lots with the overlay may be a minimum of 50 feet wide and variable front buildings lines are required based upon parkway widths along streets. Mr. James stated Pemelton has a 12 foot parkway, and must abide by the following:

- a) Not more than 1/3 of such buildings shall be set back a minimum of 10 feet from the front property line.
- b) Not more than 1/3 of such buildings shall be set back a minimum of 5 feet from the front property line.
- c) Not more than 1/3 of such buildings shall be set back 0 feet from the front property line.
- d) All corner lots or lots siding onto an alley shall have front buildings lines of at least 10 feet.
- e) Rear building lines must be at least 10 feet.
- f) Interior side building lines (one boundary may have a set back of zero feet, as long as the other side is at least 10 feet). No two patio homes shall be separated by less than 10 feet.
- g) Maximum height of patio homes is 2 stories.

Staff and the Planning and Zoning Commission recommend approval of the rezoning request.

Council and staff discussion included: 1) structures (most dense) that could go on the lots; 2) number of unrelated people living in one unit; 3) staff encouraging the inclusion of a rear alley; 4) Planning and Zoning Commission requesting a workshop with staff (as a result of this case) to discuss city wide college zoned areas that might be rezoned, and; 5) City Council's responsibility to all parties involved and to make the situation as compatible as possible.

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Following Council and staff discussion Mayor Archibald opened the public hearing and the following individuals addressed the Council:

- David Todd – agent representing Abilene Christian University. Mr. Todd addressed the rezone request to attain consistency, size of proposed homes, developing a private alley for rear access, and landscaping in the area. Mr. Todd requested Council approve the request.
- Merle Brown – opposed. Mr. Brown distributed a petition signed by 51 residents in the area opposed to the rezone. Mr. Brown noted traffic and congestion concerns.
- Charles Anderson Sr. – opposed to Patio Home Overlay. Owners of property on Pemelton Street had stated there would be single homes only. Mr. Anderson noted disappointment that property owners changed their minds.
- Steve Connally – developer with Quality Homes of Abilene. Mr. Connally distributed pictures of proposed homes to be built and stated this will be in a Home Owners Association. Mr. Connally addressed value and size of proposed homes.
- Jerry Strader – noted ultimately property will be built on, that restrictions can be put in place and problems handled.
- Kevin Watson – representative for the seller to Abilene Christian University. Serious considerations having been given to best use of the land and noted it is Abilene Christian University's intention to protect neighbors through appropriate contracts and deed restrictions.

There being no one else present and desiring to be heard the public hearing was closed.

Councilman Southward made a motion to approve **Z-2005-4**, an ordinance considered on second and final reading to add Patio Home Overlay (PH) zoning to property zoned RS-8 (Residential Single-family) and CU (College University), property described at Lots 16-33 on Pemelton Drive. Councilman Hill seconded the motion, and the motion carried.

AYES: Councilmen Chase, Hill, Higgins, Southward, Councilwoman Moore, and Mayor Archibald.

NAYS: None

ABSTAIN: Councilman Williams.

The Ordinance is numbered **8-2005** and captioned as follows:

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, SUBPART E, "ZONING", OF THE ABILENE MUNICIPAL CODE, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

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Council recessed at 10:55 a.m. to attend the “Hands Around City Hall” ceremony being held on the front lawn of City Hall.

Council reconvened at 11:10 a.m.

4.9 Tommy O’Brien, Director of Water Utilities briefed the Council on an ordinance considered on second and final reading to amend Chapter 32, Utilities, Article VI, Water Conservation Plan (Drought Contingency Plan), Division 2, Water Conservation Plan Procedures by adding 32-146, Target Water Use Goals.

Mr. O’Brien stated drought contingency planning requirements are found in the Texas Administrative Code, (TAC) Chapter 288, Subchapter B and mandate that public water systems implement drought contingency planning. Mr. O’Brien further stated drought contingency planning protects and preserves public health by minimizing the adverse impacts of water supply shortage or other water supply emergency conditions. Mr. O’Brien noted Abilene’s Drought Contingency Plan (titled “ Water Conservation Plan”) was originally adopted in 1999 with amendments adopted in 2003. Mr. O’Brien stated in October 2004, the TAC was amended to require public water systems to update their Drought Contingency Plans to include target water use reduction goals in each stage of drought contingency response as described in the system’s Drought Contingency Plan/Water Conservation Plan (DCP/WCP). Mr. O’Brien noted target water use reductions have been added to each of the four stages described in Abilene’s DCP/WCP to meet the new TAC requirements. Mr. O’Brien further stated the amended DCP/WCP must be adopted by the public water system’s governing body and be received by the TCEQ on or before May 1, 2005. Mr. O’Brien stated the City’s DCP/WCP is being amended to include target water use reduction in each stage of drought contingency response and in the near future, additional and more significant changes to the DCP/WCP will be required which will incorporate the results of the upcoming Reservoir Operations Plan. Staff recommends approval of the amendments to the ordinance.

Mr. O’Brien confirmed Council approving this item today would in no way change Council’s action taken at the previous Council meeting regarding the Water Management Plan.

Following Council and staff discussion Mayor Archibald opened the public hearing, there being no one present and desiring to be heard the public hearing was closed.

Councilman Williams made a motion to approve the ordinance considered on second and final reading to amend Chapter 32, Utilities, Article VI, Water Conservation Plan (Drought Contingency Plan), Division 2, Water Conservation Plan Procedures by adding 32-146, Target Water Use Goals. Councilwoman Moore seconded the motion, and the motion carried.

AYES: Councilmen Chase, Williams, Hill, Higgins, Southward, Councilwoman Moore, and Mayor Archibald.

NAYS: None

The Ordinance is numbered 9-2005 and captioned as follows:

AN ORDINANCE AMENDING CHAPTER 32, UTILITIES, ARTICLE VI, WATER CONSERVATION PLAN, DIVISION 2, WATER CONSERVATION PLAN PROCEDURES, OF THE CITY OF ABILENE MUNICIPAL CODE, BY ADDING CERTAIN SECTION AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR ENFORCEMENT; AND CALLING FOR A PUBLIC HEARING.

4.4 Jon James, Director of Planning & Development Services briefed the Council on **Z-2005-2**, an ordinance considered on second and final reading to rezone approximately 5 acres from AO (Agriculture Open Space) and LI (Light Industrial) to PDD (Planned Development District) zoning district, property located at 4002 Buffalo Gap Road.

Mr. James stated the 5-acre site is located near the junction of Buffalo Gap Road and S. Danville Drive, most recently utilized for the North Funeral Home business, which has been vacant for several years. Mr. James noted the surrounding area is comprised of commercial and retail uses. Mr. James further stated the front portion of the property, closest to Buffalo Gap Road, is zoned Agriculture Open Space (AO), the rear portion is zoned Light Industrial (LI), and the rear of the property is undeveloped. Mr. James noted the land uses to the north include townhomes (zoned PDD) and commercial property zoned General Commercial (GC), and other surrounding zoning includes General Commercial (GC) and Heavy Commercial (HC) to the south. However, all of the current uses are consistent with land uses most appropriate in the Shopping Center (SC) zoning district. Mr. James noted the subject parcel is comprised of two different zoning districts, the rear portion of the property has been zoned Light Industrial (LI) since at least 1980, and the front portion was zoned Agriculture Open Space (AO) since annexation and has remained AO since that time. Mr. James stated the area is completely surrounded by commercial development to the west, south, and north, and the extreme northwest portion of the property borders an existing Planned Development District (PDD), developed with townhomes. Mr. James further stated the applicant originally requested a rezoning to General Commercial (GC), but the case was withdrawn in February 2005. Staff recommends rezoning the portion of the site to a Planned Development District (PDD), as this district is tailored to the specific uses proposed on the site, and offers protection to the townhomes adjacent to the subject property. The Planning and Zoning Commission recommend making the site plan a part of the Planned Development District (PDD), to be included as an exhibit, and limit the rear portion of the property to non-intensive uses such as storage units, multi-family residential, parks, playgrounds, or places of worship.

Council and staff discussion included: 1) the stormwater drain off being of concern to residents in the area; 2) City's stormwater management regulations; 3) liability issues and homeowners responsibilities; 4) site plan process regarding water flow issues; 5) pre and post development drainage issues; 6) City cannot insure protection against flooding; 7) ingress and egress issues regarding traffic flow concerns, and; 8) lack of consistency between recommended PDD and a previous PDD (possible oversight).

Following Council and staff discussion Mayor Archibald opened the public hearing and the following individuals addressed the Council:

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- Keith McNeese – developer. Mr. McNeese distributed pictures of similar projects in Lubbock, Texas. Mr. McNeese addressed various issues and how those would be addressed, and noted that they want to be good neighbors, produce a nice project with attention being given to safety and security issues.
- Ron Harrell – property owner of town home located at 3848 Crossroads Drive and Manager of The Crossings Homeowners' Association. Mr. Harrell addressed a petition delivered to City Hall signed by 61 members of the Association. Mr. Harrell addressed various issues including traffic and stormwater drainage issues and requested the developer be required to install directional signage and that potential flooding be addressed prior to building permits being issued. Mr. Harrell also noted the fence in the area is nearing the end of its life cycle and the direction the water generally appears to run and the impact that has on the townhomes in the area.

There being no one else present and desiring to be heard the public hearing was closed.

Councilman Hill made a motion to approve **Z-2005-2**, the ordinance considered on second and final reading to rezone approximately 5 acres from AO (Agriculture Open Space) add LI (Light Industrial) to PDD (Planned Development District) zoning district, property located at 4002 Buffalo Gap Road. Councilman Williams seconded the motion. City Attorney Sharon Hicks recommended, with Councilmen Hill and Williams concurrence, that the proposed site plan that was made a part of the PDD per the Planning and Zoning Commission include a caveat that if the Engineering Study shows that the detention pond should be moved that staff can adjust the site plan to reflect that the holding pond can be in a different location. Councilmen Hill and Williams amended the motion and second to include Ms. Hicks recommendation. The motion carried.

AYES: Councilmen Chase, Williams, Hill, Higgins, Councilwoman Moore, and Mayor Archibald.

NAYS: None

ABSTAIN: Councilman Southward

The Ordinance is numbered **10-2005** and captioned as follows:

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, SUBPART E, "ZONING", OF THE ABILENE MUNICIPAL CODE, CONCERNING PDD-96 PLANNED DEVELOPMENT DISTRICT; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

Council recessed at 11:55 a.m. to attend the "I-Can" luncheon at the Abilene Civic Center.

Council reconvened at 1:25 p.m.

Councilmen Williams and Southward were absent.

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4.8 Jon James, Director of Planning & Development Services briefed the Council on **Z-2005-6**, an ordinance considered on second and final reading to amend existing PDD #77 (Planned Development District) zoning district and to add a .54-acre parcel currently zoned GC (General Commercial), property located near Catclaw Drive and Curry Lane.

Mr. James stated the applicant desires to amend an existing commercial Planned Development District (PDD), located near the intersection of Catclaw Drive and Curry Lane, just west of the Curry Junction Apartments. Mr. James noted the proposed case would add a .54 acre General Commercial (GC) zoned parcel to the existing PDD, amend the permitted use section to allow for variety stores, and alter additional elements of the PDD ordinance text, including landscaping and signage. The Planning and Zoning Commission recommend approval of the rezoning request with the following amendment:

- To delete the second bullet in Exhibit A, page 3, titled – Building Design, Massing, and Scale, “Exterior façade shall not include exposed metal siding or standard concrete masonry units”.

Staff recommends the language remain in the PDD text. Additionally, after the Planning and Zoning Commission public hearing, a revised site plan was received from Dollar General, showing additional right-of-way to be obtained along the structure’s east and south façade, allowing the creation of a 15’ setback along the sides of the structure. Staff recommends that the required 30’ setback, as stated in the original PDD, be reduced to 15’ along any PDD interior boundaries, and that the revised site plan be adopted as part of the PDD ordinance, Exhibit A, noting that the setbacks for all exterior PDD boundaries shall remain at 30’.

Council and staff discussion included: 1) the reason for the request to strike the metal siding or standard concrete masonry unites exterior façade; 2) sidewalk requirements in the PDD, and; 3) road widening, traffic and congestion issues.

Following Council and staff discussion Mayor Archibald opened the public hearing and the following individual addressed the Council:

- Sam Evans – representing Reeves Development (developer of project). Mr. Evans stated the developer is in agreement with the proposed ordinance as recommended by the Planning and Zoning Commission.

There being no one else present and desiring to be heard the public hearing was closed.

Councilman Higgins made a motion to approve **Z-2005-6**, an ordinance considered on second and final reading as approved and recommended by the Planning and Zoning Commission to amend existing PDD #77 (Planned Development District) zoning district and to add a .54-acre parcel, property located near Catclaw Drive and Curry Lane. Councilman Hill seconded the motion, and the motion carried.

AYES: Councilmen Chase, Hill, Higgins, Councilwoman Moore, and Mayor Archibald.

NAYS: None

The Ordinance is numbered 11-2005 and captioned as follows:

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, SUBPART E, "ZONING", OF THE ABILENE MUNICIPAL CODE, CONCERNING PDD-77 AND ORDINANCE NO. 38-2002 A PLANNED DEVELOPMENT DISTRICT; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

4.2 Jon James, Director of Planning and Development Services briefed the Council on an ordinance considered on second and final reading to amend sections 23-306.5.B & H (Accessory and Incidental Use), and 23-363 (Definitions) of the City of Abilene Zoning Ordinance regarding the regulation of Itinerant Businesses; and an Oral Resolution (subject to approval of the Itinerant Business ordinance amendments) revising fees for the annual Solicitation Permit and creating a fee for an Itinerant Business Permit.

Mr. James stated the Planning and Development Services Department is proposing an ordinance amendment regarding the regulation of itinerant businesses in the City of Abilene, as well as providing a recommendation for the definition of itinerant business. Mr. James noted the recommended ordinance would also establish a permitting process for these businesses, provides location standards, requires property owner permission and addresses set back requirements as well as other changes based on Council discussion at the March 10th City Council meeting. Mr. James further stated there will be no additional permit fee for non-profit organizations registered with the City and a \$100.00 per permit fee for all other businesses or organizations will be implemented. In addition, non-profit organizations may receive a blanket annual permit for all itinerant sales with their annual registration with the City as a non-profit organization. Mr. James noted as part of this change staff is recommending an increase in the annual Non-Profit Solicitation Permit fee from \$5.00 to \$15.00. Staff and the Planning and Zoning Commission recommend approval of the ordinance amendments.

Council and staff discussion included: 1) no agenda information being submitted to Council to consider regulation of itinerant businesses in the right-of-ways; 2) Council's understanding that issue before them today is regulating of itinerant businesses on private property only; 3) restrictions as outlined in proposed ordinance; 4) Section 29-5 of current City Code (effective since 1965) prohibits sales in the roadway, median and public right-of-way, but is not being enforced; 5) Abilene Reporter News (sales of newspapers in the public right-of-way) being given the opportunity to address the issue; 6) revising proposed ordinance to address itinerant businesses on private property only; 7) the interpretation of the provision of the ordinance regarding public right-of-ways; 8) definition of public right-of-way; 9) staff noted when the issue went to the Planning and Zoning Commission the question arose relevant to newspapers if the ordinance applied to them selling in the median and the answer was "no, there were separate laws both state and local that applied to the selling of items in a median" – but then the question was presented if they no longer sell in the median but went to the right-of-way would they come under the itinerant business ordinance, and yes they would because they contract for the sale of the papers; 10) removing the "public right-of-way" wording from the proposed ordinance to address only the itinerant businesses on private property issue, and; 11) the basis for the recommended ordinance as requested by local business owners.

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Following Council and staff discussion Mayor Archibald opened the public hearing and there being no one present and desiring to be heard the public hearing was closed.

Councilman Hill made a motion to approve the ordinance considered on second and final reading to amend sections 23-306.5.B & H (Accessory and Incidental Use), and 23-363 (Definitions) of the City of Abilene Zoning Ordinance regarding the regulation of Itinerant Businesses on private property only (removing from the ordinance the wording under Itinerant Businesses g) **“The public right-of way”**). Councilwoman Moore seconded the motion, and the motion carried.

AYES: Councilmen Chase, Hill, Higgins, Councilwoman Moore, and Mayor Archibald.

NAYS: None

The Ordinance is numbered **12-2005** and captioned as follows:

AN ORDINANCE AMENDING CHAPTER 23, “PLANNING AND COMMUNITY DEVELOPMENT”, SUBPART E, “ZONING”, OF THE ABILENE MUNICIPAL CODE, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY AND CALLING A PUBLIC HEARING.

Councilman Chase made a motion to approve by Oral Resolution the revision of fees for the annual Non-Profit Solicitation Permit from \$5.00 to \$15.00 and creating a \$100.00 per permit fee for all other businesses or organizations for an Itinerant Business Permit. Councilman Hill seconded the motion, and the motion carried.

4.3 Jon James, Director of Planning & Development Services briefed the Council on an ordinance considered on second and final reading to amend Section 23-356.2 (Board of Adjustment), of the Zoning Ordinance regarding approval standards for the Board of Adjustment.

Mr. James stated the Planning and Development Services Department is proposing an ordinance amendment regarding the Board of Adjustment. Mr. James noted specifically the amendment alters the criteria required to approve variances and special exceptions and requires the Board to make written findings of fact on their cases. Mr. James further stated previously there were 8 criteria for a variance and 5 for a special exception, with the proposed ordinance reducing each of those to 3 criteria that strictly conforms to the provisions of Section 211.008 of the Local Government Code. Staff discussed the proposed changes with the Board of Adjustment at their February 2004 meeting and although no vote was taken by the Board the consensus was in support of the proposed changes. Staff and the Planning and Zoning Commission recommend approval.

Mayor Archibald opened the public hearing and there being no one present and desiring to be heard the public hearing was closed.

Councilman Hill made a motion to approve the ordinance considered on second and final reading to amend Section 23-356.2 (Board of Adjustment), of the Zoning Ordinance regarding

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approval standards for the Board of Adjustment. Councilman Higgins seconded the motion, and the motion carried.

AYES: Councilmen Chase, Hill, Higgins, Councilwoman Moore, and Mayor Archibald.

NAYS: None

The Ordinance is numbered 13-2005 and captioned as follows:

AN ORDINANCE AMENDING CHAPTER 23, "PLANNING AND COMMUNITY DEVELOPMENT", SUBPART E, "ZONING", OF THE ABILENE MUNICIPAL CODE, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE, DECLARING A PENALTY AND CALLING A PUBLIC HEARING.

4.5 Jon James, Director of Planning & Development Services briefed the Council on **Z-2005-3**, an ordinance considered on second and final reading to rezone from RM-3 (Residential Multi-family) to CU (College University) zoning district, property located at 809 and 825 E.N. 16th Street.

Mr. James stated the applicant desires to rezone two lots at 809 and 825 E.N. 16th Streets, just south of the main campus area of Abilene Christian University. Mr. James noted the applicant proposes to create additional office space in the 825 E.N. 16th location, and further noted the building at 809 E.N. 16th is already being utilized as the campus alumni center. Mr. James stated the parcels to be considered for this rezoning are not directly adjacent to other College University (CU) zoning, however, College University (CU) zoning exists on parcels across the street to the applicant's properties (across E.N. 16th and Washington Boulevard). Mr. James explained staff's rationale for recommending this specific case rezoning but noted staff's preference in the future would be that a more thorough thought process be followed by the applicant. Staff and the Planning and Zoning Commission recommend approval of the request.

Mayor Archibald opened the public hearing and there being no one present and desiring to be heard the public hearing was closed.

Councilwoman Moore made a motion to approve **Z-2005-3**, an ordinance considered on second and final reading to rezone from RM-3 (Residential Multi-family) to CU (College University) zoning district, property located at 809 and 825 E.N. 16th Street. Councilman Higgins seconded the motion, and the motion carried.

AYES: Councilmen Chase, Hill, Higgins, Councilwoman Moore, and Mayor Archibald.

NAYS: None

The Ordinance is numbered 14-2005 and captioned as follows:

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, SUBPART E, "ZONING", OF THE ABILENE MUNICIPAL CODE, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

4.7 Jon James, Director of Planning & Development Services briefed the Council on **Z-2005-5**, an ordinance considered on second and final reading to rezone 5 parcels from RM-3 (Residential Multi-family) to LC (Limited Commercial) zoning district, property located at 2902, 2918, 2926, and 2934 South 2nd Street, and 126 Mockingbird Boulevard.

Mr. James stated the area to be rezoned is situated directly south of the applicant's business, WolfePak Software, located at 2901 S. 1st Street which is zoned General Commercial (GC). Mr. James noted the parcels to be rezoned consist of a mixture of land use, including two single family residences to be demolished and two vacant parcels soon to be owned by the applicant. Mr. James further noted the applicant will develop additional office space to accommodate approximately 13 new office spaces and parking. Mr. James stated a residential neighborhood lies directly to the south and west of the proposed rezoning. Mr. James further stated an alley separates a portion of the rezoning request, which contains utilities and is utilized for refuse pick-up. Mr. James noted the alley will not be closed as part of the request. Mr. James stated staff received notification in opposition to the rezoning request from three property owners, properties being located at 2926 S. 2nd, 2918 S. 2nd, and 2902 S. 2nd. Staff and the Planning & Zoning Commission recommend approval of the rezoning request, including the three properties where support was withdrawn.

Council and staff discussion included: 1) staff having received verbal notifications from the property owner of 2902 South 2nd that she now supports the rezoning; 2) concerns noted by council of rezoning property without knowing if property owners are agreeable to the changes; 3) process that would have to be followed if rezoning is denied versus tabled, and; 4) the possibility of removing the properties located at 2926 South 2nd, 2918 South 2nd, and 2902 South 2nd from the rezone request until those property owners contact the City requesting the rezone (a City initiated zone change could then be done which would not require the property owner to pay the fees).

Following Council and staff discussion Mayor Archibald opened the public hearing noting per Council discussion and consensus the only properties being considered are 2934 South 2nd and 126 Mockingbird Lane. There being no one present and desiring to be heard the public hearing was closed.

Councilman Hill made a motion to approve **Z-2005-5**, an ordinance considered on second and final reading to rezone 2 parcels from RM-3 (Residential Multi-family) to LC (Limited Commercial) zoning district, property located at 2934 South 2nd Street, and 126 Mockingbird Boulevard and to table the rezoning of the properties located at 2902, 2918, and 2926 South 2nd Streets. Councilwoman Moore seconded the motion, and the motion carried.

AYES: Councilmen Chase, Hill, Higgins, Councilwoman Moore, and Mayor Archibald.

NAYS: None

The Ordinance is numbered **15-2005** and captioned as follows:

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, SUBPART E, "ZONING", OF THE ABILENE MUNICIPAL CODE, BY CHANGING THE ZONING

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DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

4.10 Item 4.10 “City Council Budget Workshop for discussion and possible action on 2005 Capital Improvements – Annual Certificates of Obligation Sale” was removed from the agenda to be considered at a Special Called City Council Meeting on Thursday, April 21, 2005 at 8:00 a.m.

No Executive Session was held.

REGULAR SESSION

5.4 No action taken was taken on the appointment to the Frontier *Texas!* Board.

There being no further business, the meeting was adjourned at 2:55 p.m.

Jo Moore
City Secretary

Norm Archibald
Mayor