

CITY COUNCIL MEETING
July 12, 2007, 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 July 12, 2007, at 8:30 a.m. in the Council Chambers at 555 Walnut Street. Mayor Archibald was present and presiding with Councilmen Sam Chase, Stormy Higgins, Joe Spano, Anthony Williams, Councilwomen Laura Moore and Celia Davis. Also present were City Manager Larry Gilley, City Attorney Dan Santee, City Secretary Jo Moore, and various members of the City staff.

Councilman Williams gave the invocation.

Mayor Archibald introduced Madison Andrews who led the Pledge of Allegiance to the Flags of the United States of America and the State of Texas. Madison is the six year old daughter of Leslie Andrews, Assistant Director of Water Utilities for the City. Madison's mother, father and sisters were also present.

EMPLOYEE SERVICE AWARDS

Mayor Archibald, assisted by City Secretary Jo Moore, presented an Employee Service Award to the following individual for his years of service:

20 Years	Larry Swanson	Communications Manager Communications Services
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PRESENTATIONS

Mayor Archibald, assisted by Donna Littlefield, Police Communications Manager, presented the 2007 Employee Scholarship Awards as follows:

- Brooke Michelle Dezern, daughter of Billy Dezern, GIS Analyst, Information Technology
- Coyt Austin Hagelstein, son of Lee Hagelstein, Internal Auditor, Finance
- Chase Marshall Southerland, son of Dale Southerland, Police Officer, Police Criminal Investigation
- Cambra Nicole Hughes, daughter of Scott Hughes, Claims Coordinator, Risk Management
- Chelcie Mae Beaver, daughter of Charla Hammond, Housing Inspector, Planning & Development Services
- Tiffany Moore, daughter of Danny Moore, Firefighter, Fire Operations

DISPOSITION OF MINUTES

2.0 Mayor Archibald stated Council has been given the minutes from the June 28, 2007 Regular Council Meeting. Councilman Chase noted on page five of the minutes the word **“not”** had been left out of a sentence and the correct spelling of the word “since” should be **“sense”**. As corrected the sentence reads “Councilman Chase reiterated the fact that Holmes Murphy did a

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good job last year in the services they provided but since they will **not** be providing the same similar services this year, in comparative method it doesn't make **sense** that they may not do a fourth of what they did last year and yet a flat rate contract for the same amount is being awarded". There being no deletions or further corrections or additions to the minutes Councilman Chase made a motion to approve the minutes as corrected. Councilman Higgins seconded the motion, and the motion carried.

AYES: Councilmen Chase, Higgins, Spano, Williams, Councilwomen Moore and Davis, and Mayor Archibald.

NAYS: None

CONSENT AGENDA

Councilwoman Moore made a motion to approve consent agenda items 3.1 and 3.2, as recommended by staff. Councilman Spano seconded the motion, and the motion carried.

AYES: Councilmen Chase, Higgins, Williams, Spano, Councilwomen Moore and Davis, and Mayor Archibald.

NAYS: None

Resolution:

3.1 Oral Resolution approving a change order to Lasseter Bus Company in the amount of \$31,356 for changes to six new CityLink buses.

Bid Award:

3.2 Maple Street Fence Installation & Driveway, Bid #CB-7046. The bid was awarded to Bontke Bros. Construction Co., Abilene, TX, in the amount of \$36,351.18.

REGULAR AGENDA

4.1 Jon James, Director of Planning and Development Services briefed the council on **Z-2007-12**, an ordinance considered on second and final reading to rezone property from RS-6 (Residential Single-family) to LC (Limited Commercial), property located at 842 N. Mockingbird Lane.

Mr. James stated the applicant is requesting to reuse the vacated AISD administrative building, which is currently located in residential zoning. The applicant purchased the property from AISD in October 2006. The applicant plans to occupy around half of the approximately 170,000 sq. ft. structure with his Kinder Hearts Home Health, PLLC. The building will serve as an office and corporate headquarters for nurses who provide in-home care throughout the community. The other half of the structure will be available for development with another use. The applicant is requesting Limited Commercial zoning to provide the widest variety of possible occupants while still remaining compatible with adjacent residential uses.

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The Future Land Use section of the Comprehensive Plan designates North Mockingbird Lane as an Enhancement Corridor and shows a Local Community Center where it intersects with North 10th Street. This use would provide a transition from the more intense commercial and retail uses located north and west to the residential areas located south and east. Staff and the Planning and Zoning Commission recommend approval of the request.

Council and staff discussed the applicant being required to screen the area to the west of the property due to the Limited Commercial zoning screening requirements versus the Abilene Independent School District not having been required to screen the property under the Residential zoning.

Mayor Archibald opened a public hearing on the item. There being no one present and desiring to be heard Mayor Archibald closed the public hearing.

Councilwoman Davis made a motion to approve **Z-2007-12**, an ordinance considered on second and final reading to rezone property from RS-6 (Residential Single-family) to LC (Limited Commercial), property located at 842 N. Mockingbird Lane. Councilman Williams seconded the motion, and the motion carried.

AYES: Councilmen Chase, Higgins, Spano, Williams, Councilwomen Moore and Davis, and Mayor Archibald.

NAYS: None

The Ordinance is numbered **26-2007** 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.

4.2 Jon James, Director of Planning and Development Services briefed the council on **Z-2007-13**, an ordinance considered on second and final reading to rezone property from RM-2/COR (Residential Multi-family with Corridor Overlay) to O/COR (Office with Corridor Overlay), located at 7557 Buffalo Gap Road.

Mr. James stated the applicant plans to develop the parcel with a dental office. The Corridor Overlay regulations will ensure a high aesthetic standard and screening between the development and the adjacent residential area.

The Future Land Use section of the Comprehensive Plan designates this general area for low-density residential development. The proposed office will be located at the corner of an arterial and local street. This is an ideal location for a neighborhood-compatible low-intensity non-residential use where it will provide a buffer for the neighboring residential area while still taking advantage of the traffic traveling on Buffalo Gap Road. Staff and the Planning and Zoning Commission recommend approval of the request.

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Council and staff discussion included: 1) staff clarified the purpose of corridor overlay's and the City not eliminating COR zoning but keeping options within the corridor overlay's; 2) direct access off of Buffalo Gap road being under the control of the Texas Department of Transportation; 3) the need for the city to take access control from TxDot and staff noting how that process is being considered to be folded into the Local Development Code.

Mayor Archibald opened a public hearing on the item. There being no one present and desiring to be heard Mayor Archibald closed the public hearing.

Councilman Chase made a motion to approve **Z-2007-13**, an ordinance considered on second and final reading to rezone property from RM-2/COR (Residential Multi-family with Corridor Overlay) to O/COR (Office with Corridor Overlay), located at 7557 Buffalo Gap Road. Councilwoman Moore seconded the motion, and the motion carried.

AYES: Councilmen Chase, Higgins, Spano, Williams, Councilwomen Moore and Davis, and Mayor Archibald.

NAYS: None

The Ordinance is numbered **27-2007** 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.

4.3 Jon James, Director of Planning and Development Services briefed the council on **Z-2007-14**, an ordinance to rezone the base zoning of property from RM-2 (Residential Multi-family) and O (Office) to CB (Central Business) zoning, located between Grape and Mulberry Streets from North 3rd to North 6th Streets, between Mulberry and Beech Streets from North 4th to North 6th Streets and the east side of Beech Street from North 5th to North 6th Streets.

Mr. James stated the applicant originally requested to use 508 Mulberry as a Bed & Breakfast, which is not permitted in the current Office zoning. Staff initially recommended rezoning the surrounding area to Central Business zoning to accommodate the request and implement one of the recommendations from the Comprehensive Plan. Several property owners in the proposed area were concerned about the possible development of commercial uses and requested residential zoning instead. Bed and Breakfasts are permitted as a Conditional Use in College University, Central Business, General Commercial, and Heavy Commercial zoning districts. They are also permitted with a Special Exception in Agricultural Open Space, Single-family Residential, and Multi-family Residential zoning districts. The Planning and Zoning Commission recommend a mix of RM-2, LC and O zoning and staff does support the P&Z recommendation.

Council and staff discussion included: 1) the applicant's request was for a zoning that would allow a Bed and Breakfast by right; 2) the basis for staff's original recommendation of CB

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zoning; 3) staff clarified the statement on pg. 4 of the staff report that includes the wording "Furthermore, the expanded list of the permitted uses associated with CB zoning will help encourage continued investment while still protecting the existing residences and preserving the character of the area" is an overbroad statement, and; 4) Council noted in the future churches in the area would still be allowed to request CB zoning on portions of lots.

Mayor Archibald opened a public hearing on the item and the following individuals addressed the Council.

* Robert Joyce- area resident for nine years. Mr. Joyce stated he is in favor of the zoning as recommended by the P&Z and also approves of the Bed & Breakfast.

* Douglas Fournier- area resident. Mr. Fournier gave a brief history of the homes in the area and stated he is in favor of the Bed & Breakfast, but not CB zoning.

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

Councilwoman Davis made a motion to approve **Z-2007-14**, an ordinance considered on second and final reading to rezone the base zoning of property from RM-2 (Residential Multi-family) and O (Office) to RM-2 (Multi-family Residential) and LC (Limited Commercial) Zoning, located between Grape and Mulberry Streets from North 3rd to North 6th Streets, between Mulberry and Beech Streets from North 4th to North 6th Streets and the east side of Beech Street from North 5th to North 6th Streets. Councilman Spano seconded the motion, and the motion carried.

AYES: Councilmen Chase, Higgins, Spano, Williams, Councilwomen Moore and Davis, and Mayor Archibald.

NAYS: None

The Ordinance is numbered **28-2007** 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.

4.4 Jon James, Director of Planning and Development Services briefed the council on **Z-2007-15**, an ordinance considered on second and final reading to rezone property from AO (Agricultural Open Space) to RS-6 (Residential Single-family), located at the eastern extension of Lewis & Clark Trail and the southern extension of Trinity Lane.

Mr. James stated the applicant is planning to construct another phase of the South Lytle Subdivision to the southeast of Oldham Lane and E. Industrial Boulevard. The proposed development will provide 28 new lots, according to the recently-submitted Preliminary Development Plan.

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The Future Land Use section of the Comprehensive Plan designates this general area for low-density residential development. The proposed subdivision is near the existing Lone Star Ranch, Lyle South and Indian Wells subdivisions and will be consistent with the residential trends in the area. Staff and the Planning and Zoning Commission recommend approval.

Mayor Archibald opened a public hearing on the item. There being no one present and desiring to be heard Mayor Archibald closed the public hearing.

Councilman Higgins made a motion to approve **Z-2007-15**, an ordinance considered on second and final reading to rezone property from AO (Agricultural Open Space) to RS-6 (Residential Single-family), located at the eastern extension of Lewis & Clark Trail and the southern extension of Trinity Lane. Councilwoman Moore seconded the motion, and the motion carried.

AYES: Councilmen Chase, Higgins, Spano, Williams, Councilwomen Moore and Davis, and Mayor Archibald.

NAYS: None

The Ordinance is numbered **29-2007** 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.

4.5 Jon James, Director of Planning and Development Services briefed the council on **TC-2007-04**, an ordinance to abandon Fair Drive between E. Highway 80 and Sandy Street, and the west 660 feet of Sandy Street.

The Fair Dr. right-of-way in this area has never had street improvements and the applicant owns property on the east side of the north 417 feet of Fair Dr. Sandy St. is a substandard east-west street and Schaffner St. is the only right-of-way connecting E. Highway 80 with Sandy St. in this area and is improved with a street. It is located approximately 1100 feet east of Fair Dr. West of Schaffner St., all of the lots served by Sandy St. are vacant except for one parcel that has a house owned by Stuart Lindley, located at the corner of Fair Dr. and Sandy St. Mr. Lindley owns three parcels all of which are accessed only via Sandy St. or Fair Dr. Mr. James stated Mr. Lindley was originally opposed to the request but has withdrawn his opposition. The remaining parcels along the two subject rights-of-way are part of properties that have frontage on E. Highway 80.

Mr. James stated the applicant's property is currently vacant but she plans to construct a new building on the property directly east of Fair Drive to be used as residence and workshop. To fully utilize the property the applicant will need to re-plat, which will require her to make improvements to Fair Dr. where her parcel is adjacent to it. However, the improvements may be deferred until such time that the rest of Fair Dr. is constructed. The applicant is concerned about any obligation for improving Fair Dr. in the future if she re-plats her property and has requested

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the abandonment of Fair Dr. to eliminate the improvement requirement. Staff included the portion of Sandy St. in the request to try to reduce the length of Sandy St. as a dead end street. However, Sandy St. needs to stay in place from Schaffner to the parcel with Mr. Lindley's home. In most cases, including areas that have industrial zoning such as this one, the maximum cul-de-sac length permitted by the Subdivision Regulations is 600 feet, although 1000 feet is permitted in AO and RS districts. Approval of this request would leave Sandy St. substandard regarding maximum cul-de-sac length. Staff and the Plat Review Committee recommend denial of the original request, but approval of abandoning the portion of Sandy Street west of Fair Drive, with the condition that the entire abandoned right-of-way be maintained as an open Drainage and Utility Easement. The Planning and Zoning Commission recommend approval of abandoning only the portion of Sandy Street west of Fair Drive.

Mayor Archibald opened a public hearing on the item and the following individuals addressed the Council.

- Daryle Towell – speaking on behalf of the applicant Danielle Delhomme. Mr. Towell distributed a handout that included photographs that reflects what the property looks like today and Mr. Towell noted the packet also has a photo copy of a letter from Mr. Lindley retracting his opposition. Mr. Towell stated that Fair Dr. is not a road that has actually ever been used. Mr. Towell stated the real issue is economics. Ms. Delhomme would like to develop the property by building a research and development center but the more cost involved in developing the property makes it more difficult for her to do so. The penalty, with the additional requirements, for her to locate her facility in Abilene is already in excess of \$100,000. Mr. Towell listed various costs and areas that would be involved in making the required improvements. Mr. Towell stated Ms. Delhomme welcomes the opportunity to landscape along Hwy. 80 and develop that property into an attractive area, but she is asking to be relieved of the obligation to landscape along a row of trees that's never been a road.
- Danielle Delhomme – applicant. Ms. Delhomme addressed specific costs that she stated she would not have if she were building, for example, in the country. Those cost included: 1) \$10,000 worth of sidewalks; 2) McDonald's type trash dumpster type building; 3) water retention pond; 4) additional specifications on paving and driveways; 5) additional specifications on the foundation of the building; 6) additional engineering plans, and; 7) additional irrigation and landscaping plan for 300+ feet of frontage plus 418 feet down Fair St. Ms. Delhomme stated those additional cost could run into tens of thousands of dollars. Ms. Delhomme also stated that she and the man she purchased the property from Mr. Jack Chamberlin had been told by planning staff before she purchased the property that it would be no problem to close the street. Ms. Delhomme also met with planning staff and they told her she would receive 34 extra feet of land. She paid \$1,100 to submit the application but then later she was told by staff that they changed their minds and wanted her to build the street. Staff then told her that if she built anything even a lawn mower shed that would trigger her having to build the street, then they said it was ok for her to build but other things could trigger it later. Ms. Delhomme requested reassurance if during phase 1, 2 or 3 of building that she won't suddenly be triggering an additional \$50,000 cost in the middle of a project that will bankrupt her company. Ms. Delhomme noted she is willing to bear the cost to be in the city limits but the main problem is the Fair Dr. issue and landscaping

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where a street does not exist. Ms. Delhomme reviewed several different projects she would like to do and stated one reason she would like to develop in Abilene is due to her having worked with the city's Economic Development and the benefits of the grants that can be received for different phases of development. Ms. Delhomme stated no objections to the City retaining, if the request is approved, the areas where Fair St. and the west part of Sandy St. are for right-of-way for open drainage and utility easements or to the City reopening those for streets if in the future there is a dire need to do that.

- Eddie Chase, engineer working with Ms. Delhomme on site plan and approval process. Mr. Chase stated the cost of the road, without culverts, would be approximately \$90,000 and that Ms. Delhomme could be responsible for half to three quarter of that cost. Mr. Chase stated concerning Sandy St. becoming a dead end, if a circle was created into Mr. Lindley's property it would be within the 600 foot area needed.

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

Council and staff discussion included: 1) staff addressed water mitigation issues and the areas affected by flooding; 2) stormwater detention being very important in this area; 3) staff stated their 100% support of the P&Z recommendation; 4) Council noted P&Z's recommendation was made before Mr. Lindley withdrew his opposition to the request, and; 5) staff agreeing with the Plat Review's recommendation to retain right-of-way for utility and drainage easement and staff explained the process the City would go through to purchase the land back if in the future the right-of-ways were needed for streets.

Council noted the need for a compromise and questioned the possibility of granting Ms. Delhomme a temporary waiver on building the street until there are more people to share the project.

Mr. James noted a development agreement could be created that specifies what triggers the development of the street, and would call in the obligation the property owner agreed to once the city engineer determines the street is needed.

Council questioned if it would be possible and fair to grant a waiver that would end when there are other people to share the cost and not when the city says the street is needed. City Attorney Dan Santee stated that currently there are no provisions in the sub-division regulations that contemplates that type of waiver but possible options could be reviewed.

Council stated if there is a contractual arrangement that could be considered that would address the concerns as stated by all today, and if that would not delay Ms. Delhomme past a reasonable time, then perhaps the item should be tabled to allow for those considerations. Staff noted the sub-division ordinance does have a process for guaranteeing future construction rather than building immediately. A bond, or other financial guarantee could be put up or the property owner could enter into a covenant agreement that guarantees their future commitment to doing the project. Staff stated the possibility of crafting a unique covenant agreement for this case that has triggers addressing when the construction would be required.

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Mayor Archibald made a motion to table **TC-2007-04**, an ordinance considered on second and final reading to abandon Fair Drive between E. Highway 80 and Sandy Street, and the west 660 feet of Sandy Street and for staff to work with the applicant and all involved parties in crafting a compromise on this issue that will be brought before Council for consideration at a Council meeting in August. Councilwoman Davis seconded the motion, and the motion carried.

AYES: Councilmen Chase, Higgins, Spano, Williams, Councilwomen Moore and Davis, and Mayor Archibald.

NAYS: None

4.6 Jon James, Director of Planning and Development Services briefed the council on **TC-2007-05**, an ordinance to abandon Lynn Avenue from N. Treadaway Boulevard east to the railroad right-of-way.

Mr. James stated the applicant operates a business on property on both sides of the subject right-of-way. Due to past errors in the property records, the existing structure was built across the Lynn Avenue right-of-way in the early 1970's. The applicant is attempting to unify his property and approval of the request would also clean up issues involving structures and business activities occurring in the public right-of-way itself. Staff and Plat Review Committee recommend approval of the request with the condition that the abandoned right-of-way be re-platted with the adjoining property within twelve (12) months of the date of the approved ordinance. The Planning and Zoning Commission recommend approval.

Mayor Archibald opened a public hearing on the item. There being no one present and desiring to be heard Mayor Archibald closed the public hearing.

Staff noted the City's GIS maps, including graphics with the staff report, show the width of the street right- of- way inaccurately as a 60' ROW where it is actually 40 feet in width.

Councilwoman Davis made a motion to approve **TC-2007-05**, an ordinance considered on second and final reading to abandon the portion of Lynn Avenue from N. Treadaway Boulevard east to the railroad right-of-way with the condition that the abandoned right-of-way be re-platted with adjacent property within twelve (12) months of the Council approval date. Councilwoman Moore seconded the motion, and the motion carried.

AYES: Councilmen Chase, Higgins, Spano, Williams, Councilwomen Moore and Davis, and Mayor Archibald.

NAYS: None

The Ordinance is numbered **30-2007** and captioned as follows:

AN ORDINANCE PROVIDING FOR THE ABANDONMENT OF A PORTION OF PUBLIC RIGHT OF WAY; PROVIDING FOR THE TERMS AND CONDITIONS OF SUCH ABANDONMENT, AND CALLING A PUBLIC HEARING.

EXECUTIVE SESSION

Mayor Archibald noted following a five minute break Council would convene into Executive Session pursuant to Sections 551.071, 551.072, 551.074, and 551.087 of the Open Meetings Act, to seek the advice of the City Attorney with respect to pending and contemplated litigation, to consider the appointment and evaluation of public officers, to consider the purchase, exchange, lease or value of real property, and to discuss contemplated business prospects and or economic development matters.

The Council reconvened from Executive Session and reported no votes or action was taken in Executive Session.

5.5 No action was taken on an appointment to the Housing Authority Board.

There being no further business, the meeting was adjourned at 11:20 a.m.

Jo Moore
City Secretary

Norm Archibald
Mayor