

CITY COUNCIL MEETING

July 10, 2008, 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 10th 2008, 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, Robert O. Briley and Councilwoman Laura Moore. Also present were City Manager Larry Gilley, City Attorney Dan Santee, City Secretary Danette Dunlap, and various members of the City staff.

Councilman Higgins gave the invocation.

Councilman Chase introduced Laurel & Leann Bailey his granddaughters; Laurel will be in the 4th grade next year and Leann just turned 4years old. Councilman Chase also introduced his daughter Heather and her husband Major Jim Bailey U.S. Army. Laurel & Leann led the Pledge of Allegiance to the Flags of the United States of America and the State of Texas.

SPECIAL PRESENTATIONS

Mayor Archibald recognized members of the Trouble Makerz Softball Team. The team has been invited to the Southern National Championship Tournament in Columbus GA.

EMPLOYEE SCHOLARSHIP FUND AWARDS

Mayor Archibald assisted by Donna Littlefield presented the scholarship awards to five students of City Employees. We congratulate the following students who will receive scholarships from the City of Abilene Employee Scholarship Fund for 2008:

- * **Kelsey Diane Chrane**, daughter of Eddie Chrane, Fire Captain in Tactical Operations
- * **Mitchel David Locke**, son of David Ernie Locke, Firefighter in Tactical Operations
- * **Clayton Bryant Lohse**, son of Randahl Lohse, Firefighter in Tactical Operations
- * **Lindsi Leann Phipps**, daughter of Mike Phipps, Police Sergeant in the CID Division of the Police Department
- * **Zachary Reece Sartor**, son of Julie Sartor, Program Supervisor in Senior Citizens, and David Sartor, Building Official in Building Inspection

DISPOSITION OF MINUTES

5.0 Mayor Archibald stated Council has been given the minutes from the June 26th 2008 Regular Council Meeting, there being no deletions, no corrections, and no additions to the minutes Councilwoman Moore made a motion to approve the minutes as presented. Councilman Higgins seconded the motion, and the motion carried.

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

NAYS: None

CONSENT AGENDA

Item 6.1 – pulled by Mayor Archibald

Councilman Briley made a motion to approve consent agenda items 6.2 through 6.4 as recommended by staff. Councilman Spano seconded the motion, and the motion carried.

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

NAYS: None

Resolutions:

6.1 Authorizing the City Manager to submit Two Grant Applications to the State of Texas for Park Improvements at Lake Fort Phantom Hill. **(Hall) (Item pulled)**

Oral Resolution:

6.2 Selecting HILLCO Partners as the City's Legislative Representative and Authorizing the City Manager to enter into a two-year Professional Services Contract. **(McClain)**

Bid Awards:

6.3 Bid Award CB#8045 – Sayles Blvd. Rehabilitation Phase V – South 14th Street to South 7th. Bid awarded to Contract Paving Co., Tye, Texas, in the amount of \$867,344.80.

6.4 Bid Award CB#8046 – North 10th Reconstruction Phase V – Grape Street to Judge Ely Blvd. Bid awarded to Bontke Bros. Construction Co., Abilene, Texas in the amount of \$1,470,671.33.

ITEM PULLED FROM CONSENT

6.1 *Resolutions Authorizing Grant Submissions – pulled by Mayor Archibald.*

The two Resolutions authorize the City Manager to submit grant applications to the State of Texas Outdoor Recreation Grants Program and Boating Access Grants Program for Park Improvements.

Council heard from Roger Huber. Mr. Huber read a letter of support from the Fort Phantom Lake Association that expressed their appreciation and support of these projects. They believe that this is an excellent plan and they recommend approval of the Resolutions. Mr. Huber stated that there is a new awareness of the Fort Phantom Lake as a recreational attraction. Mr. Huber also thanked Council, Management and Staff for the leadership and support they have given.

Councilman Chase noted that in the council information, additional in-kind assistance has been offered by Jones County and the Lake Association and the AISD has also submitted a letter endorsing the project.

Councilman Higgins made the motion to approve consent item 6.1 as recommended by staff. Councilman Williams seconded the motion and the motion carried.

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

NAYS: None

REGULAR AGENDA

7.1 Jon James Director of Planning and Development Services briefed the city council on the Case No. **Z-2008-19** a request to amend the text of PDD-49 (Planned Development District), regarding carports, located at Champions Drive and Winners Circle.

Currently the regulations of the PDD (Planned Development District) only allow a limited number of uses/structures as permitted uses within the district, including one and two story patio homes, accessory swimming pools, and accessory storage buildings. Since carports are not listed as a permitted use, the applicant is requesting the ordinance be changed to allow carports within the district as a permitted use.

Staff recommends approval as requested.

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

Councilman Briley made the motion to approve Case No. **Z-2008-19** a request to amend the text of PDD-49 (Planned Development District), regarding carports, located at Champions Drive and Winners Circle. Councilwoman Moore seconded the motion and the motion carried.

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

NAYS: None

The Ordinance is numbered **#35-2008** 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-49 AND ORDINANCE NO. 29-1987 A PLANNED DEVELOPMENT DISTRICT; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

7.2 Jon James Director of Planning and Development Services, briefed the city council on the request Case No. **Z-2008-21** from Danny Stevens to rezone property from AO (Agricultural Open Space) to RS-12 (Single-Family Residential) zoning, located at 4226 HWY 36.

Currently the subject property is zoned AO (Agricultural Open Space) and has a single-family residential home. The surrounding uses are all compatible with the current zoning. The applicant wishes to keep using the property as a single-family dwelling. The minimum lot area for

AO property is 5 acres. In order for the property to be platted and receive Water/Sewer services, a change of zoning to an appropriate residential district is required. The applicant is trying to be served by City Water/Sewer and the request for rezoning is one of the steps in the process to allow him to receive these services.

The Future Land Use section of the Comprehensive Plan designates this general area as part of a low-density residential neighborhood. The requested RS-12 (Single-Family Residential) would be compatible with the Future Land Use Map. However, given the size of the property and the proximity of this property to the Abilene City Limits, RR-1 (Rural Residential) zoning would be more compatible with the surrounding area while still serving the purpose of the original request of the applicant. The minimum lot area for RR-1 is 1 acre. The subject parcel totals approximately 1.1 acres.

Staff recommends approval of RR-1 (Rural-Residential).

Mayor Archibald opened the public hearing and city council heard from:

- Danny Stevens – owner of the property. Mr. Stevens voiced his concerns about the process that he has been involved in after the purchase of this property. The property lies within the city limits of Abilene and doesn't have water service from the City. Today has been a step in the process to be able to receive water. Mr. Stevens explained that Potosi water comes within 600 feet due east of the property and he has been in touch with the County Commissioners and the Potosi Water Supply. Mr. Stevens also voiced his concern that after the rezone he had to plat the acreage which then made the property a subdivision and as a subdivision he would then have to install sidewalks and pave the trail north of the property as the extension of Blackburn Road.

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

Council and Staff discussion included: 1) the request before council is the rezone of the property to RR-1 (Rural Residential); 2) the request to plat will go before Planning & Zoning if the city council approves the zone change today; 3) proportionality appeal – Mr. Stevens is seeking relief from a dedication or construction requirement for the property to build sidewalks and pave the street; 4) discussion of the requirement to construct Blackburn Road, north of said property. Mr. Stevens had presented to Planning & Zoning a request to abandon the road, which was denied; 5) proportionality appeal – where by Mr. Stevens appeals the building of the Blackburn Road per the subdivision process; and 6) the Texas Commission on Environmental Quality (TCEQ) is involved in the process of getting water to this property. The property location is in the Abilene CCN (Certificate of Convenience and Necessity) and there would have to be an agreement with Potosi CCN (Certificate of Convenience and Necessity) to provide water to this location.

Councilman Williams made the motion to approve Case No. **Z-2008-21** a request from Danny Stevens to rezone property from AO (Agricultural Open Space) to RR-1 (Rural Residential) zoning. Councilman Spano seconded the motion and the motion carried.

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

NAYS: None

An Ordinance numbered #36-2008 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.

7.3 Mayor Archibald called for a motion to remove this item from the Table. Councilwoman Moore made the motion to Remove this item from the Table. Councilman Williams seconded the motion and the motion carried.

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

NAYS: None

Jon James Director of Planning Development Services, briefed the council on the Ordinance amending Chapter 19 – Nuisances; amending mowing requirements for properties larger than 5 acres.

This is an amendment to the City's Nuisance Ordinance addressing mowing on properties larger than 5 acres. As directed by City Council on May 8, 2008 council meeting, a committee of citizens provided input to staff on the revision of the ordinance. Some of the committee members reiterated their concerns about the potential fire hazard that is created where tall grasses or weeds grow up adjacent to these properties. Other members were unsettled by the considerable burden and expense of clearing, illegal dumping, and mowing that would be placed upon the owners of large undeveloped tracts. In addition to the financial impact, some landowners would lose significant grazing acreage simply because a subdivision was placed adjacent to the property.

Currently the ordinance requires only that portion of a property within 50 feet of a roadway to be mowed on tracts larger than 5 acres. The initial amendment recommendation added a requirement that a property owner must mow the area within 30 feet of a residential property of less than one acre in size. This 30 foot distance was based on the Fire Protection Handbook and NFPA 1144. Additionally, to make the distances consistent the proposed change would have reduced the mowing required adjacent to a roadway to 30 feet, from the current requirement of 50 feet.

To address those concerns expressed by residents and landowners, the amendment to Chapter 19 – Nuisances defines "Cultivated" and "Natural Land" in Section 19-3 and in Section 19-16 exempts from mowing tracts over 5 acres that are uncultivated and natural land. The amendment would require landowners who are not cultivating their property but have cleared, altered, developed, or otherwise prepared for development their 5+ acre tract to mow the property where it is within 30 feet of a lot (of 1 acre or less) that has a residence.

Nuisance Ordinance Revision

- 5+ acre lots
 - Must be mowed within 30' of road (was 50')
 - Must be mowed within 30' of adjacent residential properties of 1 acre or less
- Added exemptions (apply only to lots 5 acres or larger):
 - Cultivated cropland
 - "Natural Land"

Council and Staff discussion included: 1) this represents a compromise from the meeting with the citizen committee; 2) lots would be mowed within 30' of adjacent residential properties of 1 acre or less; 3) lots would be treated on a compliant bases; 4) natural land is the biggest issue. Who decides what natural land is? 5) Natural state – any size acreage; and 6) Ed Williams Fire Marshall, explained that the old ordinance the mowing was 50' back and was on a complaint bases. They would contact the landowner to mow the location and if they didn't then the City paid to have the lot mowed.

Mayor Archibald opened the public hearing and the city council heard from the following citizens:

- Scott Senter – land owner. Mr. Senter showed some pictures that he had taken of some locations of his property that abuts residential neighborhoods. Mr. Senter stated the reason he had left some of the trees that are now up close to a fenced neighborhood, was for sound reduction from Buffalo Gap and FM 707. Mr. Senter concurs with council that Natural State needs to include all sizes not just 5+ acres.
- Kay See – homeowner on Woodcock Circle. Ms. See explained that this was a health hazard when the property owners of undeveloped land allow the acreage to grow up next to developed housing additions. Ms. See explained that she didn't have a back gate to excess the property behind her and that she has rodents and scorpions in her home. Ms. See is asking that she receive relief through this ordinance, and that this will allow for a fire break. Ms. See also presented a signed petition from residents of Quail Park section in Abilene that requested that the Mayor and City Council revise the City Weed Ordinance making it mandatory that land owners who own property, inside the city limits of Abilene, that butts up to residential or business properties, no matter how many acres owned, keep the property mowed that butts up to that property, thereby giving them a fire break and a means to combat snakes, rodents and insects. Signed by 18 residents.
- Sherry Christian – homeowner on Woodcock Circle. Ms. Christian stated that all landowners have a responsibility and she felt that large landowners have a greater responsibility.
- Delmon Wilson – land owner. Mr. Wilson stated that there are large costs involved in cleaning around and removing trees on large acreage of land and it is not fair to ask the landowner to foot those bills. Mr. Wilson stated that he could loose 15 to 20% of land for

grazing if he had to mow. Mr. Wilson asked that the city council vote against the entire ordinance. Mr. Wilson stated it was not right to ask him to protect someone else.

- Evelyn Tilbrook – land owner. Ms. Tilbrook stated that this might be important to her one day because she too was a large land owner. Ms. Tilbrook gave the advice to not buy or build next to another site that has natural land. With natural land you can expect to have the animals.

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

Council and Staff discussion included: 1) Natural land; 2) size of Natural land; 3) traffic issues and safety issues close to roadways; 4) if land has been cleared then it stays classified as cleared; and 5) discussion of the height of grass.

Councilman Chase made a motion to approve the Ordinance amending Chapter 19-Nuisances; by amending the Exceptions clause to remove acreage size for “Natural Land” and the mowing requirements for properties larger than 5 acres. Councilman Spano seconded the motion and the motion carried.

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

NAYS: None

The Ordinance is **#37-2008** and is captioned as follows:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ABILENE; AMENDING CHAPTER 19, ARTICLE II, SECTION 19-3, “DEFINITIONS”, SECTION 19-15, “PROHIBITED ACTS OR CONDITIONS WHICH CONSTITUTE A NUISANCE,” AND SECTION 19-16, “EXCEPTIONS,” OF THE ABILENE MUNICIPAL CODE AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND CALLING FOR A PUBLIC HEARING.

Amend CHAPTER 19, ARTICLE II, SECTION 19-16 “Exceptions,” amending as follows:

Sec. 19-16. Exceptions.

(1) Sec. 19-15(19) shall not apply to the following areas:

(a) Certain portions of improved and unimproved creeks; drainage channels; detention and retention ponds; borrow ditches; any other conveyances subject to water drainage that are maintained by the City of Abilene.

(b) Portions containing drought resistant landscaping as provided by Section 23-320 of the City of Abilene Zoning Ordinance.

(c) Any lot, tract or parcel which is cultivated or natural land, regardless of acreage size.

(2) Sec. 19-15(19) shall apply to the following areas:

(a) The portion of any lot, tract or parcel of land greater than five (5) acres, which is within thirty (30) feet from the curb of any street, the edge of pavement, or any traveled portion of a street or roadway.

(b) The portion of the lot, tract or parcel of land greater than five (5) acres, which is within thirty (30) feet from any abutting lot, tract or parcel of land which is one (1) acre or less and is occupied by a residence.

7.4 Jon James Director of Planning and Development Services, briefed the council on the proposed Annexation Service Plans and the possible action to remove areas from the City's Three-Year Annexation Plan.

In December 2006 the City Council adopted a Three-Year Annexation plan including an area of approximately 3,436 acres southeast of the current City of Abilene corporate limits south of Abilene Regional Airport. Staff has met with an appointed County Annexation Committee to deliberate over the level of services to be provided if the entire study area were to be annexed.

The City's Comprehensive Plan identified this area as a potential for annexation due to its proximity to the City of Abilene and Abilene Regional Airport. Since the initiation of the 2006 Three-Year Annexation Plan, ordinance amendments have been approved regarding platting requirements within the City's extra-territorial jurisdiction (ETJ) area. Additionally, the City adopted an Airport Zoning Ordinance.

Due to these ordinance changes, two service plans were created for the study area. One service plan includes the entire study area and the proposed services negotiated with the County Annexation Committee. The alternate service plan includes a modified area being recommended for annexation and the proposed services to its area.

Staff has prepared an estimated cost analysis for each service plan.

Estimated Costs – Overall Area

| Service | Projected Costs |
|--|--|
| Police protection (5 officers & vehicles) | \$570,000 ⁽¹⁾ |
| Fire protection (fire service water lines) | \$1,374,100 |
| Emergency medical services | * |
| Solid waste collection | * |
| Operation and maintenance of (public) water and wastewater facilities | * |
| Operation and maintenance of (public) roads and streets, including road and street lighting (Hardison Lane & streets within Black Hawk/Colonial Hills) | \$975,000 (Hardison) \$1,971,000 (Black Hawk/ Colonial Hills) |
| Operation and maintenance of (public) parks, playgrounds, and swimming pools | * |
| Operation and maintenance of any other publicly owned facility, building, or service | * |
| Total Costs | \$4,890,100 |

* No additional costs incurred with annexation

(1) One time cost – estimated average annual cost is \$350,000

Estimated Costs – Alternate Area

| Service | Projected Costs |
|---|------------------|
| Police protection | * |
| Fire protection | * |
| Emergency medical services | * |
| Solid waste collection | * |
| Operation and maintenance of (public) water and wastewater facilities | * |
| Operation and maintenance of (public) roads and streets, including road and street lighting (Hardison Lane) | \$975,000 |
| Operation and maintenance of (public) parks, playgrounds, and swimming pools | * |
| Operation and maintenance of any other publicly owned facility, building, or service | * |
| Total Costs | \$975,000 |

* No additional costs incurred with annexation

Staff recommends that the Council modify the annexation area by removing the area not included in the alternate service plan and approve the alternate service plan for annexation.

Mayor Archibald opened the public hearing and the city council heard from the following:

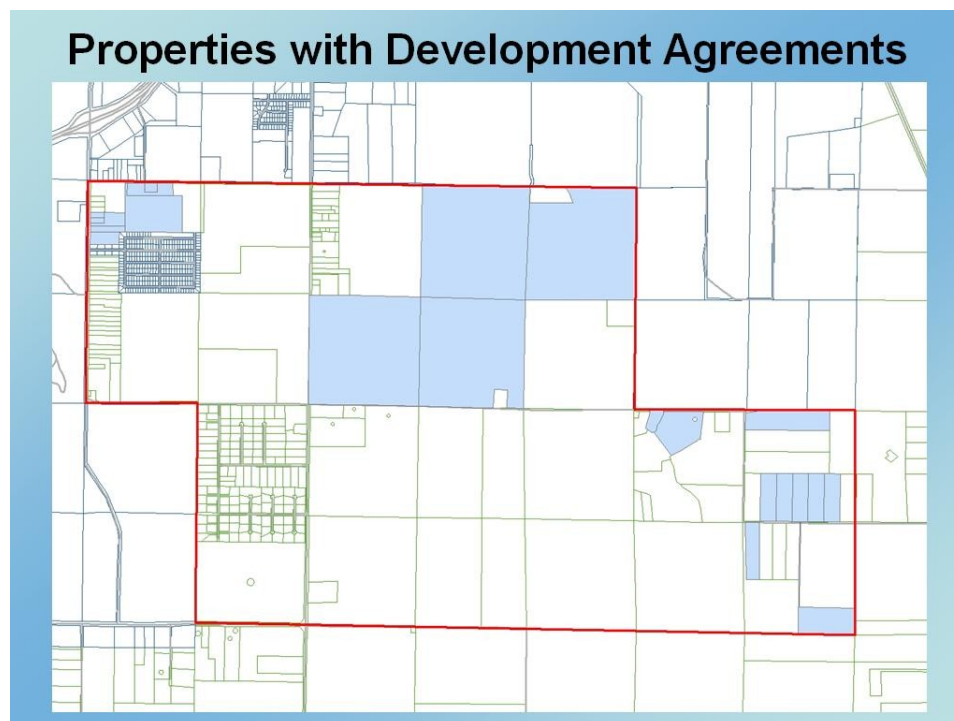
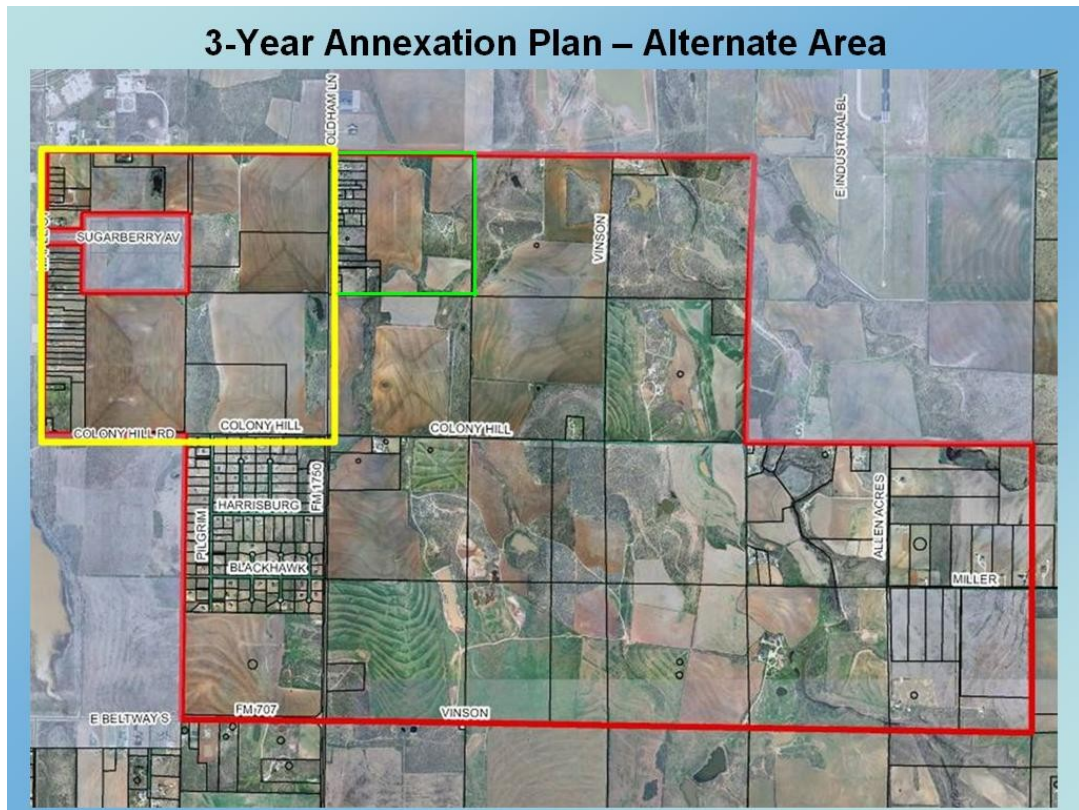
- Dennis Reiling with View/Caps Water Supply – Mr. Reiling stated that the concern he had was with the portion south of Dyess Air force. Mr. Reiling stated the Airport Zoning would take care of the area south of the base and around Hwy 277. He also stated that it would be a conflict with View/Caps CCN. He requested that the city council eliminate annexation south of Dyess and let the Airport Zoning take over.
- Spencer Butcher – Maple Street resident opposed – Mr. Butcher stated that he had canvassed the area and those residents did not receive a letter informing them of this meeting. He also stated that they had not been aware of the meetings of the Committee. Mr. Butcher also presented a petition from the residents of the Maple Street area that oppose the annexation.
- Kathy Butcher – Maple Street resident opposed – Ms. Butcher stated that they had built in this area so that they could build a guest house away from the main house. She also stated that this annexation would cause an increase of taxes and they had concerns with being on a septic system.
- Eileen Gipson – opposed. Ms. Gipson stated that they are free of high cost of living by living in the country. Like living in the country.
- Martha Sodeman – opposed. Ms. Sodeman was on the County appointed Committee. The Committee meetings were private and were not open to the public. They did have one public meeting and notices were sent out and email contacts made of those that have been interested. No one from the Maple street area has contacted them. They reached out to those interested.

The Committee has worked very hard and they believe that they did a good job; they still don't want to be annexed.

- Evelyn Tilbrook – opposed. Ms. Tilbrook also served on the Committee established by the County Commissioners Court. The Committee was tasked to work out a service plan and they made no attempt to leave someone out. They took a great deal of time with great sacrifices by some neighbors. She stated that none want to be annexed and it is going to cost the current citizens of Abilene.
- Vada Reid – opposed. Ms. Reid stated that elderly people live in the area and they can't afford the cost.
- Mike Akins – Mr. Akins stated that housing in Abilene is still doing fairly well. He strongly encouraged the council to let it all go. He stressed with the shortage in the Police department that the money it would cost to annex it could go toward the police. Mr. Akins pointed out that the city is growing north and he feels that the city needs to concentrate on what they have now.
- Sue Beth Jolly – opposed. Ms. Jolly voiced concern that they were not notified about the meeting today. (Mr. James stated that there was not a requirement for notification of today's meeting.) Ms. Jolly asked about the services that would be provided if they are annexed. What about their septic tanks?
- Tammy Reese – served on the committee. Ms. Reese voiced her concern that the only extra they would receive if annexed would be trash service. Ms. Reese made comments about the sewer lines being run. She stated that it would cost the homeowner because they would have to connect to the sewer at the property line and remove the old septic system. Ms. Reese stated that the one question she asked was how they could save the city money. Ms. Reese stated that they want the city grow. She asked that the council either revamp the proposed area or drop all together and bring back in three years. She stated that there is not any city service that they would gain that they are not already getting.

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

Council and Staff discussion included: 1) this was a stop and evaluate where the city is at this point in time with the annexation; 2) what is the cost benefit; 3) discussion of adding a small section east of Oldham Lane or FM 1750, (area outlined in green on the following map); 4) the committee established the parameters and these parameters would be applied to the lots east of Oldham lane or FM 1750; and 5) some land owners have signed Development Agreements with the City, property owners with signed agreements are highlighted in light blue on the map.



Councilman Higgins made the motion to modify the annexation area by reducing from the original area to the 4 quarters around Maple Street plus the one quarter area east of Oldham Road and approve the alternate service plan for annexation. Councilman Williams seconded the motion and the motion carried.

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

NAYS: None

EXECUTIVE SESSION

Mayor Archibald recessed the Council into Executive Session pursuant to Sections 551.071, 551.074, 551.072 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.

There being no further business the meeting was adjourned at 1:12 p.m.

Danette Dunlap
City Secretary

Norm Archibald
Mayor