

**CITY COUNCIL MEETING
October 23, 2008, 5:30 p.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 October 23, 2008, at 5:30 p.m. in the Council Chambers at 555 Walnut Street. Mayor Archibald was present and presiding with Councilmen Sam Chase, Stormy Higgins, Robert O Briley, Anthony Williams and Councilwoman Laura Moore, absent Councilman Spano. Also present were City Manager Larry Gilley, City Attorney Dan Santee, City Secretary Danette Dunlap, and various members of the City staff.

Councilman Briley gave the invocation after a moment of silence for the family of Sgt. Reuben Marcus Fernandez III, a 2004 Cooper High School graduate who recently was killed in Iraq.

Councilwoman Moore introduced her daughter London Moore, who is 10 years old and a 5th grader at Austin Elementary. London led the Pledge of Allegiance to the Flags of the United States of America and the State of Texas.

PUBLIC COMMENT

- Theodore Polovy – Mr. Polovy voiced his concerns regarding the new buses that had been purchased. The seats are very cramped and very tight. Mr. Polovy also voiced his concern regarding the scheduling of the bus routes and he felt that the bus drivers where not being able to take breaks due to a tight turn around time on the routes.

DISPOSITION OF MINUTES

6.0 Mayor Archibald stated Council has been given the minutes from the Regular Meeting held October 9, 2008. There being no deletions, no corrections, and no additions to the minutes Councilman Chase made a motion to approve the minutes as presented. Councilman Williams seconded the motion and the motion carried.

AYES: Councilman Chase, Williams, Briley, Higgins, Councilwoman Moore and Mayor Archibald

NAYS: None

CONSENT AGENDA

Councilman Briley made a motion to approve consent agenda items 7.1 through 7.7 except 7.6 as presented. Councilwoman Moore seconded the motion, the motion carried. Item 7.6 pulled by Councilman Chase.

AYES: Councilman Chase, Williams, Briley, Higgins, Councilwoman Moore and Mayor Archibald

NAYS: None

Oral Resolutions:

- 7.1** Approving a fireworks display permit for an event to be held at Hardin Simmons University on October 24, 2008.
- 7.2** Authorize Amendment to City of Merkel Water Supply Contract to Relocate Delivery Point and Participation in the City of Merkel Pipeline replacement Project with the upsizing of the New Five-Points Pump.

Resolution:

- 7.3** Approving the proposed Red Flags Identity Theft Prevention Program that fulfills the requirements for the City of Abilene Utilities as required by the Federal Trade Commission (FTC).

The Resolution numbered **#36-2008** and captioned as follows:

RESOLUTION APPROVING THE RED FLAGS IDENTITY THEFT PREVENTION PROGRAM AS REQUIRED BY THE FEDERAL TRADE COMMISSION (FTC).

Ordinance:

- 7.4** *First Reading* on an Ordinance amending Section 23-128(A) and adding Section 23-172 of the Sign Regulations of the City of Abilene regarding Electronic Message Signs; and setting a public hearing for November 6, 2008.

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

Bid Awards:

- 7.5** **CB# 8071** – Batwing Mowers for Stormwater Division. City Council approved the award of bid to Parker Implement, the low responsive bidder in the amount of \$51,204.00.
- 7.6** **CB# 9003** – Vehicles for Various Divisions – *Item was pulled by Councilman Chase.*

- 7.7 CB# 9004** – N 2nd and Cedar Parking Lot (Library). City Council approved the award of bids with alternates to Bontke Bros Construction Co., Abilene, Texas, in the amount of \$182,840.35.

Items Pulled from Consent Agenda

- 7.6 CB# 9003** – Vehicles for Various Divisions – *Item was pulled by Councilman Chase.* Councilman Chase had a question concerning the change in the award of bid from Arrow Ford for the Large PU's to Caldwell Country Chevrolet/Plant Ford & Dodge. Mindy Patterson Director of Finance explained that the Arrow Ford bid on the seven large pickups, and had exceeded the five percent local preference allowance. Caldwell Country Chevrolet had become the lowest bidder.

Councilman Chase made the motion to approve the bid award as follows:
Item 1 & 2 – Police SUV's and Large PU's to Caldwell Country Chevrolet/Plant Ford & Dodge
Item 3A, 3B, 4A, 4B, 5, 6, 7 – to Arrow Ford, Abilene Texas
Totaling \$836,727.00 Councilman Williams seconded the motion, the motion carried.

AYES: Councilman Chase, Williams, Briley, Higgins, Councilwoman Moore and Mayor Archibald
NAYS: None

REGULAR AGENDA

- 8.1** Jon James Director of Planning and Development Services briefed the council on the Case No. **Z-2008-33** a request from CKWSM (Ronnie Smith Transmission) to rezone property from LC (Limited Commercial) to GC (General Commercial) zoning, located at 4201 Bob-O-Link Dr.

Currently the property is zoned LC and is undeveloped. There is a large single-family subdivision to the north and west of the property. The properties directly to the north are being developed for hotel uses, the property to the south is developed with a Wal-Mart, and to the east is an automotive repair business.

The Future Land Use section of the Comprehensive Plan designates this general area as a low density residential. Although there is the presence of commercial activity in the immediate area, this rezoning would allow GC zoning to directly abut RS-6 zoning, which is not deemed to be compatible. The current LC zoning serves as a buffer to the single-family zoning from some of the more intensive GC zoning uses that would not be appropriate adjacent to single-family zoning

Staff recommends denial. The P&Z Commission recommended approval as requested by a vote of five (5) in favor and one (1) opposed.

Council and Staff discussion included: 1) Transmission business wants to store cars on the lot; 2) changing the zoning to GC will allow for any type of business that is allowed in GC; 3) what about the use of a PDDistrict? property owner wanted to move forward as is; 4) concern by staff and P&Z that the lot is right next to Residential housing; 5) area is generally General Commercial (GC); and 6) would allow for the relief of vehicles parked in the road right of way.

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

- Kenny Smith – owner. Mr. Smith stated that this lot will provide for them a place to park vehicles and get them off the street. They will also add some buffering from the residential area.

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

Councilman Chase made the motion to approve the Ordinance for Case No. **Z-2008-33** a request from CKWSM (Ronnie Smith Transmission) to rezone property from LC (Limited Commercial) to GC (General Commercial) zoning, located at 4201 Bob-O-Link Dr. Councilman Williams seconded the motion, the motion carried.

AYES: Councilman Chase, Williams, Briley, Higgins, Councilwoman Moore and Mayor Archibald

NAYS: None

The Ordinance is numbered **54-2008** 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.

8.2 Jon James Director of Planning and Development, briefed the Council on the Ordinance for Case No. **Z-2008-34** a request from Lana Trigg to rezone property from AO (Agricultural Open Space) to RR-1 (Rural Residential) zoning located at 6149 Hartford Street.

Currently the property is zoned AO and is undeveloped. The surrounding area primarily consists of single-family housing that sit on larger RS-6 lots as well as agricultural lots with single-family development on them. The PDD to the west is intended for commercial development, but has higher aesthetic requirements to soften the effect on the surrounding residential uses.

The Future Land Use section of the Comprehensive Plan designates this general area for low-density residential. The subject property is in the process of being replatted. The current zoning of AO requires a minimum lot size of 5 acres which the subject property does not meet. RR-1 (Rural Residential) zoning would allow this property to be platted and would not create any non-conforming issues on the property. Rural residential zoning is also compatible with the surrounding zoning.

Staff and P&Z 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 Briley made the motion to approve the Ordinance for Case No. **Z-2008-34** a request from Lana Trigg to rezone property from AO (Agricultural Open Space) to RR-1 (Rural Residential) zoning located at 6149 Hartford Street. Councilman Williams seconded the motion and the motion carried.

AYES: Councilman Chase, Williams, Briley, Higgins, Councilwoman Moore and Mayor Archibald

NAYS: None

The Ordinance is numbered **#55-2008** 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.

8.3 Jon James Director of Planning and Development Services briefed the council on the ordinance for Case No. **TC-2008-08** a request from the City of Abilene to abandon a partial alley right-of-way directly south of 6141 Hartford St.

The partial alley right-of-way was dedicated as a part of a plat that dedicated half of the ROW needed for a full alley ROW width. The intent was to get future dedication of ROW to create an alley as future properties were developed.

The zoning for the surrounding area is AO (Agricultural Open Space). There are no plans and no need for future dedication of additional alley ROW. There are currently no utilities located in the ROW and per the Plat Review Committee no future plans to run any utilities down the ROW.

Plat Review Committee: Approval, the request meets all criteria for abandonment.

Staff Recommendation: Approval.

P&Z Commission Recommendation: Approval

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

Councilman Higgins made the motion to approve the Ordinance for Case No. **TC-2008-08** a request from the City of Abilene to abandon a partial alley right-of-way directly south of 6141 Hartford St. Councilwoman Moore seconded the motion, the motion carried.

AYES: Councilman Chase, Williams, Briley, Higgins, Councilwoman Moore and Mayor Archibald

NAYS: None

The Ordinance is numbered **#56-2008** 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.

WORKSHOP

6:23 P.M.

2009 State Legislative Program

Assistant City Manager Evalin McClain introduced the 2009 State Legislative Program and introduced Snapper Carr and Brandon Aghamalian with HILLCO Partners.

Mr. Carr and Mr. Aghamalian reviewed the priority Legislative issues for the 81st Legislature when it convenes on January 13, 2009.

1. Preserve Local Budgeting Authority and Revenue Sources.
2. Improving the Texas Municipal Retirement System.
3. Establish Abilene Municipal Court of Record.
4. Authorize Local Option Elections for Dry Areas.

CAPS

Support local control of City budgeting authority and oppose legislation that would unduly restrict the ability of the City to set its own budget or generate the necessary revenue to provide services.

APPRAISAL CAPS

Current Law – 10% appraisal cap and for residence only.

Legislative Proposed Law – 5% appraisal cap, Commercial vs. Residential property, All jurisdictions (ISD), Business opposes, Costs State too much money if ISD is included.

REVENUE CAPS

Current Law – Cities & counties use the “Truth in Taxation” law with 8% rollback triggered by petition.

Legislative Proposal – Modify Truth in Taxation formula to 5% with required election to exceed cap.

TMRS

Seek passage of legislation to provide City greater flexibility for retirement options and benefits provided by the Texas Municipal Retirement System (TMRS).

- Recent actuarial changes and past administrative practices at TMRS have increased employer pension liabilities and raised contribution rates for cities that have adopted annually repeating benefits.

- To address this situation, several new measures have been undertaken. (i.e. – advance funding for annually repeating benefits including Updated Service Credit and Cost of Living Adjustments).
- This has resulted in significantly higher contribution rates for the City of Abilene.
- These significant increases were not anticipated by the City and will require a significant increase in City retirement contributions.
- In addition to additional expenses, the City could be faced with a situation were we are forced to decrease future benefits due to the costly nature of the needed changes.

Solution

- The City of Abilene will continue to support the overall reforms being sought by the TMRS Board. Specifically, the TMRS Board is expected to seek legislative authority to:
 - ✓ Allow TMRS to credit unrealized gains and losses and establish that the employer accounts will bear the risk of TMRS investment performance and will receive a variable rate of interest each year; and
 - ✓ Establish interest credits to employee accounts and the annuity purchase rate for retirement calculations to be no less than 5%.
- In addition, the City of Abilene will seek legislative reform to allow:
 - ✓ The City to forgo COLA one year and then be able to have the COLA the next year without being required to catch-up for the year that was not paid; and
 - ✓ Flexibility so that COLAs could be changed without requiring a “look back” so the change would be treated as though it was in place from the date of retirement.

COURT OF RECORD

Seek passage of legislation to designate the City of Abilene’s Municipal Court to serve as the municipal court of record.

- In 1999, the Uniform Municipal Courts of Record Act authorized the creation of municipal courts of record by City ordinance.
- The most noticeable advantage of establishing a municipal court of record is that fewer municipal cases would be appealed to county court.
- Some defendants automatically appeal cases to county (county court’s standard fine is lower or they want to move the case to a court of record).
- If a case is tried in a non-municipal court of record, on appeal to county court the defendant has an automatic right to a new trial.
- An appeal from a municipal court of record does not result in an automatic new trial at the county court. Instead, the appellant must file a written motion for new trial in the municipal court, which sets forth points of error, and give timely notice of appeal. If the municipal court denies the appellant’s motion for new trial, and notice of appeal was properly filed, the case is appealed to county court.

Problem – Current law applies a one size fits all approach that fails to take into consideration the unique needs, concerns, and administrative procedures of a particular court.

Solution – Seek passage of legislation that would allow for the designation of their court as municipal court of record while at the same time maintaining certain unique administrative functions.

In short the City of Abilene would like to take advantage of the ability to “customize” their municipal court of record in a fashion similar to efforts undertaken by other cities over the years.

LOCAL OPTION ELECTION

Recommended Position: Seek passage of legislation that would allow the City Council to call for an election on alcohol sales in areas annexed into the City after the original election on alcohol sales.

ISSUE

- In 1978, voters approved the sale of alcoholic beverages in the City of Abilene.
- Subsequent annexation has left small pockets that are not afforded the same options available to the majority of citizens.
- Development of retail establishments that sell food and beverages typically will not occur in areas where they are prohibited from selling alcoholic beverages.
- It seems inequitable when one area is afforded certain rights and options and denied in another area.

Problem – Current law requires a petition process before an election can be set to allow for alcohol sales in annexed areas.

Process is cumbersome, time-consuming, costly, and needlessly burdensome on citizens seeking simply the right to vote on the issue.

Solution – Seek passage of legislation so Abilene City Council can call for an election on the sale of alcoholic beverages in areas annexed into the city limits after voters approved the sale of alcoholic beverages in 1978.

OTHER HOT ISSUES 81ST SESSION

State Budget

Transportation

Immigration

Economic Development

Water – Reservoirs & new funding mechanisms

Land Use

Parks

TMRS

Council and Staff discussion included: 1) leadership change at TMRS; 2) City of Fort Worth has the same problem as the City of Abilene with the Alcohol Election issue; 3) the agenda for Texas Transit; 4) Water – state tap fees, tax or surcharge on collection and the fees would be sent to the State; 5) Municipal Court of Record – what do we gain or lose? The Municipal Judge has been involved in the discussion of Court of Record. By going through the Legislature vs. ordinance, Legislation would allow the City to tailor the Court of Record to the needs of the Abilene Municipal Court; 6) appeals to county court would stop and this would allow the revenue from a court case to stay in the City; 7) appeals are cut down, greater flexibility, no additional employees needed; and 8) water issues.

No action needed on this item.

Sale of Lake Fort Phantom Lots

The next workshop item was presented by Paul Knippel Director of Public Works. Mr. Knippel briefed the council on the opportunity for those who lease lots at Lake Fort Phantom to purchase them from the City.

Before the sale of any of the leased lots the property will need to be subdivided out of the larger city owned tract on which it exists. The subdivision process will consist of preparing and recording a plat for all lots, street right of way, utility easements, and drainage easements.

The subdivision process requires that all lots be served by adequate public facilities (water supply, sewage disposal, and streets). There will not be a need at this time for upgrading of the water lines. Would continue to allow septic tanks on lots (may not be viable in the future). Streets – every lot will need to be accessed by a paved road.

Lots with On-Site Sewage Facilities must be platted to a minimum of ½ acre per state law.

The city, as the “developer”, will be responsible for the cost of creating the subdivision, including costs associated with plat preparation and public facility improvements. The prospective lot owners would be responsible for payment for the lot and customary buyer closing costs. City financing is not recommended. The actual sales price of each lot must be based on market value as determined by an independent certified appraiser at the time of sale.

The total cost is estimated to be approximately \$3,650,000. This includes costs associated with plat preparation, street improvement, and seller closing costs. The total revenue from lot sales is estimated to be \$3,890,000. This based on lot values presented in a draft lake plan prepared by Jacobs/Carter Burgess and assumes that 100% of the lease holders will choose to purchase their lot.

Phase 1 would consist of Comanche Trail. Comanche Trail would consist of 42 lots. This will serve as a pilot project wherein unanticipated issues can be identified and resolved before proceeding with subsequent phases.

The estimated development cost associated with Phase 1 is \$250,000. This includes estimated costs of a) professional surveyor services contract to prepare the plat, b) construction contract to improve Choctaw Point, and c) seller costs including title policy and appraisal. The estimated revenue from the sale of 100% of the lots along Comanche Trail is \$315,000, assuming lot values as presented in the plan by Jacobs (actual sale price based on appraisal at time of sale).

It is recommended that a dedicated fund be established through which all expenses and revenues are directed.

The next step in this process will be Council approval of a contract for professional surveying services to prepare a subdivision plat for the lots along Comanche Trail. Staff anticipates placing this contract on a Council Agenda in November 2008.

Council and Staff discussion included; 1) Septic systems and the possibility that Texas Commission on Environmental Quality (TCEQ) could change the rules in the future; and 2) lots that don't have Lake Frontage that they might have the ability to have ready access to the water.

No action needed on this item.

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. Councilman Williams left during the Executive Session.

There being no further business the meeting was adjourned at 9:58 p.m.

Danette Dunlap
City Secretary

Norm Archibald
Mayor