

MINUTES OF REGULAR BUSINESS MEETING
City of Stephenville - City Council
TUESDAY, FEBRUARY 1, 2005– 5:30 P.M.

The City Council of the City of Stephenville, Texas, convened on February 1, 2005, at 5:30 p.m., in the Council Chambers at City Hall, 298 West Washington Street, for the purpose of a Regular Business Meeting, with the meeting being open to the public and notice of said meeting, giving the date, time, place and subject thereof, having been posted as prescribed by Chapter 551, Government Code, Vernon's Texas Codes Annotated, with the following members present, to wit:

Mayor	:	Rusty Jergins
Mayor Pro-Tem	:	Joe E. Cude
Council members	:	Malcolm L. Cross Andrew Johnson Bill Corbin Todd McEvoy Robert W. Burns
Absent	:	Ed Horton
Others Attending	:	Mark A. Kaiser, City Administrator Randy Thomas, City Attorney Cindy L. Stafford, City Secretary

I. CALL TO ORDER

The meeting of the Stephenville City Council was called to order at 5:30 p.m. on Tuesday, February 1, 2005, by Mayor Rusty Jergins, who declared a quorum present.

II. CITIZENS' GENERAL DISCUSSION

No one wished to address the council.

III. PLANNING AND ZONING COMMISSION PUBLIC HEARINGS

A. Request to Rezone from B-2 "Secondary and Highway Business District" to R-3 "Multiple Family Residential District" part of Lots 1 and 2, Block 34, South Side Addition (7.059 acres) known as 1300 and 1400 West Hyman Street

Betty Chew, Director of Community Development, gave the staff report, stating that the Planning and Zoning Commission is recommending that this rezoning request be approved. There is an 86 unit apartment complex on this property which houses elderly and handicapped.

Carolyn Peek, Manager of the Casa Brendan Apartments on this property, stated that these apartments were built in 1985 and 1986. She said that at that time, there was a “general” zoning and it was not known until lately that the apartments did not comply with the zoning classification.

Mayor Jergins opened a public hearing.

Speaking in Favor of Rezoning: No one.

Speaking in Opposition of Rezoning: No one.

Mayor Jergins closed the public hearing.

B. Consider Adopting Ordinance No. 2005- Rezoning from B-2 “Secondary and Highway Business District” to R-3 “Multiple Family Residential District” part of Lots 1 and 2, Block 34, South Side Addition (7.059 acres) known as 1300 and 1400 West Hyman Street

MOTION by Robert Burns, second by Andrew Johnson, to adopt Ordinance No. 2005-02 rezoning the land above described. MOTION CARRIED by unanimous vote.

C. Request to Rezone from B-3 “Central Business District” to B-4 “Private Club District”, Lots D, E, F, and K; Block 5; City Addition, known as 133 West Washington Street

Betty Chew gave the staff report and stated the Planning and Zoning Commission is also recommending that this rezoning request be approved. The property is currently occupied by Café Trifles.

Applicants, Carol Gibson and Stormy Armstrong, gave a power point presentation to the council, which is attached to the minutes.

City Attorney Randy Thomas reminded the council that because this matter is in litigation, he, as city attorney, and the city’s trial counsel are advising that individual council members not make any remarks concerning this rezoning issue.

Mayor Jergins opened the public hearing.

Speaking in Favor of Rezoning:

Landon Northcutt who has recently purchased a building on the square at 166 South Belknap. “As far as this zoning request is concerned, I’m in favor of the

zoning to be changed to B-4 zoning. I think it will help the downtown area, and will help revitalize it, and I think it's crucial." He listed several other restaurants on Washington Street, which had been rezoned to B-4 classification. Northcutt said it was an "irrational distinction" to limit them by not granting the rezoning. He mentioned the lawsuit filed by owners of Café Trifles against the suit and said that the damages are growing every day. [Randy Thomas corrected him to adding "possible" damages.] Northcutt said, "If they're successful, which I think they will be. I would be willing to testify for them in federal court as a citizen of this county and this city and as an owner of a business downtown."

Frank Green, moved to Stephenville from Odessa, Texas, after 50 years. "I ran a restaurant all that time, and I had liquor by the drink served in my restaurants, served on the board of directors of Texas Restaurant Operators, and was voted into the Texas Hall of Fame for Restaurant Operators." Green said that he never had trouble with customers drinking too much when he operated a restaurant. He said that people just want to have a drink or two with their meal and that there's nothing wrong with that. He said, "These ladies have done a wonderful job downtown and run a good, honorable place. Do not discriminate against these ladies or against your downtown area."

Rick Tennyson, 1466 Oakwood, Stephenville, stated that he was in favor of the rezoning request.

Cheryl Konz, 207 Maple Lane, Stephenville, said that she was speaking in support of Café Trifles. She said that she has personally been involved with the owners, having had her daughter's wedding reception there. She said that the owners are very responsible business owners. Konz said that she was impressed with the concept and the owners concern for the responsible use of alcohol. Konz said, "They should have the freedom to run their business as they choose. I believe there is a constitutional right to the pursuit of this legitimate business and based on the precedent that has been established by granting this request to other restaurants." Konz said that if we choose to say "no" to Café Trifles, then the council should rescind all other B-4 rezonings.

David Weindorf, 135 Sandra Palmer, Stephenville, said he felt it important to speak on this issue. He said he doesn't understand why the council is so adamantly against this rezoning. He said there is no deviant or immoral behavior going on in Café Trifles, but that it is a very lovely place, they serve good food, and has a quality atmosphere. He wanted the council to recognize the fact that this type place is not where "college kids go to get drunk". He said this is a place where "a father can offer a toast to his daughter on her wedding day or where a graduation celebration can be held".

Brandon Briggs, 1191 West Jones, Stephenville, stated that he is in favor for Café Trifles. He thinks it is unjust for so many restaurants to be able to sell alcoholic beverages and not afford that same privilege to Café Trifles.

John Haggerman, 1630 Hyman, Stephenville, congratulated the owners of Café Trifles on their wonderful presentation. “I would like to say that finally, after three public hearings, we are now talking about the real guts of it.” He referred to comments being made at prior hearings and in the newspaper that “Stephenville was voted dry and that’s how we should keep it.” Haggerman said, “Stephenville is dry because of the 18th Amendment to the Constitution back in 1920. In 1930, they repealed that and it was left up to the states to do however they felt they needed to do it. Texas gave it to the counties and to the cities and therefore it is up to them to decide what they want to do with it. It’s not that Stephenville was voted dry, it’s just that we haven’t made the progression enough to change that.” He said that Café Trifles is one of the few places in town that can service organizations, especially fraternities, banquets, etc.

Jeff Sandford, Chamber of Commerce President, said that he feels all businesses should be on a level playing field and have every opportunity with the resources out there to succeed.

Brian Griggs, 177 PR 1612, Stephenville, said that he has been in the food service business for nine years and works for the third largest food distributor in the nation. He said that restaurants are not willing to move here because of lack of alcohol. He said that very few restaurants that open up last very long, and he attributes that to not being able to serve alcohol and must compete with those who do.

John Luna, 899 West Washington, Stephenville, stated that because of the lawsuit filed by the owners of Café Trifles, the city will continue to spend money needlessly.

Bill Oxford, Jr. owns a business at 159 South Graham, Stephenville, and is President of the Heritage Square Foundation. Oxford stated that this is fundamentally an issue of fairness. “Fourteen businesses have come before the council with this request and have been granted this request. Now, one comes from downtown and, arbitrarily, the council has decided on two occasions to turn them down. That doesn’t seem fair to us and that’s what I hear throughout the membership in the downtown area. Whatever the rules are, let’s apply them fairly to everybody who’s involved. Another issue that the foundation wants to address is that Café Trifles is one of the cornerstone businesses in the downtown area and one of the main ways we’re hoping in the future that we’re going to expand on the nightlife in the downtown area.”

Lee Oliver, 584 North Belknap, Stephenville, said that he and his wife live about 5 ½ blocks north of Café Trifles. He said that his religion allows him to drink responsibly but that he wouldn't want to require any one to drink; therefore, he wouldn't want someone of differing beliefs to force those beliefs on him. He said that it's an easy walk for him and his wife to walk from their home to the square. He said they come right past the police station, the fire station, the hospital. "If we could just get a grocery store and a filling station to move in down the block we'd be all right. It's a nice neighborhood, and we want to keep it that way. We would like to go out to a nice restaurant and have an enjoyable evening, including a glass of wine. Please don't impose your beliefs on me. Approve this."

Speaking in Opposition to Rezoning:

Jim Kirby, 1234 CR 474, Stephenville. "I want to pin all of my comments on the following that I hear over and over again. 'This is not an alcohol issue, it's a fairness issue.' I hear the words, 'arbitrary decision' and 'capricious decision' bantered about a lot. Let me tell you what an arbitrary decision would be. If someone applied for rezoning at this location and was turned down and somebody else bought the property and they applied at that location and were granted it. That would be capricious and arbitrary. What's done here has nothing to do with what's done over there. The P&Z is an advisory board and I commend those folks for their hard work. In this country, we have a system of checks and balances, and that's what we have with the P&Z and with the council. There was a recent article in the *Empire-Tribune* about that council needs to do the right thing. Well, what the right thing is to make the correct decision based upon the hearing that is presented. The P&Z's a checklist. If all it was was a P&Z recommendation, we wouldn't have a forum in the city charter for public hearing. We'd just go down, check it off and get your license. I'd like to ask what would happen when this property might be sold. I think that's the question of concern there. We have successful restaurant here without alcohol—Jake and Dorothy's, pizza restaurants. I would like to urge you all to overturn the good work of the Planning and Zoning Commission and make the quality judgment that this is not what we need and I'd like to urge these ladies to stay in business and drop their lawsuit."

Kirby Fears, 131 Brittain Circle, Stephenville. He held up two clippings of the "jail logs" from the newspaper. He marked those which were alcohol related—63% two weeks ago, 72% last week. Fears stated, "If you drink a little glass of wine or 12 oz. of beer or one shot of whiskey, it will cause your blood alcohol level to go up to .01% and that is what is called the 'disinhibited' area. Then if you drink more and your alcohol level goes up to .02% you become 'disorderly'. Then if you have more than that-- .030% you are "drunk". If you go up to .04%, you are dead." He said there's nothing positive about alcohol. "It damages lives and reputations and relationships. It is poison to the body and

it causes broken homes and abuse to children and divorce. It is highly addictive and in many cases, it is the gateway to addiction of illicit drugs, even prescription drugs. It causes arguments and fights. It causes monetary failures and even poverty. It causes wrecks and death and impairs one's ability to think clearly and act properly. Yes, it causes ruined health. I beg you. I plead with you to turn this B-4 zoning down."

Johnny Huffman, 1150 North Lillian, Stephenville, talked about the cost of enforcing alcohol related violations. After conferring with the police chief, he calculated that the cost over a year's time would be \$49,088. Compared to figures he pulled from the Texas State Comptroller's website, Huffman determined that the city would lose \$29,000 per year. As far as comparisons to other towns which allow alcohol sales such as Granbury, he said, "If I wanted to be like Granbury, I would live there."

Gene Sherman, 2520 FM 914, Stephenville expressed concern with the rationalization and intimidation used in our logic. If you offer another outlet, it just invites more people; therefore, the alcohol-related problems keep increasing. He said that if a good restaurant serves good food, there is no need to serve alcohol.

Troy Erwin, Pecan Hills Estates, said that he concurs with all statements made by those in opposition to the rezoning.

Forest Wood, 1107 Prairie Wind, Stephenville, says he doesn't believe financial viability is enough reason to rezone this property. He said there are many successful restaurants in Stephenville that do not serve alcohol. He said that he cannot support the reasons given in favor of rezoning.

Alan Nix, 113 Ben Hogan, Stephenville, stated that the issue before the council is the same as the last two times it was presented. He said there is no change in the staff report and no change in the surrounding area or no change to exhibit a reason to change a previous decision. He acknowledged the threat of litigation which now hangs over the council. Nix urged the council to "stay the course". Nix said, "I believe we need to maintain the integrity of the downtown area. What has happened in other locations done by previous councils has no bearing on this. This is a decision based on the merits of this particular piece of property, and I urge you to deny this request. P&Z's recommendation does not have any bearing on this other than it is what it is, only a recommendation. You have an opportunity to uphold your previous two decisions. You have the backing, I believe, of the majority of the citizens of Stephenville. I would like to commend the ladies for taking an empty building and making a pleasant atmosphere, a good viable business. I wish they would continue to run it as that."

Frances Nix, 652 Maplewood Drive, Stephenville, said that she loves Stephenville and that it is a special place for her having been born here and lived her entire life here. She spoke of meeting newcomers to Stephenville who intentionally moved here because of the philosophy of its citizens. Nix said that “Stephenville is perfect just the way it is.”

Rick Craig, 140 PR 1419, Stephenville, said that Texas is leading the nation in alcohol-related accidents and deaths. He said that he was a member of the Hood County Volunteer Rescue unit when he lived in Granbury. One specific accident that he remembers was alcohol-related, which caused the death of one of his friends. His friend was involved in a head-on collision, where the driver of the other vehicle had had just “a couple of drinks at lunch”.

Rebuttal in Favor of Rezoning:

Stormy Armstrong acknowledged many supporters at the meeting and thanked them all for coming. She said, “We look forward to showing you that we can have a nice restaurant and serve our customers in the downtown area. We’ve spent many years learning about the restaurant industry and are trying to keep the downtown area clean and suitable for families and everyone to enjoy. We’re still learning and are grateful for our customers. There are those who don’t agree with us, but let’s try to work together for the better of Stephenville. Carol and I thank you for your consideration on this B-4 zoning.”

Mayor Jergins closed the public hearing.

D. Consider Adopting Ordinance No. 2005- Rezoning from B-3 “Central Business District” to B-4 “Private Club District”, Lots D, E, F, and K; Block 5; City Addition, known as 133 West Washington Street

MOTION by Malcolm Cross, second by Todd McEvoy, to adopt Ordinance No. 2005-03. MOTION FAILED by the following vote:

Ayes: Council members McEvoy, Cross, and Mayor Jergins.

Nays: Council members Burns, Corbin, Johnson, and Cude.

IV. PLANNING AND ZONING COMMISSION ANNUAL REPORT—Dave Shepherd, Chairman, Planning and Zoning Commission

Chairman Shepherd reported that during 2004, the commission considered 15 zoning change requests, 3 subdivision proposals, 2 amendments to Zoning Ordinance, 2 vacate rights of way, and 1 planned development. P&Z developed a zoning plan for the 450 acres annexed in 2003, and has conducted work sessions to revise the B-1 “Neighborhood Business District section of the Zoning Ordinance. The commission

continues to work on reviewing and revising the remaining chapters of the Zoning Ordinance and will be forwarding that work to the council.

Councilmember Burns thanked the Planning and Zoning Commission for their hard work on the new ordinances, and keep up the good work.

MOTION by Bill Corbin, second by Joe Cude, to accept the Planning and Zoning Commission report as presented. MOTION CARRIED by unanimous vote.

V. COMPREHENSIVE ANNUAL FINANCIAL REPORT, Paula Spiegelhauer with Pattillo, Brown, and Hill, L.L.P.

Don Ives, Director of Finance and Administration, introduced Paula Spiegelhauer, who made the presentation and answered questions from council members. She said that the city is definitely financially strong.

MOTION by Robert Burns, second by Todd McEvoy, to accept the report and refer it to the Finance Committee. MOTION CARRIED by unanimous vote.

VI. CHAMBER OF COMMERCE TOURISM REPORT—Jeff Sandford, President, Stephenville Chamber of Commerce

Jeff Sandford made the report, which is attached hereto and made a part hereof for all purposes. He specifically mentioned the National Reined Cow Horse Association World Championship Show to be held in February 2004. It is estimated that this two-week event will bring \$4.2 million to area businesses. The Larry Joe Taylor Chili Cook-off and Concert in April is estimated to bring in \$5 million in economic impact. The Stephenville Chamber's website was named the No. 1 website in the State of Texas by the Texas Chamber of Commerce Executive.

MOTION by Todd McEvoy, second by Andrew Johnson, to accept the report and approve the tourism budget as presented. MOTION CARRIED by unanimous vote.

VII. PLANNING AND DEVELOPMENT COMMITTEE REPORT

Robert Burns, Chairman, gave this committee report from its meeting on January 18.

A. Brick Streets

MOTION by Robert Burns, second by Bill Corbin, to retain this report for future reference and possible use. MOTION CARRIED by unanimous vote.

B. New Library

Burns reported that the committee discussed the opportunity of acquiring the Stephenville Funeral Home property as a possible location for a new library. MOTION by Robert Burns, second by Andrew Johnson, to direct the Library Advisory Board to review the needs assessment of the library and consider the funeral home property as a possible location for the library and for the board to report back to the council at its March 1, 2005 meeting. MOTION CARRIED by unanimous vote.

C. Comprehensive Plan—Land Use Section

The committee discussed Chapter 4—Land Use section of the Comprehensive Plan.

VIII. PUBLIC HEALTH AND SAFETY COMMITTEE

A. Consider Approval of Ordinance No. 2005-02 Amending Section 114.04(D) Private Owned Ambulance Services

MOTION by Todd McEvoy, second by Andrew Johnson, to adopt Ordinance No. 2005-03. MOTION CARRIED by unanimous vote.

B. Consider Approval of Expenditure of Forfeiture Funds

MOTION by Todd McEvoy, second by Bill Corbin, to approve the expenditure of \$6,752.88 from the Forfeiture Fund for the purchase of two ballistic shields, a police tactical rifle, and miscellaneous tactical equipment. MOTION CARRIED by unanimous vote.

C. Consider Approval of Contract with Curtis Dees for Canine Program

MOTION by Todd McEvoy, second Andrew Johnson, to approve the contract with Officer Curtis Dees for drug dog handling services. MOTION CARRIED by unanimous vote.

D. Consider Approval of Homeland Security Grant

MOTION by Todd McEvoy, second by Andrew Johnson, to approve the application for 2005 Homeland Security Grant. MOTION CARRIED by unanimous vote.

IX. PERSONNEL COMMITTEE REPORT

A. Pay Plan

MOTION by Joe Cude, second by Robert Burns, to adopt the pay policy as follows: "Pay adjustments will be considered based upon factors and criteria established from time to time by the city council. In preparation for the budget deliberations the city council will review and make recommendations for pay adjustments each June." MOTION CARRIED by unanimous vote.

B. Consider Approval of Contract with Texas First Group Replacement Service, Inc. for Interim Utility Director

MOTION by Joe Cude, second by Andrew Johnson, to approve the contract with Texas First Group Replacement Service, Inc. for Interim Utility Director, Larry Fleming. MOTION CARRIED by unanimous vote.

X. CONSENT AGENDA

Joe Cude asked that Item D. be removed from the consent agenda. MOTION by Andrew Johnson, second by Todd McEvoy, to approve Items A., B., and C. of the Consent Agenda. MOTION CARRIED by unanimous roll call vote.

- A. Approval of Minutes of Regular Council Meeting on January 4, 2005**
- B. Approve Election Contract with Erath County for Election Services**
- C. Approve Order Calling Election for May 7, 2005**
- D. Approve Bid Award for Ambulance**

MOTION by Joe Cude, second by Bill Corbin, to award the bid for a new 2005 model ambulance to Taylor Made Sales for \$83,341.00. MOTION CARRIED by unanimous roll call vote.

XI. COMMENTS BY CITY ADMINISTRATOR

Mark Kaiser reported that early voting for the February 5 special city election concluded today with 113 people voting early. The water tank rehabilitation has been completed. Texas Municipal League is sponsoring a legislative briefing on February 14. Kaiser and some of the council members will be attending.

XII. COMMENTS BY COUNCIL MEMBERS

XIII. EXECUTIVE SESSION. At 7:59 p.m., Mayor Jergins recessed the open portion of the meeting, and council went into executive session in compliance with the provisions of the Texas Open Meetings Law, Subchapter D, Government Code, Vernon's Texas Codes, Annotated, in accordance with Sec. 551.074 Personnel Matters (a)(1) to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee and Sec. 551.072 Deliberations about Real Property.

A. Consider Purchase of Lot 2B, Block 129, City Addition, Stephenville, Erath County, Texas

B. Consider Purchase of part of Lot 3, Block 129, City Addition, Stephenville, Erath County, Texas

C. Evaluation of City Administrator

Council reconvened in open session at 9:07 p.m.

XIV. ACTION TAKEN ON MATTERS DISCUSSED IN EXECUTIVE SESSION

MOTION by Bill Corbin, second by Robert Burns, to approve the two contracts for the purchase of property set out above. MOTION CARRIED by unanimous vote.

XV. ADJOURN

MOTION by Joe Cude, second by Todd McEvoy, to adjourn the meeting. MOTION CARRIED by unanimous vote at 9:07 p.m.

Russell E. Jergins, Mayor

ATTEST:

Cindy L. Stafford, City Secretary