

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

The City Council of the City of Stephenville, Texas, convened on July 5, 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:

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| Mayor | : | Rusty Jergins |
| Mayor Pro-Tem | : | Todd McEvoy |
| Council members | : | Cyndi Godwin Malcolm L. Cross Nancy Hunter Andrew Johnson Alan Nash Mark Murphy Barry Ratliff |
| 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 5:29 p.m. on Tuesday, July 5, 2005, by Mayor Rusty Jergins, who declared a quorum present.

II. EXECUTIVE SESSION. At 5:33 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. 551.071(1)(A) Consultations with Attorney; pending or contemplated litigation.

Café Trifles, Inc. et al v. The City of Stephenville, Cause No. CV-27437

At 5:47 p.m., the council reconvened in open session.

III. ACTION TAKEN ON MATTERS DISCUSSED IN EXECUTIVE SESSION

No action was taken by council on matters discussed in executive session.

IV. CITIZENS' GENERAL DISCUSSION

Jeff Sandford, President of the Stephenville Chamber of Commerce, congratulated the July Fourth Family Fun Fair Committee and city staff for a successful Fourth of July celebration. He specifically complimented Drew Wells, Director of Community Services.

Lee Oliver, 584 N. Belknap, expressed his appreciation to the council for action taken on recent projects. He specifically mentioned the skateboard park and other exercise opportunities in the park. He asked that the council would look with fairness on each item they consider.

Susan Adams expressed her concerns over the recent hikes in oil prices and encouraged the council to consider any incentive programs to reduce the use of oil, gas, water, and other energy sources.

V. PLANNING AND ZONING COMMISSION—PUBLIC HEARINGS

A. Consider 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, Director of Community Development, reported that the Planning and Zoning Commission recommends approval of this zoning request.

Carol Gibson, applicant and co-owner of the restaurant located on subject property, addressed the council. She said that even though alcoholic beverages have been allowed to be consumed in her restaurant since 1998, there is no control over the usage by the owners. She said that the zoning change is vital in order to establish this control. She reminded the council that the Stephenville Chamber of Commerce and the Heritage Square Foundation support the approval of the rezoning of this property.

Mayor Jergins opened a public hearing.

Speaking in Favor of Rezoning:

Marcy Tanter, 811 Lydia, stated that she is a non-drinker but supports approval of the requested rezoning.

Gene Oliver, 584 N. Belknap, asked that the council consider the fairness of this, and that the owners deserve to have their property rezoned just as other B-4 applicants. She also stated that language from the proposed Comprehensive Plan offers alcohol sales as a way to stimulate the economy of the downtown area.

Bill Oxford, President of Heritage Square Foundation, asked for the support of the council by granting this rezoning request. He said that revitalization of the downtown area is one of the main purposes of the foundation and he hopes the council will support it.

Speaking in Opposition of Rezoning:

Johnny Huffman, 1150 N. Lillian, gave statistical information for offenses of driving while intoxicated and minor in possession. He notes that in Stephenville, 42 DWI's were issued in 2002; 56 in 2003; 75 in 2004; and 35 as of June 5, 2005. Of the MIP's, 17 were issued in 2002; 34 in 2003; 24 in 2004; and 12 as of June 5, 2005. His conclusion was that serving alcohol is a safety issue and is costly for the taxpayers of the city.

Alan Nix, 113 Ben Hogan, stated that the prior decisions of past councils has been to deny this rezoning, and he supports that decision. He does not feel this is the proper place for a business because of its location on the square. It is a safety issue as well as a quality of life issue. He stated that the zoning will stay with the property and there is no guarantee that future owners will conduct the same type business as the current owners.

Dale Cartwright, 3592 CR 184, represented the Calvary Baptist Church. He said he was not going to speak about the evils of alcohol as they are all around us. He spoke about the will of the people, and that the voters of Erath County have turned down the option to sell alcohol "over and over again". In closing, he said, "In the last debate, the churches and people against zoning were held in a bad light by those who were for it and also by a local newspaper. David faced a giant but prevailed. The giant had his head cut off. I nor our church can sit in judgment of the council or these folks, but everything will be brought to light in the final judgment, and every person, including myself, will have to give an answer for what they do or don't do. May your good conscience prevail. God bless you."

Bob Koonce, 1405 Prairie Wind, said that all other places have to furnish a parking lot. "The city has to furnish Café Trifles their own parking lot. . . and that's not fair." He said that the ladies [owners] should have planned ahead better before they bought it [subject property].

Frances Nix, 652 Maplewood. Mayor Jergins noted that she submitted a petition signed by 43 people, which states, "We, the undersigned, ask that the present B-3 zoning remain unchanged on the property located at 133 W. Washington directly across the street from the north entrance of the Erath County Court House." Mrs. Nix stated that as far back as she remembers, alcohol has never been served on the courthouse square. She said that Stephenville, as well as the square, is very special to her and she does not want to see alcohol served on the square. She reminded the council that this matter has been considered three times prior and has been denied all

three times. She said that people wanting to drink could go to the many other places in town that serve alcohol instead of having it on the square.

Alan Ward, 1046 W. Green, stated that he represents a Tarleton State University organization, College Life, Student Government Organization, TSU Student Athlete Advisory Council, Interfraternal Council. [It was clarified that he was speaking on behalf of College Life as president and not on behalf of Tarleton State University.] He claimed that rezoning should not be granted only to save a business; that if a business cannot survive without selling alcohol, it should not be rescued by the council. He said that as a married man who hopes to have children, that if he did not possess the vision to try to prevent the serving of alcohol, we would be subject to the “slippery slope syndrome”, where it would be easier to grant the next request.

Donza Huffman, 1150 N. Lillian, said that she hopes that none of the recently-elected council members ran for council in order to approve this B-4 issue. She asked that the council consider maintaining the B-3 zoning status.

Mayor Jergins closed the public hearing.

Rebuttal:

Sayra Armstrong, co-owner of Café Trifles, said that their mission is to meet or exceed the needs of their customers and provide them with the best possible service. She said that they have built an excellent reputation in a competitive market. She said that they are only asking for the same opportunity that has been afforded to other restaurants.

B. Consider Ordinance No. 2005-11 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.

Council member Murphy made the following remarks: “There has been much heated discussion on this topic for a while now. Many have presented impassioned arguments about the dangers of alcohol effects on families, statistics, and so forth, which all seems logical to me. The other side argues that the square area needs help in revitalization and filling the old, empty areas, which also seems correct. The local newspaper took it so far as to use a term for those folks those oppose drinking, calling them a ‘Morality Gestapo’. Both sides are fairly emotional and this has gotten a bit out of hand at times. I’ve read, discussed and thought hard about this for a while now. Yes, I’ve even prayed about what to do. From my viewpoint this is an issue of fairness. I am by no means an expert in either, but from what I read of both the Bible and our secular laws neither of these prohibit having a glass of wine with a meal. However, both of these do prohibit drunkenness. I have confidence that our police can deal with violations of our secular laws on drunkenness, and the Lord with [will]

deal with his part. Therefore, in my opinion it is fine to imbibe alcohol in moderation, but wrong to be drunk. Despite what some may think, Stephenville is not a dry town. There are at least 6 or 7 drinking-only establishments within a mile of these chambers where you can go see drunks every Friday and Saturday, falling around, cursing and even urinating in public. These places are bars, pure and simple. I understand we cannot close them down due to the zoning laws set by the state. I'm not equating what these ladies at Trifle have in mind to what exists at those bars. But if these nightclubs are allowed to be open, then surely a quality restaurant like Trifles should be allowed to sell drinks with their meals. We have to do what is right for Stephenville and consider zoning fairly, on a case-by-case basis, and in this case, B4 zoning is right."

Council member Cross stated that he endorses Mr. Murphy's comments. He stated that as a member of the committee for the 2030 Comprehensive Plan, that fine dining with alcohol sales can help to revitalize a downtown area.

Council member Johnson delivered a prepared, written statement. "I would like to take a few moments to explain the reasoning behind my decision to consistently vote to deny this zoning request. As we are all aware, zoning decisions come to the city council with a recommendation from the Planning and Zoning Commission after a thorough staff evaluation of the property. An application is never forwarded from city staff to the commission unless the application meets the requirements of the zoning ordinance. The zoning request is then placed before the city council for a final decision based on the highest and best use of the property. This decision tonight, as are all zoning decisions, is subjective. Zoning is designed to promote "the public health, safety, morals or general welfare" of a community (Local government code 211.001). If the request was based strictly on zoning requirements, no request would ever need to go past the staff approval level of the process. At the council level any zoning application should be scrutinized for compatibility in the affected neighborhood as well as the city as a whole.

The request this evening is to rezone to private club district 133 W. Washington Street, a 7,000 square foot facility with the capacity to safely serve 397 patrons simultaneously. This application goes against the comprehensive land use map currently in effect for our city.

This application has nothing to do with who owns the property or the business itself, I do not personally know Ms. Armstrong or Ms. Gibson very well and by all accounts they are honest hard working individuals. My vote is in no way an attack on them personally. This zoning request we are considering this evening is permanently attached to the property itself. If private club district zoning is approved for this property, nothing binds the property owner, future property owner, or lessee to any one specific use of the property. Any private club district use could be implemented without any subsequent action by city staff or the city council. This leaves a good deal of latitude as to the use of this property. Unfortunately, with this being the case, each

and every zoning request brought before council should be considered on a “worst case scenario” basis.

There are plenty of examples of where a particular zoning was granted in the past and a change in the use of the property has proven that the zoning decision was a poor one due to the many uses available in the particular classification. I do not believe that this building, if other uses were to be applied, would promote the public health, safety, morals, and general welfare of this city nor represent the highest and best use of this property.

Council member Nash stated that when he took the oath of office as a council member, he swore to uphold the laws of the United States and of this state. As Erath is a dry county, the law says that if you vote a county dry, a municipality must allow private zoning so that the consumption of alcohol is not totally prohibited. He said that in the United States, citizens have three basic rights—the right to life, liberty, and property. He stated that based on this, he cannot see significant danger in granting this rezoning.

Council member Godwin stated that she concurs with Council member Nash’ statements. She also anticipates consideration of the other rezoning request on this agenda. She believes it is only fair to grant this rezoning.

MOTION by Malcolm Cross, second by Mark Murphy, to adopt Ordinance No. 2005-10. MOTION CARRIED by the following vote:

Ayes: Council members Godwin, Cross, Hunter, Nash, McEvoy, Murphy.

Noes: Council members Johnson and Ratliff.

C. Consider Request to Rezone from I “Industrial District” to B-4 “Private Club District”, Space #60 Bosque River Center, part of Lot 1, Block 156, City Addition, known as 2900 West Washington Street.

Betty Chew, Director of Community Development, reported that the Planning and Zoning Commission recommends approval of this zoning request.

Applicant, V. W. Stephens, Managing Partner of the Bosque River Center, stated that the proposed business is an internet café serving deli sandwiches, coffee, wine, and beer. He did say that the subject property is adjacent to the movie theatre. He said that he has been in the “alcohol business” in Stephenville for twelve years and has never had a charge for serving a minor. He said that he serves over 600 people every Thursday night.

Mayor Jergins opened a public hearing.

Speaking in Favor of Rezoning:

Cynthia Stephens, chef for the proposed café, The Bean and Grape. She said this café will be a bistro type business. She said in no way do they want to abuse the use of alcohol. She also stated that bars and nightclubs are not allowed in the Bosque River Center.

Speaking in Opposition to Rezoning:

Ed Dittfurth, Pastor of First Assembly of God, said that he has been part of the community since 1986 when he came to Stephenville as a college student. He is a chaplain for the Sheriff's Department and active in Cross Timbers Family Services Board of Directors, Erath County Community Coalition, Tarleton Wellness Committee. He said that abuse of alcohol and underage drinking is a challenge for our community. Dittfurth said that while the Planning and Zoning Commission confirms the requirements to be met for rezoning, the council determines what the will of the people is and acts in the best interest of the community.

Alan Nix, 113 Ben Hogan, said the issue remains the same. It is just a different piece of property. He reiterated his concerns about granting B-4 rezoning. He said that he personally knows V. W. Stephens and acknowledges that his intentions are good, but that leases are made to be broken and are not eternal. He said the proximity to a school whether it is a public school or a charter school [Erath Excels] should be considered. He thinks the café can be operated as a viable business without the sale of alcohol.

Alan Ward said that he also represents Rocky Point Baptist Church. He said he speaks only against the principle of alcohol at a close proximity to students who frequent the movie theatre. He said there is a successful sandwich shop, situated next to the movie theatre for many years which does not serve alcohol. Ward made a passionate plea to the council to vote against the requested rezoning.

Bob Koonce, 1405 Prairie Wind, said that sooner or later someone will have too much to drink and have an accident and possibly a fatal accident. All the revenue will not be enough to justify that.

Dale Cartwright, Pastor of Calvary Baptist Church, said that you don't have to vote for it [rezoning]. He said if the council does not stop granting B-4 zoning that there will not be a place in town where children can go without the influence of alcohol being present. He said as a result of the availability of alcohol in Stephenville, that people spend their money on drink and cannot afford their rent. They then turn to the local churches to help pay for rent and utilities. He said council should consider that aspect.

Gary Ward, Pastor of Rocky Point Baptist Church, told the council that they should do what is right for the people in attendance at this meeting and vote against the rezoning

request. He said he represents a church of hundreds which oppose both of the rezoning requests on the agenda. He said that he counsels young people over and over again who abuse alcohol. He said their dreams are shattered, their lives broken. He said, "There is nothing good about alcohol!" "Why have it? Just refrain from it." He asked the council to just do what's right—"Vote no." He said that you [council] are subject to a higher power and greater authority. [Council member Nash clarified by asking Rev. Ward if he was speaking on behalf of the Lord, Jesus Christ. Ward replied, "Yes, from my heart."

David Ward, 1425 Glenwood, said that he is a product of non-control. He said that he did what the world told him to do. He said that he has great parents who taught him what to do, but he chose the way of the world. He said that as a business owner, he has control when he is present at his job. That even though V. W. Stephens is a good business man, he cannot be there all the time, therefore does not have complete control of what happens at his business.

Angela Downing, 231 Choctaw, said that she opposed the rezoning because of its close proximity to the movie theatre.

Mayor Jergins closed the public hearing.

Rebuttal:

V. W. Stephens confirmed that he does not live inside the city limits of Stephenville but does pay a little over \$400,000 in taxes.

D. Consider Ordinance No. 2005-10 Rezoning from I "Industrial District" to B-4 "Private Club District", Space #60 Bosque River Center, part of Lot 1, Block 156, City Addition, known as 2900 West Washington Street.

MOTION by Malcolm Cross to adopt Ordinance No. 205-11. Motion failed for lack of a second.

MOTION by Nancy Hunter, second by Malcolm Cross, to adopt Ordinance No. 2005-11. MOTION CARRIED by the following vote:

Ayes: Council members Godwin, Cross, Hunter, Nash, McEvoy.

Noes: Council members Johnson, Murphy, Ratliff.

VI. PLANNING AND DEVELOPMENT COMMITTEE REPORT

Todd McEvoy reported on this committee meeting.

A. Comprehensive Plan

A copy of the completed Comprehensive Plan 2030 was distributed to all council members. The Planning and Zoning Commission will review the plan and forward a recommendation to the council in two or three months.

B. Annexation Master Plan and Procedures

MOTION by Todd McEvoy, second by Andrew Johnson, to direct the Planning and Zoning Commission to review and update the Master Annexation Plan and report back to the council by March 31, 2006. MOTION CARRIED by unanimous vote.

C. Skateboard Park

MOTION by Todd McEvoy, second by Cyndi Godwin, to pour a concrete slab for the skateboard project not to exceed the amount of \$15,000.

MOTION by Mark Murphy, second by Cyndi Godwin, to amend the motion by replacing \$15,000 by the amount of \$17,000.

Discussion ensued by council members.

Barry Ratliff gave a prepared, written statement. "In an effort to prioritize the needs of the community, one thing I must consider is the number of citizens affected by our actions. Regarding the skate park, it appears to me that only a select few will actually benefit from this expense.

The previous council placed \$15,000 in the budget for this project. It has now ballooned into more than 3 times that amount--close to \$53,000 – plus an additional **annual** insurance cost of \$2500. Is this the best use of funds?

We have greater needs that could serve more of our citizens. For instance, \$53,000 would go a long way to air-condition the Rec Hall to make it available to our senior citizens so that they would have a safe floor for their dances. Also, \$53,000 could be allocated to reform and renovate our library.

If additional facilities are needed at the park, volleyball courts would benefit a wider range of users than the skate park and would cost the city much less, thus making better use of city funds.

I believe some issues surrounding the skate park have been ignored.

There is no plan to fence the area, no plan for liability waivers, no plan for supervision.

Many skate parks require waivers. Most are fee-based and use a portion of the fees to provide supervision/security. The planned site is in a flood plain.

One of the stated reasons for considering the construction of a skate park was to keep skate boarders off private property as well as a few areas of public property. There is a city ordinance in place which addresses this issue. Now it seems violators of this ordinance are being rewarded for bad behavior. Even if the skate park is completed, will the problem be solved? I would hope so, but I think not.

With this in mind, I cannot in good conscience support the skate park at this time. I do not believe the city should be involved in this endeavor. Perhaps the skate park should be left to private enterprise. . . .

Andrew Johnson said that this is a project he would like to see completed. He said that he feels the city should provide an area for this activity since the city ordinance prohibits skateboarding on certain public and private property.

MOTION FAILED to amend by the following vote:

Ayes: Council members Godwin, Cross, Hunter, and Murphy.

Noes: Council members Johnson, Nash, McEvoy, Ratliff, and Mayor Jergins.

MOTION CARRIED on the original motion by following vote:

Ayes: Council members Godwin, Cross, Hunter, Johnson, Nash, McEvoy, Murphy, and Mayor Jergins.

Noes: Council member Ratliff.

D. Public Library

MOTION by Todd McEvoy, second by Mark Murphy, to appoint a committee to conduct interviews of library consultants, with the committee consisting of two staff members—Lynn Lloyd, Drew Wells; two library board members—Patricia Maxey and Janis Petronis; and two city council members—Nancy Hunter and Andrew Johnson.

MOTION CARRIED by the following vote:

Ayes: Council members Godwin, Cross, Hunter, Johnson, McEvoy, Murphy, and Mayor Jergins.

Noes: Council members Ratliff and Nash.

VII. FINANCE COMMITTEE REPORT

Alan Nash gave the committee report.

A. Storm Water Drainage Funding

Anticipated cost for this project is \$6 to \$7 million. The city currently receives about \$480,000 in revenue each from the storm water drainage fees, which appears just sufficient enough to cover a bond issuance of \$6 million. The committee asked the staff to analyze the fee structure to determine if adjustments need to be made to allow for funds each year, over and above debt payments, to perform annual storm water drainage maintenance projects.

B. Fee Schedule

Staff presented recommended changes to the city's fee schedule, and the council will consider this as part of their budget hearings for fiscal year 2005-2006.

C. SAFER (Staff for Adequate Fire and Emergency Response) Grant

MOTION by Alan Nash, second by Todd McEvoy, to approve the application for this grant which will assist the fire department to pay a portion of the staffing cost for a new firefighter position. MOTION CARRIED by unanimous vote.

D. City Entrance Sign

MOTION by Todd McEvoy, second by Barry Ratliff, to allocate from hotel/motel occupancy funds, the amount of \$4,500 for a welcome sign to Stephenville. MOTION CARRIED by unanimous vote.

VIII. NOMINATIONS COMMITTEE REPORT

Malcolm Cross gave this committee report.

A. Parks and Recreation Advisory Board—2 vacancies

MOTION by Malcolm Cross, second by Mark Murphy, to appoint Jerry Land and Marci Tanter to the Parks and Recreation Advisory Board. MOTION CARRIED by unanimous vote.

B. Airport Advisory Board—3 vacancies

MOTION by Malcolm Cross, second by Mark Murphy, to table this agenda item. MOTION CARRIED by a 7-1 vote with Council member Nash abstaining.

C. Water Conservation Committee—1 vacancy

MOTION by Malcolm Cross, second by Cyndi Godwin, to appoint Davis Waggoner to the Water Conservation Committee. MOTION CARRIED by unanimous vote

D. July Fourth Family Fun Fair

MOTION by Malcolm Cross, second by Cyndi Godwin, to appoint Elizabeth Bays to a three-year term on the Fourth of July Family Fun Fair Committee. MOTION CARRIED by unanimous vote.

E. City Council Rules of Procedure

This matter had been tabled by the committee.

IX. CONSENT AGENDA

Council member Hunter requested Item A. be removed from the Consent Agenda.

MOTION by Andrew Johnson, second by Alan Nash to approve Item B of the Consent Agenda. MOTION CARRIED by unanimous roll call vote.

Council member Hunter asked that the minutes be corrected by adding her name to those council members present.

MOTION by Mark Murphy, second by Nancy Hunter, to approve Item A. of the Consent Agenda as corrected. MOTION CARRIED by unanimous roll call vote.

A. Approval of Minutes of Regular Council Meeting on June 7, 2005

B. Consider Amendment to Agreement with Texas First Group Replacement Service, Inc.

X. COMMENTS BY CITY ADMINISTRATOR

Mark Kaiser mentioned that the phosphorous removal project at the Waste Water Treatment Plant is progressing well. The waterline replacement projects on Race, Vanderbilt, and Donna is complete.

XI. COMMENTS BY COUNCIL MEMBERS

Todd McEvoy thanked Drew Wells for his work on the July 4th Family Fun Fair, and also the Fire Department for letting him ride in the firetruck.

Drew Wells thanked all those people who worked on the Family Fun Fair, and he specifically recognized Traci Riggs. He mentioned that Traci has been on the job less than six months, but was exceptional in organizing and carrying out her functions for the fun fair.

Mark Murphy noted that the matter of an invocation and pledge prior to council meetings has not been finally decided and will be brought up at a later meeting.

XII. ADJOURN

MOTION by Todd McEvoy, second by Barry Ratliff, to adjourn the meeting.
MOTION CARRIED by unanimous vote at 8:46 p.m.

Russell E. Jergins, Mayor

ATTEST:

Cindy L. Stafford, City Secretary