

**MINUTES OF REGULAR BUSINESS MEETING**  
City of Stephenville - City Council  
**TUESDAY, SEPTEMBER 6, 2005– 5:30 P.M.**

The City Council of the City of Stephenville, Texas, convened on September 6, 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	:	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 5:31 p.m. on Tuesday, September 6, 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. Consider Request to Rezone from B-2 “Secondary and Highway Business District” to R-3 “Multiple Family Residential District”, part of Lot 11, Block 33, South Side Addition, known as 1610 Hyman Street.**

Betty Chew, Director of Community Development, gave the staff report on this item. The Planning and Zoning Commission recommends the change of zoning classification for this property. The owner/application proposes to replat the property and construct duplex structures on same.

Applicant/Owner Steve Peacock said that once he removed the dilapidated structure from the property, he thought the best way to utilize the property is by constructing duplex structures.

Mayor Jergins opened a public hearing.

Speaking in Favor of Rezoning:

Mayor Jergins asked that remarks made by Steve Peacock be reported as being in favor of this rezoning request.

Speaking in Opposition to Rezoning: No one.

Mayor Jergins closed the public hearing.

**B. Consider Ordinance No. 2005-14 Rezoning from B-2 “Secondary and Highway Business District” to R-3 “Multiple Family Residential District”, part of Lot 11, Block 33, South Side Addition, known as 1610 Hyman Street.**

MOTION by Todd McEvoy, second by Barry Ratliff, to adopt Ordinance No. 2005-14. MOTION CARRIED by unanimous vote.

**C. Consider Request to Rezone from B-1 “Neighborhood Business District” to B-4 “Private Club District”, Lot 14H, Block 14, River North Addition, known as 1815 Lingleville Road.**

Betty Chew gave the staff report stating that the Planning and Zoning Commission recommends denying this request. As this is a recommendation to deny the request, a super majority vote (3/4 or seven affirmative votes) of the council is required in order to grant this request.

Applicant/Owner Tommy Henderson told the council that he had applied for this rezoning in an effort to boost his business. Otherwise, he said he may have to close his doors.

Mayor Jergins opened a public hearing.

Speaking in Favor of Rezoning:

Mayor Jergins asked that remarks made by Tommy Henderson be reported as being in favor of this rezoning request.

Robert Seabourn, 1245 Groesbeck, Stephenville, TX, is the general manager at Lone Star Lanes Bowling. He told the council that Mr. Henderson is looking to the council for an opportunity to improve his business. He also said that they have chosen not to

allow bowlers to bring their own alcoholic beverages into the facility all the time. He said they would lose control if they allowed BYOB continuously.

Speaking in Opposition to Rezoning:

Ed Dittfurth, 134 CR 476, Stephenville, TX, said that he didn't like to see any business close its doors, but he also didn't like to see any business rely on the sale of alcohol to keep the doors open. He asked them to consider the wishes of a majority of the adjacent property owners who do not want this rezoning. He called attention to the petition opposing this rezoning, which petition has been filed with the city secretary. He pointed out that 494 people had signed it.

Rev. Dale Cartwright, 3592 CR 184 Stephenville, TX, said that the petition referenced by Ed Dittfurth had been signed by many of the members of the Calvary Baptist Church, which is within 200 feet of the bowling alley. He said that Tommy Henderson is his personal friend but they just happen to be on different sides of an issue. Cartwright said that the council has a responsibility to make these hard decisions.

Johnny Huffman, 1150 North Lillian, Stephenville, TX, said that the council needs to consider the recommendation of the Planning and Zoning Commission and the wishes of the people who signed the petition.

Russ McDanel, 109 Byron Nelson, Stephenville, TX, reminded the council that just a few years ago, Stephenville was named one of the best 100 small cities in America. He asked the council to uphold this honor and deny this request. He also added that as a real estate broker, this requested rezoning does not represent the highest and best use for this property.

Mayor Jergins closed the public hearing.

Alan Nash said that the rezoning issues that have come before the council are the most difficult that he has encountered since sitting on the council. He said that it is a difficult task to balance our rights as property owners and the right to use our property as we see fit versus the rights of others and the rights of the community at large. He said that zoning is a compromise. He said that, in his view, what should be considered in determining the zoning requests are:

- Trying to achieve a common scheme that provides for an organized and orderly structure.
- Protection of our neighbors. Our freedom often depends on what our neighbor does.

Nash said that he has problems with a private club situated in the middle of residential property, neighborhood businesses, a park, a church, a retirement facility, and a nursing home.

MOTION by Alan Nash, second by Cyndi Godwin, to deny the rezoning request.

Malcolm Cross said that he is impressed by the number of the signatures on the petition which has been submitted regarding this rezoning issue, and the petition should be taken with grave seriousness. Although, he said, it is not a decisive factor, but an important one. He also expressed concern that some of the signatures appear to be in the same handwriting, and that under other circumstances, this may appear questionable. He advised that in the future, anyone circulating petitions take necessary precautions to ensure the veracity of the petition. Regarding comments made that people should be able to use their property in the way they see fit, Cross stated this is dependent upon that use being legal. In response to the claim that this rezoning request is being sought in an effort to revive the business, Cross said that he could never believe that “government in general or the Stephenville City Council in particular owes any business within its jurisdiction the end result of being profitable.”

Mark Murphy requested his statements be included in the record of this meeting. “I’ve said in the past that I have no problem with people drinking in moderation or businesses wanting to serve alcohol in an adult environment. However, the manager of the bowling alley himself said at the P&Z hearing that parents often drop off their kids and expect the facility to act as baby sitters. I do not think it appropriate for unsupervised children to be around opportunities that might arise for them to drink or be influenced by alcohol, nor should they be left unsupervised by their parents or guardians to be around other drinking adults or strangers. As we can’t control what some parents do, we can, as a council and city, control certain opportunities for their kids to get in trouble. Therefore, I oppose B4 zoning for this business as proposed. If there were some way to guarantee that the kids wouldn’t be exposed, I would probably be for it. I am also somewhat disturbed by the idea of expanding the BYOB times and exposing more unsupervised children to alcohol, should this B4 not be approved. I’ve asked in writing that the Planning and Zoning Commission revisit the idea of a special use permit so that when a property changes hands or usage, the zoning reverts back from a private club. I hope the P&Z will investigate this further.”

Following further discussion, vote on the motion was taken.

MOTION CARRIED by the following vote:

Ayes: Council members Godwin, Hunter, Johnson, Nash, McEvoy, Murphy, Ratliff.

Noes: Council member Cross.

**D. Consider Ordinance No. 2005-15 Rezoning from B-1 “Neighborhood Business District” to B-4 “Private Club District”, Lot 14H, Block 14, River North Addition, known as 1815 Lingleville Road.**

**IV. ANNUAL REPORT FROM OPERATIONS MANAGEMENT INTERNATIONAL, INC.**

Richard Diamato, Regional Vice President for OMI, first introduced Johnny Davis, Project Manager of the local plant and Oswaldo Garza, Regional Manager. Diamato reported that OMI and the City of Stephenville have been in a partnership for nine years. He claimed that there has been success in controlling and maintaining costs and improving efficiency at the plant. Besides operation and management of the wastewater treatment plant, OMI is active in the community as well. Copy of the annual report has been filed with the city secretary.

MOTION by Mark Murphy, second by Nancy Hunter, to accept the annual report.  
MOTION CARRIED by unanimous vote.

Nancy Hunter excused herself from the remainder of the meeting.

**V. CONSIDER DESIGNATING LOT 26, BLOCK 32, SOUTH SIDE ADDITION, CITY OF STEPHENVILLE AS A REINVESTMENT ZONE**

Betty Chew outlined the procedure for considering this agenda item.

Mark Murphy read the following statement into the record: "I said in the last council meeting that I am very pleased a business of this caliber and reputation is coming to Stephenville. I also wholeheartedly support the use of tax abatements to some degree when businesses meet the requirements established in the Economic Development Incentives Program (EDI) adopted by the city.

"It appears that the applicant has met all the requirements of the program including jobs created, capital improvements, etc. However, it appears to me that proper procedure was not followed on the city's end of things. The EDI Program in Section 5, page B3 states 'Copies of the complete application package and staff comments will be forwarded to the Planning and Development Committee within 30 days from the date the City receives the application package.' And in section C the EDIP states that 'The Planning and Development Committee will consider the application at a regular or called meeting(s)...' 'In the case of a tax abatement request, after review of the request, the [Planning and Development] Committee will meet with representatives of each governing body of every taxing unit that the proposed reinvestment zone involves to determine each taxing unit's intentions of entering into a tax abatement.'

"I understand that these steps were not taken due to expediency and that construction was due to begin in September. As far as I know, the Planning and Development Committee never received or considered this application in order to make a recommendation to the full council, and the Committee never met with the school district, county or groundwater district as other taxing authorities per the requirements of this official city policy.

“If there is no clause in the policy that allows city staff to circumvent this procedure, then it seems to me there are two courses of action we could choose from, subject to legal interpretation by the city attorney, of course. We could send this to the P&D Committee as the procedure calls for, or we could vote to override the rules in this case and move on to action by the full council. I would not be in favor of circumventing the procedures established by previous councils. In my opinion, this needs to go to committee, just as the rules say it should. There are reasons why those rules of procedure were enacted and we need a good reason to disregard them.”

Betty Chew responded to the question of notification of other tax entities. First, the groundwater district does not qualify for tax abatement; however, all tax entities were notified in writing of this tax abatement filing. Chew confirmed that the tax abatement application was sent to the council as a whole. Mayor Jergins clarified that when this application was brought before the council at its August 16, 2005 meeting, no opposition was voiced against taking the matter directly to council and no action taken to refer the matter to the Planning and Development Committee. Jergins stated the procedure followed was taken in the interest of time.

It was noted that the Planning and Development Committee will consider amending the Economic Development Incentive Policy at a future meeting.

Malcolm Cross said that he is delighted that Hampton Inn is coming to Stephenville. However, he is concerned about not providing a level playing field since there are already hotels in Stephenville who did not receive any tax abatements.

Betty Chew responded that the tax abatement policy was adopted in 1995. No hotels have been built in Stephenville since the abatement policy was implemented. She also confirmed that the owner/applicant will be dedicating the Harbin Drive right of way as part of the construction project. She also confirmed that Hampton Inn would not be excused from collecting hotel occupancy taxes if granted this tax abatement.

Alan Nash pointed out that the hotel occupancy taxes are restricted funds that can only be used for certain things. “Abatements we give out of the general fund put a heavier burden on our residential and existing business taxpayers. So we need to be real careful about justifying abatements based on other revenues that it may bring in.”

Zivota Nikolic, owner/applicant, said that he estimated collection of hotel occupancy tax for a ten year period, which coincides with the tax abatement period, to be approximately \$1 million. The first year, it will probably be \$70-80,000. He said that there are expenses on their part which they incur, such as donating 0.8 acre of their land for the Harbin Drive right of way and contributing approximately \$350,000 for their part of its construction. Nikolic said that this business will draw new people to Stephenville, thereby increasing sales tax.

In answer to the question from Alan Nash if denial of the tax abatement would keep them from going forward with the project, Nikolic stated that they would continue with the project with some alterations of the present plan. They plan to have an enclosed pool area if granted the tax abatement.

**A. Public Hearing**

Mayor Jergins opened a public hearing.

Speaking in Favor of Abatement Request:

Mayor Jergins asked that remarks made by Zivota Nikolic be reported as being in favor of this tax abatement request.

Speaking in Opposition of Abatement Request:

Joe Cude, 1355 Lydia, Stephenville, TX, said that he agreed with Malcolm Cross' statements about a level playing field. He said that when he sat on the city council, he considered a tax abatement filed by Walgreen's. The council considered that Walgreen's would be in competition with pharmacies already doing business in Stephenville, and the council denied the request. Cude said that Walgreen's still came to Stephenville, and its construction included costly drainage improvements. He said that the council should not give an advantage to a new business over existing businesses.

Mayor Jergins closed the public hearing.

**B. Consider Adoption of Ordinance No. 2005-16**

Alan Nash made an impassioned argument against tax abatement stating that it is wrong to the taxpayers and to the long-standing businesses who have endured tax appraisal and tax rate increases every year to subsidize another business to come in and compete with their own people. He continued by saying, "I'm not against tax abatement for all retail. If there is a need that's not being met and we can attract a business that will not destroy our existing business, let's do everything we can to attract new business. But it is fundamentally unfair and outside the proper role of government for us to cherry-pick businesses and give preferential treatment in taxes. It's nothing against the Hampton Inn. I hope you make billions of dollars in our town. We ought not be in the business of generating revenue for the city. We ought to be in the business of protecting the interest of our citizens. We ought to be in the business of promoting our folks and promoting the prosperity of our folks."

MOTION by Alan Nash, second by Malcolm Cross, to deny the abatement request.

Barry Ratliff pointed out that only one person, and that being an individual citizen, spoke in opposition to this matter. He noted that no one from any of the existing hotels or motels came or spoke in opposition to this tax abatement request. He said that if the other hotel owners and managers had a problem with the request, he hopes they would have come forward.

Todd McEvoy stated that he prefers the proposed Hampton Inn at this location versus the mobile home park, which was formerly situated on subject property. McEvoy said that he considers the dedication of the street right of way, relocation of the sanitary sewer and construction of a quality facility as assets to be taken into account, and that is the reason McEvoy said he is in favor of the tax abatement.

Nash argued that the question is, "Are we going to use taxpayer dollars to help them improve their facility to have a competitive advantage over other local facilities?"

Murphy stated that we have a policy in place, and that policy is to serve a purpose. He said that when he looks at the numbers, the amount of hotel occupancy tax that will be gained far outweigh the amount of taxes abated.

Cyndi Godwin stated that she does not believe the existing hotels and motels will be adversely affected by Hampton Inn building in Stephenville. She acknowledged that there is a need for more hotel rooms in the city.

MOTION by Todd McEvoy, second by Barry Ratliff, to end debate. MOTION CARRIED by 5-2 vote.

MOTION FAILED to deny the request for tax abatement, by the following vote.

Ayes: Council members Cross, Johnson and Nash.

Noes: Council members Godwin, McEvoy, Murphy, and Ratliff.

MOTION by Todd McEvoy, second by Mark Murphy, to adopt Ordinance No. 2005-15 designating a 4-acre tract of land being all of Lot 26, Block 32, South Side Addition, as a reinvestment zone. MOTION CARRIED by the following vote:

Ayes: Council members Godwin, McEvoy, Murphy, and Ratliff.

Noes: Council members Cross, Johnson, and Nash

**C. Consider Authorizing the Mayor to Execute Tax Abatement Agreement between the City of Stephenville and Polserb LLC**

MOTION by Mark Murphy, second by Todd McEvoy, to authorize the mayor to execute the tax abatement agreement with Polserb LLC.

Ayes: Council members Godwin, McEvoy, Murphy, and Ratliff.

Noes: Council members Cross, Johnson, and Nash.

**VI. ANNUAL REPORT FROM PARKS AND RECREATION DEPARTMENT**

Drew Wells reported on the programs and events provided during the past year. Improvements were made to two of the city's parks, including playground equipment (50/50 participation with Optimist Club), sports pavilion restoration, and picnic shelter renovations at the Optimist Jaycee Park; and in City Park, the rebuilding of McCleskey softball field (50/50 participation with SISD), tennis court resurfacing, and restoration of the large pavilion. Activities in the Recreation Department: dance, 368 participants; swimming lessons, 117; swimming pool, 5,841; camps, 172. The total recreation participation in 2005 was 6,598. Athletic Programs included youth and adult league programs with a total participation of over 2,500. Special events participation was approximately 57,768. The highest attendance was for the Ricky Skaggs concert.

MOTION by Alan Nash, second by Andrew Johnson, to accept the Parks and Recreation Report. MOTION CARRIED by unanimous vote.

**VII. REPORT FROM SPECIAL LIBRARY COMMITTEE CONCERNING ARCHITECT INTERVIEWS**

Janis Petronis gave the report from this committee. She first recognized all of the committee members: council members Nancy Hunter and Andrew Johnson, Library Board Members Patricia Maxey and herself, and city staff members Drew Wells and Lynn Lloyd. The committee reviewed all of the proposals from interested architectural firms for the development of a public library facility and interviewed four of the seven firms, which submitted a proposal. Following deliberation by the committee, the members recommend the firm of Hidell and Associates of Carrollton. Petronis reported that this firm is very experienced in building libraries, and added, "Hands down, the most qualified."

Petronis stated that it became apparent during the interview process that there is an obvious trend in building multipurpose facilities. The committee, therefore, encouraged the council to consider a similar request for proposal directed toward a multipurpose facility.

MOTION by Todd McEvoy, second by Andrew Johnson, to refer this agenda item to the Planning and Development Committee for further consideration toward recommending a new committee to address a multi-use center. MOTION CARRIED by unanimous vote.

**VIII. CONSIDER ORDINANCE (No. 2005-17) ADOPTING THE BUDGET FOR FISCAL YEAR 2005-2006**

MOTION by Todd McEvoy, second by Andrew Johnson, to adopt Ordinance No. 2005-16. MOTION CARRIED by unanimous vote.

**IX. CONSIDER ORDINANCE NO. 2005-18 ADOPTING THE FEE SCHEDULE**

MOTION by Todd McEvoy, second by Alan Nash, to adopt Ordinance No. 2005-17.  
MOTION CARRIED by unanimous vote.

**X. PUBLIC HEARING CONCERNING THE TAX RATE FOR 2005**

Mayor Jergins opened a public hearing.

Don Ives, Finance Director, stated that as part of the statutory requirement, the council should announce the date, time and place of the meeting at which the vote on the tax rate will be held. Ives also noted that the second public hearing on the tax rate will be held on September 13, 2005, at 5:30 p.m. in the Council Chambers at Stephenville City Hall.

Mayor Jergins announced that the city council will take a vote on the tax rate at its meeting on Tuesday, September 20, 2005, at 5:30 p.m. in the Council Chambers at Stephenville City Hall.

Mayor Jergins closed the public hearing.

**XI. CONSENT AGENDA**

Todd McEvoy requested Item C be removed from the Consent Agenda. Alan Nash requested Item A be removed from the Consent Agenda. MOTION by Todd McEvoy, second by Barry Ratliff, to approve Items B and D of the Consent Agenda. MOTION CARRIED by unanimous roll call vote.

Todd McEvoy asked if the city was paying the \$40 per household fee for this service, and Kaiser explained that this is budgeted in the landfill account.

MOTION by Todd McEvoy, second by Andrew Johnson, to approve Item C of the Consent Agenda. MOTION CARRIED by roll call vote, with Mark Murphy abstaining.

Alan Nash asked that specific comments he made at the August 2, 2005 council meeting be included in those minutes. He furnished the city secretary with the specific statements.

MOTION by Mark Murphy, second by Cyndi Godwin, to approve Item A, as amended, of the Consent Agenda. MOTION CARRIED by unanimous roll call vote.

**A. Approval of Minutes of Regular Council Meeting on August 2, 2005**

**B. Approval of Minutes of Regular Council Meeting on August 16, 2005**

- C. Approval of Interlocal Agreement with the City of Fort Worth for Household Hazardous Waste Program**
- D. Approval of Purchase of Motorola Radio Equipment**

## **XII. COMMENTS BY CITY ADMINISTRATOR**

Phosphorous removal project at the Wastewater Treatment Plant is 96% complete. The 2005 Street Reconstruction Project is nearing completion. He reminded council members of upcoming council and committee meetings.

Kaiser reported that the City of Stephenville has been placed on emergency standby to provide for emergency shelter support for victims of Hurricane Katrina. The city has authorized two 6500 gallon loads of potable water, which will be transported by the Dairy Farmers of America to the distressed area. Also, the city has authorized a two-man team of Stephenville firefighters and a two-man team of police officers with a patrol car to be available on request.

## **XIII. COMMENTS BY COUNCIL MEMBERS**

Todd McEvoy asked city staff to check and evaluate the speed limits signs on Frey Street from Harbin Drive to the Northwest Loop.

Malcolm Cross asked the city administrator to look into the matter of multiple non-related persons living in the same house in R-1 Single-Family Dwelling Districts.

Mark Murphy submitted in writing the following:

1. "I would like to commend Councilman Nancy Hunter and others for their leadership in the local Katrina relief efforts. She has done a fabulous job and many, many people have volunteered time, money, items and blood to this worthy cause. I thank the people of Stephenville for their tireless work and urge everyone to not let up in this effort. It makes me proud to live in a town with people like you where we know God has blessed us, and we can demonstrate our appreciation of these blessings by helping others.
2. "What is up with the Senior Citizens Center? I know that the floor cave-ins have been addressed, but is it true that a ceiling fan fell to the floor the other night? I was appalled when I heard about that. We need to get this solved quickly. This should be top priority. The place needs a safety review of some sort right away, at a minimum, and no one should use the place if it is dangerous. Does it pass inspection by our own building codes and standards? For the longer term, we need a new facility, whether part of a multi-purpose complex, or a stand-alone Senior Center.

3. "Citizens have pointed out to me that the Methodist Branch drainage trench just South of Washington St. needs better attention. It is full of trash and the weeds stay tall. Until we construct the new stormwater drains, this area needs some better attention."

**XIV. ADJOURN**

MOTION by Todd McEvoy, second by Andrew Johnson, to adjourn the meeting.  
MOTION CARRIED by unanimous vote at 8:56 p.m.

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Russell E. Jergins, Mayor

ATTEST:

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Cindy L. Stafford, City Secretary