

City Council
April 5, 2010

A regular meeting of the Mayor and City Council of the City of Waxahachie, Texas was held in the Council Chamber at City Hall, 401 S. Rogers on Monday, April 5, 2010, at 7:00 p.m.

Council Members Present: Ron Wilkinson, Mayor
N.B. (Buck) Jordan, Mayor Pro Tem
Chuck Beatty, Councilman
Joe Jenkins, Councilman
John Wray, Councilman

Others Present: Paul Stevens, City Manager
Michael Scott, Assistant City Manager
Steve Chapman, City Attorney
Lori Saunders, City Secretary

Mayor Ron Wilkinson called the meeting to order and Councilman Joe Jenkins gave the invocation and led the Pledge of Allegiance.

CONSENT AGENDA:

- a. Minutes of the regular City Council meeting of March 15, 2010
- b. Minutes of the Planning and Zoning Commission meeting of March 24, 2010
- c. Minutes of the Heritage Preservation Commission meeting of February 10, 2010
- d. Minutes of the Senior Center Advisory Committee meeting of February 10, 2010

Councilman Chuck Beatty moved to approve Items a. through d. on the Consent Agenda.
Councilman John Wray seconded. The vote was as follows:

Ayes: Ron Wilkinson
Chuck Beatty
Joe Jenkins
John Wray

Noes: None

Absent: Buck Jordan

The motion carried.

Mayor Ron Wilkinson read a Proclamation designating April 11-18, 2010 as “Western Heritage Week” and presented it to Mr. Tim Eaton and Mr. Mark Miller. Mr. Eaton announced during Western Heritage Weekend the Texas Theater will have western music, cowboy poetry at the Rogers Hotel, chuck wagons, gunfight shows, western and cowboy vendors, along with the great shopping and food in the downtown area. He noted one-half of the Saturday proceeds will be donated to the Gingerbread House.

Councilman Joe Jenkins introduce (in the absence of Mayor Pro Tem Buck Jordan) Mr. Ray Pike as the Honorary Councilmember for the month of April. He announced Mr. Pike is the Publisher of the Waxahachie Dailey Light and is responsible for six weekly publications along with a commercial printing operation. Mr. Pike has been in the newspaper industry since 1968 and has called home to several different cities along his newspaper career. For the past four years, Mr. Pike has called Waxahachie home. He is married to Lynn and has one grown son, two dogs and a cat. Mr. Pike’s hobbies are motorcycling, woodworking and golf.

Mr. Ira Tenpenny, 109 Rosa, Waxahachie, reported he has witnessed BB guns being shot in his neighborhood and asked the Council to consider an ordinance regulating BB guns. He noted machine type BB guns are now available and expressed his concern with the danger of these guns. He expressed concern with the supervision of children with BB guns.

Police Chief Chuck Edge reported, to his knowledge, the police department is not having any issues with BB guns and noted the law notes that BB guns are to be kept on the owners property.

Councilman Joe Jenkins asked if other cities have BB gun ordinances. City Manager Paul Stevens noted City Staff will review other cities ordinances on BB gun guidelines.

City Manager Paul Stevens reported City Hall is having roof leaks which have caused some minor interior damage. He noted he spoke to Mr. Dick Tallechet, consultant on the roof repairs at the Civic Center and Mr. Tallechet recommended Exterior Consulting Innovations (ECI). Mr. Stevens reported ECI reviewed City Hall and the existing leaks aren’t just related to the roof, but to the exterior of the building and are occurring in the original building as well as the addition. ECI will provide the City with an evaluation report that will include: a summary of existing conditions and construction; a professional opinion of observed defects, deficiencies and causes; an evaluation of repair alternatives with cost analysis; project recommendations and priorities. Mr. Stevens noted the cost of this service is \$20,494.00 and reported after the evaluation; the City will have to bid out the repairs.

Mr. Michael Tolson, President of Exterior Consulting Innovations, announced his company is a professional consulting and design firm that specializes in the exterior restoration of buildings

and new construction design review and noted he has been in business for twenty-seven (27) years. He reviewed several photos of City Hall depicting water damage areas and explained that his firm will do some constructive excavation to see what needs to be repaired by taking components from the building for testing.

Mayor Wilkinson asked if the contract had a completion date. Mr. Tolson explained it will take approximately two weeks to do the field work and approximately two weeks to prepare the report and have it back to City Council. Mayor Wilkinson recommended a completion date in the contract.

Councilman John Wray asked if the monies to be spent are from the building maintenance fund and Mr. Stevens reported the money will come from the building maintenance budget.

Councilman Joe Jenkins moved to hire Exterior Consulting Innovations for a fee of \$20,494.00 and contract to include a negotiated completion date. Councilman John Wray seconded, **All Ayes.**

Mayor Ron Wilkinson opened the Public Hearing on Zoning Amendment Request No. 2010-04: Request by Kristina Bellows, for a Specific Use Permit within a Single Family (SF) Zoning District for registered in home child care to be located at 124 Horseshoe Bend, being 0.1683 acres, Lot 13, Block 2, Garden Valley Ranch Phase 1– Owner: Kristina Bellows.

Ms. Kristina Bellows, 124 Horseshoe Bend, Waxahachie, requested approval for a family home child care. She reported, based on the size of her home and yard, the State will allow for six (6) children and noted the children will be three, four and five year olds.

Planning Director Clyde Melick noted the State will regulate for six (6) and sibling can be in addition to the ones she is teaching. He noted if the Specific Use Permit is approved the child care will be regulated by the State.

Councilman Joe Jenkins asked if it conflicted with the Homeowners Association Bylaws. Ms. Bellows noted Mr. Bill Cleaver, President of the Homeowners Association and the Board reviewed the bylaws and found nothing opposing this request.

There being no others to speak for or against Zoning Amendment Request No. 2010-04, Mayor Wilkinson closed the Public Hearing.

City Attorney Steve Chapman presented Ordinance No. 2566

ORDINANCE NO. 2566

AN ORDINANCE AUTHORIZING A SPECIFIC USE PERMIT FOR LOT 13 IN BLOCK 2, GARDEN VALLEY RANCH, PHASE I, AN ADDITION TO THE CITY OF WAXAHACHIE, ELLIS COUNTY, TEXAS, LOCALLY KNOWN AS 124 HORSESHOE BEND, WAXAHACHIE, ELLIS COUNTY, TEXAS, BEING SINGLE FAMILY (SF) TO SINGLE FAMILY WITH SPECIFIC USE PERMIT (SF w/SUP), FOR THE PURPOSE OF ALLOWING A STATE REGISTERED IN-HOME CHILD CARE FACILITY, AND ORDERING THE CHANGING OF THE ZONING MAP THEREOF IN ACCORDANCE WITH SAID CHANGE.

Councilman John Wray moved to approve Ordinance No. 2566 as presented, subject to Staff Comments. Councilman Joe Jenkins seconded. The vote was as follows:

Ayes: Buck Jordan
 Chuck Beatty
 Joe Jenkins
 John Wray

Noes: Ron Wilkinson

The motion carried.

Mayor Ron Wilkinson opened the Public Hearing on a request from Christopher S. Hallabough for the Replat of Harriet I. Nowlin Subdivision, Block 19, Lot 5A, Lot 5B, Lot 5C and Lot 6AR being a Replat of part of Block 19, of the Harriet I. Nowlin Subdivision, located on Business Hwy. 287- Owner: Christopher S. Hallabough (RP 2010-03).

Planning Director Clyde Melick reported Mr. Christopher Hallabough did meet all technical requirements and had no issues with Staff Comments. He noted the Planning and Zoning recommended approval.

There being no others to speak for or against Replat 2010-03, Mayor Wilkinson closed the Public Hearing.

Councilman John Wray moved to approve a request from Christopher S. Hallabough for the Replat of Harriet I. Nowlin Subdivision, Block 19, Lot 5A, Lot 5B, Lot 5C and Lot 6AR being a Replat of part of Block 19, of the Harriet I. Nowlin Subdivision, located on Business Hwy. 287- Owner: Christopher S. Hallabough (RP 2010-03), subject to Staff Comments. Mayor Pro Tem Buck Jordan seconded, **All Ayes.**

Mayor Wilkinson announced consideration of a variance by Your Beauty Supply and More for beer and wine retailers off-premise permit located at 516 Wyatt Street has been removed from the agenda per the request of the Applicant.

Human Resources Director Gayle Sims reported with the recent retirement of Russell Poyner and promotion of Todd Woodruff, the classified positions under Civil Service has reduced the Sergeants from seven (7) to six (6) and increased Police Patrol Officer from forty (40) to forty-one (41). She presented the following Ordinance to decrease the number of Sergeants and increase number of Patrol Officer in the Police Department Civil Service Classified Position list.

ORDINANCE NO. 2567

AN ORDINANCE OF THE CITY OF WAXAHACHIE, TEXAS, ESTABLISHING AND RE-ESTABLISHING CLASSIFIED POSITIONS UNDER CIVIL SERVICE IN THE FIRE AND POLICE DEPARTMENTS, REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING AN EFFECTIVE DATE.

Councilman Chuck Beatty moved to approve Ordinance No. 2567 as presented. Mayor Pro Tem Buck Jordan seconded, **All Ayes.**

Economic Development Director Doug Barnes reported the City is a member of the Steering Committee of Cities served by Oncor and has endorsed legislative efforts pertaining to the Sunset Commission's review of the Public Utility Commission and the Electric Reliability Council of Texas. The Sunset agency's recommendations pertaining to both organizations are expected to form the basis of bills during the 82nd Legislative Session in 2011. The Steering Committee will offer all Resolutions of its members during the Sunset hearings to apprise lawmakers of Cities' perspective on how to make the electric market more competitive and beneficial to consumers.

Mr. Barnes presented the following Resolution:

RESOLUTION NO. 1138

A RESOLUTION OF THE CITY WAXAHACHIE, TEXAS, ENDORSING CERTAIN LEGISLATIVE CHANGES RELATING TO THE SUNSET REVIEW OF THE TEXAS PUBLIC UTILITY COMMISSION AND THE SPECIAL PURPOSE REVIEW OF THE ELECTRIC RELIABILITY COUNCIL OF TEXAS.

WHEREAS, the City of Waxahachie ("City") is a member of the Steering Committee

of Cities Served by Oncor created by 146 cities in the Oncor service territory to protect the interests of cities and their residents with regard to electric rates; and

WHEREAS, affordable and reliable power means economic development for our cities and a better standard of living for our citizens; and

WHEREAS, by deregulating the retail electric market, Senate Bill 7 of 1999 (“SB 7”) was intended to allow competitive forces to drive down the price of electricity; and

WHEREAS, the Texas electric retail market has failed to develop into a truly competitive market as envisioned by the Texas Legislature; and

WHEREAS, competition has failed to develop in the deregulated electric market because certain power generation companies own or control enough generation capacity to exercise market power to the detriment of customers and non-affiliated retail electric providers; and

WHEREAS, alleged market power abuse inquiries conducted by the Public Utility Commission (“PUC”) are hampered by the lack of adequate resources because the parties hurt by the illegal activity, like cities, are not allowed to participate in the investigations; and

WHEREAS, the managers at the Electric Reliability Council of Texas (“ERCOT”) have failed to adequately manage expenses and operations. The most obvious example is ERCOT’s implementation of a nodal market — a project now four years behind schedule and expected to cost at least eight times original estimates; and

WHEREAS, the Sunset Advisory Commission is expected to recommend legislative reforms for the PUC and ERCOT; and

WHEREAS, the City supports all such legislative reforms that promote a truly healthy electric market where competition can flourish and consumers can save money; and

WHEREAS, the City endorses efforts proposed by the Steering Committee that enhance electric competition, implement the original intent of SB 7, and reduce costs to the City and its residents.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WAXAHACHIE, TEXAS, THAT:

I.

The City urges reforming the PUC and ERCOT in such a way as to enhance competition in the deregulated market, to promote consumer protection and to encourage the sale of affordable electricity. Specifically, the City urges the Texas Legislature, as it considers changes recommended by the Sunset Advisory Commission, to adopt reforms consistent with the following:

- All generators, regardless of size, should explicitly be barred from the unlawful exercise of market power.
- Entities such as municipalities, commercial customers or retail electric providers harmed by wholesale market abuse should be given explicit standing to participate in market power abuse enforcement actions brought by the PUC.
- Fines should be increased for market abuses in such a way that the PUC can order full restitution to the market, market participants, or parties injured by the violation.
- Activities defined as market abuse by the Federal Energy Regulatory Commission should be prohibited.

- The statutory purpose of the PUC should be modified to require it to harmonize its pursuit of competition with the protection of consumers of electricity.
- As a condition of conducting business within Texas, competitive Retail Electric Providers (“REPs”) should be required to include among their offers one standard electricity package that has PUC-approved terms and conditions.
- The number of consumer representatives on the ERCOT board should be increased from the current three members, to six.
- The Office of the Comptroller should be assigned a seat on the board as well as on appropriate budget oversight panels within ERCOT. The Comptroller’s office should be given access to all ERCOT contracting material and be charged with conducting a bi-annual performance review of ERCOT.
- The PUC should be required to pre-approve all debt financing by ERCOT.

II.

A copy of the resolution shall be sent to the elected lawmakers representing the City’s interests in the Texas House and Senate and to the legal counsel of the Steering Committee.

PRESENTED AND PASSED on this 5th day of April, 2010, by a vote of 5 ayes and 0 nays at a regular meeting of the City Council of the City of Waxahachie, Texas.

Councilman John Wray moved to approve Resolution No. 1138 as presented. Councilman Joe Jenkins seconded, **All Ayes.**

Utility Director David Bailey presented Ordinance No. 2568 amending use of the public sewers. He explained the amendments were necessary because of the changes to the City’s technically based local limits and to meet the EPA’s pretreatment streamlining requirements. He introduced his staff that completed the amendments: Joel Otts, Steve Brigman and Everett Viar and thanked them for their extensive research on this project.

ORDINANCE NO. 2568

AN ORDINANCE AMENDING THE WAXAHACHIE CITY CODE SECTION 33-52 THROUGH SECTION 33-67 REGULATING THE DISPOSAL OF INDUSTRIAL WASTE AND THE USE OF PUBLIC SEWERS; PROVIDING FOR MODES OF DISPOSAL; PROVIDING FOR THE DISPOSITION OF INDUSTRIAL WASTE; PROVIDING FOR FEES; PROVIDING FOR PENALTIES FOR VIOLATION; PROVIDING FOR SAVING CLAUSE; AND REPEALING ALL ORDINANCES IN CONFLICT HERewith AND SETTING AN EFFECTIVE DATE.

Councilman Chuck Beatty moved to approve Ordinance No. 2568 as presented. Mayor Pro Tem Buck Jordan seconded, **All Ayes.**

Utility Director David Bailey presented Resolution No. 1139 for continued commitment to support the Texas Commission on Environmental Quality through enforcement and funding of

the Industrial Pretreatment Program requirements of the city's Use of the Public Sewer Ordinance.

RESOLUTION NO. 1139

“A RESOLUTION OF THE CITY OF WAXAHACHIE ENDORSING WASTEWATER TREATMENT; AND, COMMITTING THE CITY TO PROPER ENFORCEMENT AND FUNDING THEREOF.”

WHEREAS, the Mayor and City Council of the City of Waxahachie, adopted Ordinance No. 1370 in the year 1983 establishing uniform requirements for direct and indirect contributors into the wastewater collection system, establishing discharge prohibitions, adopting standards, providing for recovery of costs requiring wastewater contribution permits of significant users, providing for periodic compliance reports, reports, providing penalties and for revocation of permits; and

WHEREAS, on the 7th day of November, 1994, the Mayor and City Council of the City of Waxahachie adopted Ordinance No. 1820 updating, reinforcing and reaffirming the matters covered in Ordinance No. 1370; and

WHEREAS, the Mayor and City Council by Resolution No 865 continued that commitment;

WHEREAS, the Mayor and City Council desire to continue that commitment; and

WHEREAS, the Mayor and City Council of the City of Waxahachie desire to specifically go on record to endorse their continuing commitment to support enforcement and funding of industrial wastewater pretreatment requirements.

NOW, THEREFORE, BE IT RESOLVED THAT THE MAYOR AND CITY COUNCIL OF THE CITY OF WAXAHACHIE, do hereby announce and state of record their continued commitment to support enforcement and provide funding through industrial user surcharge for wastewater pretreatment and related activities.

Councilman John Wray moved to approve Resolution No. 1139 as presented. Councilman Chuck Beatty seconded, **All Ayes.**

Finance Director Charles Harris reported an official from the State Comptroller's Tax Allocation Section notified him that approximately a year ago taxes were charged to and paid by a customer who had filed a tax exemption certificate. He noted while there was initially some question regarding the validity of the exemption request, the taxpayer paid sales tax and remitted the collections to the State. Eventually the dispute was resolved in favor of the tax payer and all taxes paid after the date of the initial request have been refunded by the State. Now the State will look to the City for repayment of taxes previously remitted to us. Mr. Harris reported the refund sales tax is in the amount of \$310,044.96. He noted the General Funds share of the

refund will be approximately \$232,534 and the Waxahachie Community Development Corporation share will be approximately \$77,511. Mr. Harris noted he is awaiting a more precise allocation from the State.

CITIZENS PETITIONS AND REQUEST

Mr. Ray Pike thanked Mayor Pro Tem Buck Jordan for asking him to serve as the Honorary Councilmember for the month of April.

COMMENTS BY MAYOR, CITY COUNCIL, CITY ATTORNEY AND CITY MANAGER

City Manager Paul Stevens updated Council on stimulus funds the Army Corps of Engineer's received to do repairs at Bardwell Lake. He reported in previous meetings with the Army Corps of Engineer's the City of Waxahachie would be required to subsidize the funding and be required to pay back the funds in one year. He announced the Army Corps of Engineer will amortize the payments over a thirty (30) year period which will have a positive impact on the City's water and wastewater budget. Mr. Stevens noted he will have more details in the near future.

Public Relations Manager Amy Hollywood announced on April 27, 2010 the Senior Center will hold a Senior/Senior Prom. She noted approximately forty high school senior students will be participating.

There being no further business, the meeting adjourned at 8:36 p.m.

Respectfully submitted,

Lori Saunders
City Secretary