

MINUTES

BOARD OF COMMISSIONERS

The Board of Commissioners of the City of Burkburnett, Texas met in a regular called meeting on Monday, June 21, 2010 at 7:00 p.m. in the Council Chambers of the City Hall, 501 Sheppard Road, Burkburnett, Texas. The meeting was open to the public with notice being given in compliance with the Open Meeting Act. The following Commissioners were present:

Carl Law	Mayor
Charlene Lewis	Mayor Pro-Tem
Bill Lindenborn	Commissioner
Ted Kwas	Commissioner
Josh Andrajack	Commissioner
Chase Thronton	Commissioner
Raymond Holland	Commissioner

Other's present: Mike Slye, City Manager; Trish Holley, City Clerk; Mike Whaley, Director of Public Works; Rodney Roberts, Parks/Recreation Director; Chief Mike Tracy, Police Chief and Susan Morris, Wichita Falls Public Health District. Rick Sims, City Attorney Jay Cantrell.

Other's present: Glen Hutchinson, Clay Gahagan, Yvette Thornton, Paula Smith, Brad & Carrie Garrett, Wade Medbery, Mike Thornton, Kathy Patterson, Jack McMullen, Michael Bunton, Arnie & Nancy Wells, Pat Dollar, Mark Jackson, Charles Kernott, Tina Jackson, William Jackson, Pennie & Jerry Hayes, Mike Crowley, Susan Mitchell, Charles Jackson, Flora Holland, Warren Fretz, Bobby Crozier, Kathy Dickey, Ron Clarke, Thomas Watson, Jack Baber, Joyce Snyder, Curtis Salyer, Kelly & Gary Bolen, Stephanie Berrryman, Dee & Ed Wood, Brenda Whaley, Carol Holland, Shawna Anderson, Robert Farmer, Susie & Brooks Hill, Jr., F.T. Felty, Bill Vincent, Trudy Thompson, Daniel McMullen, Cindy Guinn, Susan Disney, Sharon Bankhead, Lee Harvey, Sr., Nova Dickson, Denise Kirkpatrick, Brian Frances, Barbara McNeese, Laura Gibson, Charles Finley, S. Liza Toole, Shae Whitlock, Jeff Krc, Kevin Blackwood, Karla Blackwood and Patricia Dominquez.

Jeff Bromley representing Burkburnett Informer Star was present. Channel 6 news was present.

Item 1. Mayor Law called the meeting to order and welcomed the visitors.

Item 2. Invocation was given by Reverend Kenneth MacKenzie, Vicar of the St. John the Divine Episcopal Church.

Item 3. The Pledge of Allegiance was led by Commissioner Lewis.

Item 4. Consent Agenda.

- A. Approval of minutes from May 11th, May 17th workshop session and May 17, 2010 regular meeting.

Motion was made by Commissioner Lewis, seconded by Commissioner Thornton to approve Consent Agenda Item 4A. Motion carried unanimously.

Item 5. Cemetery Committee update-Denise Kirkpatrick.

Denise Kirkpatrick, 716 Sunset, addressed the Mayor and Commissioners. Ms. Kirkpatrick, Chair of the Cemetery Committee introduced the Committee members: Ron Clarke-secretary, Nova Dickson, Brenda Whaley, Shannon Waitman. Ms. Kirkpatrick thanked the Commissioners for allowing them to represent the City and the Burkburnett Memorial Cemetery. Ms. Kirkpatrick stated the board had met and discussed the following: space price adjustment-she stated if allowed to lower the price for approximately 90 days, it might encourage citizens to purchase the property and with the increase of sales start the Phase III of the cemetery. The committee also discussed the potential of purchasing the property that has the old skating rink, clean it up and possibly have a pavilion placed there for services.

Ms. Kirkpatrick the committee would like to recommend approving the following to serve on the Cemetery Committee. They are : Paula Smith and Kathy Patterson.

Ms. Kirkpatrick discussed the vision for Phase III for the Burkburnett Memorial Cemetery that would include: an office, restrooms, handicap accessibility, pavilion, roads with names and a map of the facility.

Ms. Kirkpatrick thanked the Mayor and Commissioners for allowing them to come and speak and address the future plans for the Burkburnett Memorial Cemetery.

Item 6. Motion was made by Commissioner Thornton, seconded by Commissioner Kwas to approve the appointment of Paula Smith and Kathy Patterson to serve on the Burkburnett Memorial Cemetery Committee. Motion carried unanimously.

Item 7. Mayor Law asked David Strayhorn, President of the Tax Increment Finance (TIF) Board to speak concerning the I44 Sewer Utility project.

David Strayhorn, 1414 Chaparral, Burkburnett addressed the Mayor and Commissioners. Mr. Strayhorn asked the Board to consider alternative financing for the I44 Corridor sewer project. Mr. Strayhorn stated the estimated cost is \$553,950.00 and the TIF has \$159,000 leaving a balance to be financed of \$500,000 with a 15 year pay off.

The TIF Zone Board is charged with building infrastructure in the corridor as delineated, and I can't think of a better project than the sewer project. I'm here tonight asking if we have to wait to November to call an election or can we fund the project in a different way. I'm concerned because Wichita County could pull their share of obligations/revenues that is being paid to the TIF Fund.

Commissioner Thornton stated he understood the petition was to place this on the ballot and therefore we have no choice but to wait and put it on the November ballot for a vote.

Wade Medbery, 1018 Pawhuska, Burkburnett addressed the Mayor and Commissioners and stated the monies going to the TIF Zone is nothing more than our tax dollars being diverted from one area to another, there are other ways to spend TIF monies as long as it is in the TIF zone. The people spoke and do not want the City to incur debt; I'd wait and get an Attorney General's opinion before moving forward.

Motion was made by Commissioner Andrajack, seconded by Commissioner Thornton to defer this action until getting a legal opinion. Motion carried unanimously.

Item 8. Ordinance Number 782 was presented in its entirety. Caption of same being:

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS ESTABLISHING REGULATIONS GOVERNING THE OPERATION OF LODGING ESTABLISHMENTS IN BURKBURNETT; PROVIDING FOR SEVERABILITY, FINDING THAT THIS ORDINANCE WAS ADOPTED AT AN OPEN MEETING AND FOR AN EFFECTIVE DATE.

Susan Morris, Wichita Falls/Wichita County Public Health District addressed the Mayor and Commissioners. Ms. Morris explained the ordinance would allow the Health District to conduct inspections of all the hotel/motels in Burkburnett. There would also be a fee attached for the service.

Jack McMullen, 1202 E. Third Street, Burkburnett addressed the Board. Mr. McMullen asked if this would include the inspection of the KOA Campgrounds and feel like they should not be included.

Ms. Morris stated that would be included due to the individual cabins that will be located on the properties which are rented out and the Blacksox Facility will probably fall into this category as well.

Motion was made by Commissioner Andrajack, seconded by Commissioner Lindenborn to approve Ordinance Number 782 as presented.

Ayes: Mayor Law, Commissioners: Andrajack and Lindenborn

Nays: Commissioners Lewis, Kwas, Thornton and Holland

Abstained: None
Motion failed.

Item 9. Motion was made by Commissioner Lewis, seconded by Commissioner Holland to approve the following members for the Burkburnett Senior Citizen's Activity Center: 1)Becky Trammel-President; Marilyn Keck-Vice President; 2)Board Members-Margit Bale, Don Freeman, Mike Crowley, Deanna Schroder, Russell Roberts and Charlie McCullough; 3)removal from the Board of Directors-Albert Alexander, Kenneth Alexander, Billy Bob Manzel, Pat Dollar, Ruth Menz, Cissie Neal, Susan Rozzell and Dan Schaffner. Motion carried unanimously.

Item 10. Ordinance Number 784 was presented in its entirety. Caption of same being:

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS AMENDING THE FISCAL YEAR 2010 GENERAL BUDGET TO REFLECT THE ADJUSTMENT OF EXPENDITURES FOR PROFESSIONAL SERVICES RENDERED FOR THE BURKBURNETT COMMUNITY CENTER RENOVATION PROJECT PROVIDED TO SAID CITY; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

Mr. Slye stated that Commissioners Lewis and Lindenborn requested the architectural fees incurred for the Community Center renovation design work be listed on the agenda. In order to pay in this fiscal year budget, an ordinance amending the budget is required.

Commissioner Lewis stated she asked Rick Sims from Bundy, Young, Sims & Potter come and speak tonight.

Rick Sims addressed the Mayor and Commissioners and gave a brief history of his services here in Burkburnett. He also reviewed the steps in the architectural process.

Commissioner Thornton asked when and who told you to go forward with the drawings or conceptual plans, the full plans, I'm asking because on October 19, the minutes state for the proposed conceptual plans, the HOT committee meeting says for the potential design for the renovations, they don't have that authority, the Board of Commissioners has the authority. We have two issues at hand, you acted on good faith to perform your duties to provide a good job, on the other hand, our legislative procedures have been butchered and to use tax payer's money to pay for this service is unacceptable, the person who told you to move forward should pay the fee.

The following citizens spoke: Michael Thornton, 120 Ave D stated if the Charter would be followed, the city would not be in the mess it is, Mr. Sims should be paid, the man responsible for this should be held accountable.

Wade Medbery, 1018 Pawhuska stated he has reviewed data received through Open Records Request and couldn't find where the Commissioners ever gave the authority to start the renovation on the Community Center, the HOT Committee met on October 8 with several Commissioners in attendance, according to the minutes, they gave Mr. Sims some direction, then on October 19 the Commissioners approved the conceptual plans, looks like they are covering something up, the money hasn't been appropriated, where are you going to pay for this, from what I've been told, the city has money missing from the gas franchise, they paid the state over \$28,000 for road work and with less than \$500.00 surplus in the budget, how are these things being paid.

Charles Jackson, 1118 Bishop, asked how the plans were going to be paid for to begin with, and didn't the voters say they wanted this issue to be brought to a vote and then they would decide as to whether Mr. Sims should be paid and who authorized Mr. Sims to start working on the full set of plans.

Mr. Slye stated the fees would have been paid out of debt proceeds, the petition was to stop the issuance of debt, and it will be up to the Commissioners as to whether they call for an election. The petition was to stop the issuance, not call an election; the Commissioners authorized Mr. Sims to start working on the plans for the renovations.

Michael Bunton, 700 Glendale asked two of the Commissioners if their company would allow them to commit to this amount of money without a contract and where will this money come from. I think someone needs to be held responsible and make that person pay for this, I've searched the laws and from what Mr. Slye stated that it was illegal to have professional service contracts, I can't find where it says this only that it talks about having a contract.

Commissioner Andrajack stated he doesn't get involved with that aspect of his business and could not answer his first question.

Commissioner Thornton stated that Mr. Slye stated the Commissioners approved this, but in the minutes it states they approved the conceptual plans and the HOT committee approved the potential design, you said other boards have to come to us before final approval, and if the Commissioners approved this, then the minutes are incorrect and the City Clerk should be reprimanded for not having the minutes correct.

Mr. Slye explained it has been the practice to have action minutes and I encourage you to come and listen to the tape from that meeting.

Commissioner Kwas stated that a Commissioner that used to be on the board asked if this would cost the city any money and Mr. Slye stated no.

Commissioner Thornton asked if the fees could be taken from the person who is responsible instead of the general fund.

Commissioner Lindenborn stated then it would take a long time for it to be paid because it would be coming from the Commissioners pay of \$9.23 because we did approve this, I didn't miss any meetings and the Commissioners did approve this action.

After much discussion, Mayor Law asked for a motion. Commissioner Lewis made a motion to approve Ordinance Number 784, seconded by Commissioner Lindenborn.

Commissioner Kwas made a motion to amend the first motion that the monies be taken from Mr. Slye's car allowance instead of the General Fund, seconded by Commissioner Thornton.

Based on the opinion from Mr. Cantrell, the motion to amend the first motion contains an issue that is not in the Ordinance or on the agenda and to withdraw the amendment motion.

Mayor Law stated a motion was on the floor with a second to approve Ordinance Number 784.

Ayes: Mayor Law, Commissioners: Lewis, Lindenborn and Andrajack.

Nays: Commissioners Kwas, Thornton and Holland.

Abstained: none

Item 11. Resolution Number 485. A resolution defining city manager's duties in regard to the 'advice and consent' per City Charter Article IV, Section 5 (c) request by Commissioner Kwas. The resolution was presented in its entirety.

The following citizens spoke against approving the resolution clarifying the city manager's duties in regard to the 'advice and consent': Michael Bunton, 700 Glendale, Michael Thornton, 120 Ave D.

Motion was made by Commissioner Andrajack, seconded by Commissioner Lindenborn to approve Resolution Number 485 as presented.

Ayes: Mayor Law, Commissioners: Andrajack, Lindenborn and Kwas

Nays: Commissioners: Lewis, Thornton and Holland

Abstained: none

Motion passed.

Item 12. Ordinance Number 783 was presented in its entirety. Caption of same being:

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS ESTABLISHING CHILD SAFETY AREAS; MAKING IT UNLAWFUL FOR CERTAIN SEXUAL OFFENDERS TO RESIDE WITHIN 1,000 FEET OF CHILD SAFETY AREAS OR TO LOITER WITHIN A CHILD SAFETY AREA OR ON PUBLIC WAYS WITHIN 300 FEET OF CHILD SAFETY AREAS; PROHIBITING CERTAIN SEX OFFENDERS FROM INVITING CHILDREN TO TRICK OR TREAT; ESTABLISHING RESTRICTIONS ON THE RENTAL OF PROPERTY TO BE OCCUPIED BY CERTAIN SEX OFFENDERS AND A DUTY TO ADVISE PERSONS RENTING PROPERTY IF CERTAIN SEX OFFENDERS WILL OCCUPY THE PREMISES; PROVIDING EVIDENTIARY RULES FOR THE ADMINISTRATION OF THESE REGULATIONS; PROVIDING EXCEPTIONS TO THESE REGULATIONS; ESTABLISHING AN OFFENSE AND PENALTIES FOR VIOLATIONS OF THE ORDINANCE; PROVIDING FOR SEVERABILITY, FINDING THAT THIS ORDINANCE WAS ADOPTED AT AN OPEN MEETING AND ESTABLISHING AN EFFECTIVE DATE.

After much discussion, motion was made by Commissioner Andrajack, seconded by Commissioner Thornton to defer the ordinance until the next regular meeting with corrections allowing an offender to go to church and to take a child to school/parent teacher conference without violating the ordinance. Motion carried unanimously.

Item 13. Resolution Number 484 was presented in its entirety. A resolution for continued participation with the Steering Committee of Cities served by OnCor and payment for such participation.

Motion was made by Commissioner Lewis, seconded by Commissioner Lindenborn to approve Resolution Number 484 as presented.

Ayes: Mayor Law, Commissioners: Lewis, Lindenborn, Kwas and Andrajack
Nays: Commissioners Thornton and Holland
Abstained: None

Motion passed.

Item 14. Commissioner Kwas requested to discuss and act on a possible conflict of interest during the consideration of the Planning & Zoning Commission Case Number 2010-82 application of 111 North Avenue C meeting on May 17, 2010.

Commissioner Kwas stated he feels there was a conflict of interest but with Mr. Cantrell legal opinion it might not be, however, I think this is a moral issue. I don't know why this wasn't approved at the last meeting, the lot can only be used for a mobile home, we could have spot zoned this, there are other areas in town

that have been granted zoning that do not meet setback requirements. You not allowing a property owner to use this which is taking money out of her pocket, the lot can't be used for anything else. I don't understand it.

Commissioner Thornton asked if this was in reference to Commissioner Andrajack's father sitting on the P&Z board.

Commissioner Kwas said yes. Commissioner Thornton stated he was also concerned because it being an immediate family member, and for their decision to be overturned, it comes before the Commissioners. Can we take a vote to overturn how a Commissioner voted?

City Attorney, Jay Cantrell stated he does not believe you can, you go by Roberts Rules & Order, I don't think you have any type of right to keep a member from voting, and I don't know of any state laws that would allow this type of action.

Stephanie Berryman, 209 S Ave D #24 addressed the Mayor and Commissioners. I've read over the ordinances and laws and I understand it may not be breaking any laws, however I feel that Commissioner Andrajack should have stated since his father is on the P&Z board, that he should have stepped out while a vote was taken, I do think it was a conflict of interest for him to vote on this issue knowing his father sits on the board.

Commissioner Lewis asked if Mr. Andrajack received money for sitting on the P&Z board, which is no, and Commissioner Andrajack receives \$10.00 a month.

Mayor Law asked for a motion, no motion was made.

Item 15. Mayor Law recessed to "Executive Session" at 9:55 p.m. pursuant to the Texas Open Meetings Act, Section 551.074 (a) (1) to consider the appointment or employment of the current Director of Administration on a part time basis following his retirement.

Item 16. Mayor Law reconvened at 10:31 p.m. to regular session.

Motion was made by Commissioner Lindenborn, seconded by Commissioner Andrajack to approve entering into an agreement for temporary employment of the current Director of Administration-Dale Leiws on a part time basis and may be terminated at any time by either party following his retirement and to add to the agreement that it not exceed 6 months in Paragraph 4.

Ayes: Mayor Law, Commissioners: Lindenborn, Andrajack and Lewis

Nays: Commissioners: Kwas, Thornton and Holland.

Abstained: none

Motion passed.

Item 17. Commissioner Thornton requested the Board discuss hiring an audit firm to audit the city's books according to the City Charter.

Commissioner Thornton stated he was concerned with the letter of agreement in the yearly audit stating they cannot contest to the numbers provided in the audit.

Mr. Slye explained, the current auditors come in 2 times a year, they pull a sampling from each department to confirm that what we are reporting is in fact true, they follow the rules and guidelines for the standard auditing required for municipalities.

Commissioner Thornton asked if there had ever been an in depth audit.

Mr. Slye reported the audit provided to you is an in depth audit that is in accordance with the generally accepted auditing principles for governmental entities.

Commissioner Andrajack stated with his financial background, this is accurate reporting procedures. The auditors come and take a sampling of accounts they want to see, the City doesn't provide them with the information they want to give, the auditors determine what accounts and reports they want.

Item 18. The Commissioners reviewed the monthly reports.

Item 19. Personal Audience Comments to Commissioners/Comments on Agenda Items.

Michael Bunton, 700 Glendale, Burkburnett stated he wanted to file a complaint against the City Manager, Mike Slye and proceeded to pass out a written complaint to the Board.

Charles Jackson, 1118 Bishop Road, Burkburnett reported misconduct by the Code Enforcement Rodney Mathews, Dale Lewis and Lonnie Blevins; I have recordings of such misconduct on tape and I like to report Mr. Slye's SUV had been in the IC Evans Elementary School sand box about 9 years ago and was removed by City employees.

Wade Medbery, 1018 Pawhuska, Burkburnett reported that at the last meeting, it was reported the city had made an agreement with Fred Dwyer to clean the property next to the Walmart building, I submitted an open records request for a copy of the agreement and was told there was no agreement on file, I asked for the amount or a copy of the billing and was told there was no bill or invoice, but that it was agreed to pay approximately \$100.00 per hour for the backhoe. I

question how this was done without your knowledge in just letting the administration make these decisions without your authority.

Brooks Hill, Jr., 1441 Sioux stated at the beginning of the meeting the Mayor had already stole his thunder by announcing to turning off cell phones, that is what I wanted to speak on, its disrespectful to the Council and to the citizens that are attending, I'd like to see this enforced because it is disruptive.

Susan Mitchell, 1424 Hiawatha, Burkburnett thanked Commissioner Andrajack for sending the letter to her explaining his decision regarding the Divine property. I still think you should have withdrawn your vote, the Council is the human element, if you want to have things black and white, a computer can do that, we don't need a council. Ms. Mitchell also discussed the television reporting, zoning and the disappointment that families are leaving Burkburnett because we are no longer Burkburnett friendly.

Stephanie Berryman, 209 S. Ave B, #24 had questions about the zoning, she asked why the Divine lot is zoned SF-6 when the lot size does not meet the requirements, about the super majority vote and can a variance be granted to Ms. Divine due to this being a hardship, she is losing money on the lot by not being able to let a mobile home on it.

Kathy Dickey, 1219 Cheryl, Burkburnett read a statement from a Police Report from June 14th and how the police handled a situation improperly and hopes this doesn't happen to anyone else.

Item 23. City Manager's report.

- A. SECO Grant update. Mr. Slye reported the State Energy Conservation Office has awarded the City \$57,000 in grant funds for improvements to City Hall and the Library.
- B. HES (Hazardous Elimination Safety) Project update. Mr. Slye reported that project was scheduled for the first day after school was out, as you can see nothing has been done, this is a TXDOT project, they hired a contractor, the contractor was not up to standards and can't be found, they are now waiting for the surety company filings before they can re-bid the project out. It will be done, but I don't have a date as to when it will start.

Item 24. Council comments.

Commissioner Thornton thanked everyone for coming tonight and stated he enjoyed everyone's comments and hope to see you all at the next meeting.

Commissioner Holland thanked everyone for coming tonight; it's been a wild and fun ride; the meeting was lengthy and thanked those for their support.

Commissioner Lewis thanked everyone for attending and stated she had received a call stating she has gone to the other side, well I'm still here, I think I'm still alive, but I'm nobody's swing vote, I vote the way I feel is fair to everyone and I'd like to for the next agenda to have an item on how we are going to pay Mr. Sims.

Commissioner Lindenborn thanked everyone for coming, I appreciate the citizen comments, but I'm still voting and acting in a way that I feel is best for the entire city and all citizens.

Commissioner Kwas said it has been an enlightening experience this evening and it has been a long hard day; I want to chastise the Council for not spot zoning Ms. Divine's lot, if we had it would have taken care of her.

Commissioner Andrajack thanked everyone for coming and staying, I appreciate your continued participation in the comments and I also would also reiterate what Commissioner Lindenborn said, in addition to the comments, I welcome and do receive emails from the citizens, if you're interested in my email, see me after the meeting, I welcome your questions.

Mayor Law thanked everyone for staying and thanked the audience for their cooperation tonight in respecting everyone, we had a good meeting and we are representing all citizens, not just one group or one side of town, but everyone. I know the entire council feels that way.

Item 25. Motion was made by Commissioner Thornton, seconded by Commissioner Kwas to adjourn. Motion carried unanimously.

Carl Law, Mayor

ATTEST:

Trish Holley, City Clerk