

## ***MINUTES***

### ***BOARD OF COMMISSIONERS***

The Board of Commissioners of the City of Burkburnett, Texas met in a regular called meeting on Monday, May 17, 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; R. Dale Lewis; Mike Whaley, Director of Public Works; Chief Mike Tracy, Police Chief and Susan Morris, Wichita Falls Public Health District.

Other's present: Glen Hutchinson, Clay Gahagan, Wade Medbery, Brad & Carresa Garrett, Stuart Tunnell, Tina & William Jackson, Charles Jackson, Michael Thornton, Nicole Cook, Amy Brounstein, Mark & Kimberly Jackson, Lahoma Vaughn, Arnie & Nancy Wells, Jack McMullen, Michael Bunton, Ron Clarke, Bill Vincent, Lee Shoffner, Paula Smith, Charles Kernott, Warren Fretz, Kathy Patterson, Mike Crowley, Curtis Salyer, Debra Wood, Alisa Dunford, Lahoma Wood, Flora Holland, Donnie Shepard, Gary & Kelly Bolen, Jerry & Pennie Hayes, Diane Young, Thomas Watson, Jack Baber, Stephanie Beryman, Michael Geer, Bill McGuire, Larry Russell, LaDana & Josh Stimpson, Willa Divine, Frank Carlson, Trudy Thompson, Pete Couture, Ken & Karla Blackwood, Pat Dollar, Daniel McMullen, Steve & Cindy Guinn, Stephen Stubblefield, Carol Holland, Susan Disney and others that were illegible.

Jeff Bromley representing Burkburnett Informer Star and Ann Arnold representing KFDX-Channel 3 was present.

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

Item 2. Invocation was given by Connie Goettman, Pastor of Kingdom Harvest Fellowship.

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

Item 4. Resolution Numbers 481, 482 and 483 was presented by City Manager, Mike Slye. The resolutions of gratitude were presented to Arnie Wells, Scott Dolan and Mike Tugman for serving on the Board of Commissioners. Mayor Law presented a blanket depicting the City of Burkburnett's Flag to Arnie Wells and Scott Dolan. Mike Tugman was not present.

Item 5. Consent Agenda.

- A. Approval of minutes from April 5<sup>th</sup> and April 19 workshop session and April 19, 2010 regular meeting.

Motion was made by Commissioner Lewis, seconded by Commissioner Kwas to approve Consent Agenda Item 5A. Motion carried unanimously.

Item 6. Mayor Law closed the meeting at 7:08 p.m. and opened the "Public Hearing" for the Planning & Zoning Commission Case #2010-82, a re-zone application for Lot 9, Block 1, College Addition known as 111 N. Avenue C.

Mike Slye, City Manager addressed the Commissioners. Mr. Slye explained this is the third time the case has been presented to the P&Z Board and the Board of Commissioners. The owner is requesting the zoning be changed from Single Family SF-6 to Residential R-2 in order to put a mobile home on the lot. The case was also presented to the P & Z for a complete block/area re-zoning classification; it was not recommended to re-zone it. At each meeting, citizens have spoken against changing the zoning in order to allow a mobile home on the property.

Marla Divine spoke on behalf of her mother-Ms. Willa Divine property owner. Ms. Divine stated the property was purchase in 1966 and has sentimental value. For many years, the lot had a mobile home on it, they didn't know the zoning ordinance wouldn't allow a new mobile home be placed on it once the old one was removed. This is a loss of income for us and the lot is not large enough to build a house on. I don't understand why you will not allow a mobile home to be placed on a lot that once had a mobile home on it. Are you saying people that live in mobile homes can only live in certain areas of Burkburnett? Is that not isolation from certain areas of Burkburnett. From what I can gather certain people do not want someone living next to them that live in a mobile home.

Billy Ray Mize, Chair of the Planning & Zoning Commission reported on May 3<sup>rd</sup>, the P&Z Board met to hear the re-zone request. Mr. Mize stated this is the 3 time to hear the request, 2-3 property owners in the area each spoke against approving the case. There was no support of changing the zoning except the property owner and the citizen wanting to lease the property from Ms. Divine. Mr. Mize stated the main reason in not approving the case is to keep from "spot zoning". Mr. Mize stated the property owner gave a good presentation for the need to re-zone and it's hard for the board to deny such a request, however, surrounding property owners did not want a mobile home on that lot. The golden rule the P&Z Commission follow-'thou shalt not spot zone'.

Stephanie Berryman, 209 S. Avenue B, Lot 24 addressed the board. Ms. Berryman stated she currently wants to place her mobile home on the lot Ms. Divine owns so she won't have to take care of it anymore. Ms. Berryman said she has 3 small children, and the area she is living there playground equipment has been vandalized many times as well as her home broken in to and there is a registered sex offender living behind them. Her parents live on Avenue C and by allowing her to place her home there they would be able to help watch and take care of her children. I grew up there and know it's a nice neighborhood to raise your children.

Michael Geer, 114 N. Avenue C addressed the board. Mr. Geer stated he lives across the street from this lot. I'm in favor of her moving a mobile home to this lot, this is my daughter and this would put her and my grandchildren closer to me and in a better proximity. I also own the lot north of my property that had a mobile home on it, I cleaned up the property and keep it looking nice. Nobody will build a home on a 50' wide lot. I also have been helping Ms. Divine with the property by keeping it mowed for her at no charge. I'm in favor of the mobile home and ask you to consider approving this request.

Lahoma Wood, 205 E. 1<sup>st</sup> Street we also own property across from Ms. Divine and we came to the board asking for a re-zone request. We were denied; I just wanted to let people know that Ms. Divine isn't the only one that has been denied a re-zone request for that area.

Susan Mitchell, 1422 Hiawatha stated she agreed somewhat with what Marla Divine was saying, this is almost segregation. I sympathize with Stephanie and having her children in an area she doesn't want them in. I drove that street and I challenge everyone here to see if they could build a home on a 50' wide lot. The lot was obviously for a mobile home only. I was for zoning, however, in some cases; the zoning leaves no room for common sense.

Charles Jackson, 1118 Bishop Road stated the reason for zoning is because mobile homes are not built like stick framed houses, the neighborhood they want to place this mobile home in is not JanLee or Sycamore addition, this would be an improvement to the neighborhood.

John Beard, 405 E. 1 Street stated he does not know these people that want to put the home on the lot but that he knows the property. The property has a slab for a mobile home, if this was a main street through Burkburnett, then I would understand, but I don't see what the problem is in allowing this.

Jack McMullen, 1202 E. 3<sup>rd</sup> Street stated he wanted to clarify that he was in the mobile home manufacturing business for over 20 years, since 1978, mobile homes are no longer in existence, they are called manufactured homes and they are built better than the old mobile homes. Having a manufactured home on this lot would be an asset to the city;

some rules could be enforced to make sure they are skirted, etc in order for them to look nice. How they are installed have to meeting HUD requirements. I've seen manufactured homes survive high winds, they've held up.

Commissioner Holland asked how long the property had been vacant-Ms. Divine stated 3 years.

Marla Divine asked how the decision is made on where a mobile home can be placed.

Mr. Slye stated in 2000 the zoning ordinance was passed. Several public hearing was scheduled for citizens to review and voice their concerns on the Zoning Map for the city. Since the zoning has been in place, there have been times; the commissioners have re-zoned several areas because it wasn't zoned properly. In this case, Avenue C was zoned for stick built home because that was what was predominately there. The council asked the P&Z Commission to go back and look at the whole street to see if it needed to be re-zoned. Notices were sent out to the citizens that lived within 200 feet of the entire block; again no one came forward stating they wanted it zoned for mobile homes so it retained the stick built home zoning. Zoning was enacted to protect the property owner's values. Before zoning, a person could place a pig farm next to any home they wanted to, there was nothing to prevent this from happening. The zoning was not intended to segregate property owners; it was there to protect them. In fact, there are many, many areas in Burkburnett where manufactured homes can be placed. Not just one or two places.

W. L. Bunton, 1585 Rat Road, Wichita Falls stated that on any of your rules, regulations, laws, you should use a good dose of common sense, when you decide on this, you don't have to put everything in bucket, you should at least consider it.

Commissioner Andrajack asked for clarification-Ms. Divine stated the lot had sentimental value to them and had no intention of selling, but Ms. Berryman stated she plans to buy the lot? Ms. Divine stated she will be renting, not purchasing the property.

Item 7. Mayor closed the "Public Hearing" at 7:47 p.m. and reopened the regular meeting.

Item 8. Motion was made by Commissioner Holland, seconded by Commissioner Lewis to approve Case #2010-82, Lot 9, Block 1, College Addition, also known as 111 N. Avenue C allowing a mobile home to be placed on the lot.

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

The motion failed due to lack of a super majority vote.

Item 9. Motion was made by Commissioner Kwas, seconded by Commissioner Lindernborn to approve an easement agreement with Abundant Life Church of God. Motion carried unanimously.

Item 10. Ordinance Number 781 was presented in its entirety. Caption of same being:

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS ADOPTING REGULATIONS PERTAINING TO PUBLIC POOLS AND SPAS; DEFINING CERTAIN TERMS; CREATING AN OFFENSE FOR VIOLATION OF THE REGULATIONS AND ESTABLISHING A PENALTY; ESTABLISHING PROCEDURES FOR PERMITS AND CERTIFICATION OF MANAGERS OF OPERATIONS; AUTHORIZING INSPECTIONS; ESTABLISHING MAINTENANCE AND OPERATION PROCEDURES; PROVIDING FOR REGULATIONS IN THE POOL AND SPA AREA AND FOR SUSPENSION OF A PERMIT; ADOPTING DESIGN STANDARDS; PROVIDING FOR REVIEW OF REPAIR PLANS AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Susan Morris, Wichita Falls-Wichita County Public Health District addressed the Commissioners. Ms. Morris stated by passing the pool and spa ordinance, this would allow for health inspections of public pools and spas and mandating certain state requirements. This is for public facilities only like in hotels and the municipal pool.

Motion was made by Commissioner Andrajack, seconded by Commissioner Kwas to approve Ordinance Number 781 as presented. Motion carried unanimously.

Item 11. Mike Slye, City Manager addressed the Commissioners. Mr. Slye stated that on October 19, 2009 the Board of Commissioners met and discussed the proposed renovations to the Community Center. Mr. Slye explained that once they approved the proposed plans, Mr. Rick Sims started preparing the documents. The Hotel Tax Committee met on December 9, 2009 to review the proposed documents and estimated costs.

Wade Medbery, 1018 Pawhuska addressed the Commissioners. Mr. Medbery stated he had researched whether the Commissioners had made a motion to approve an agreement and/or contract to pursue the proposed plans for the renovation of the community center. From an Open Records Request, I received a copy of the unsigned agreement dated April 5, looks like this was being discussed sometime in October, Mr. Sims was involved in a HOT meeting in February where the committee told him to go ahead with project which they didn't have the authority to do. Before voting on this issue tonight you should get an Attorney General opinion to make sure you're not covering up an action that may not be legal.

Commissioner Lewis read from the minutes of October 19, 2009 a motion was made by Commissioner Dolan, seconded by Commissioner Kwas to approve the proposed conceptual plan for the renovation of the Burkburnett Community Center, motion carried unanimously. Then on February 19, 2010 Mr. Wells asked if any monies would be incurred and the answer was no.

Mr. Slye stated he didn't remember everything that was said, but that we all thought the Hotel Occupancy Tax monies would service the debt.

Commissioner Thornton asked if this was normal practice to have services rendered and then sign a contract.

Mr. Slye stated that when the council said to move forward in October than became an oral contract with Bundy, Young, Sims & Potter

Commissioner Thornton stated the Hotel Occupancy Tax committee didn't have the authority to expend monies from the General Fund and the contract should have been in place before proceeding. Whoever told him to move forward should be responsible for the \$45,000 fee and or disciplined.

Commissioner Andrajack stated that two items are being discussed tonight and it's getting confusing-1) was the work authorized or not; 2) whether or not if authorized, work was done for the city.

Commissioner Holland stated someone should have said you were about to spend \$45,000 and get approval before proceeding, the taxpayers shouldn't be responsible.

Commissioner Lindenborn stated the entire Council approved the proposed conceptual plans for the renovation of the Community Center.

Motion was made by Commissioner Lindenborn to approve the Standard Architectural Agreement, seconded by Commissioner Andrajack.

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

Commissioner Lewis asked if she could ask a question. She then asked where the money was going to come from to pay Bundy, Young, Sims & Potter, Inc.

Mayor Law stated the motion failed, Mr. Sims would not be paid.

Item 12. Motion was made by Commissioner Thornton, seconded by Commissioner Holland to approve the purchased Water Contract between the City of Wichita Falls and the City of Burkburnett. Motion carried unanimously.

Item 13. Commissioner Thornton request to proceed with a potential Sex Offenders Ordinance for the City of Burkburnett.

Commissioner Thornton addressed the Mayor and Commissioners. Commissioner Thornton reported in their packets is ordinances from the City of Wichita Falls, Iowa Park and Electra. Also provided is a list of the registered offenders in Burkburnett and a proposed draft ordinance.

Citizens requested to speak regarding the Sex Offenders Ordinance.

Alisa Dunford, 1004 Easy Street spoke in favor of enforcing a sex offender ordinance in the City of Burkburnett.

John Beard, 405 E. 1<sup>st</sup>, stated the Police Department does a good job of keeping up with the ones here in Burkburnett and to make a good decision.

Detective Lahoma Vaughn, Burkburnett Police Department briefly gave a report on the process of how they keep up with the offenders here in Burkburnett.

Motion was made by Commissioner Kwas, seconded by Commissioner Holland to approve proceeding with a potential Sex Offenders Ordinance for the City of Burkburnett and be placed on the next regular Commissioners meeting agenda. Motion carried unanimously.

Item 14. Motion was made by Commissioner Thornton, seconded by Commissioner Kwas to approve a Burkburnett Development Corporation budget amendment of \$3,000.00 transfer from Loan Repayment to Legal Fees. Motion carried unanimously.

Item 15. Resolution Number 478 was presented. A resolution authorizing an agreement between the Burkburnett Development Corporation to fund fifty percent of the proposed Burkburnett Community Center Renovation-second and final reading.

Motion was made by Commissioner Lewis, seconded by Commissioner Andrajack to approve the second and final reading- Burkburnett Development Corporation funding of fifty percent of the proposed Burkburnett Community Center Renovation with the understanding the agreement will become null and void if the project changes in any manner from that which it was originally presented to the BDC Board of Directors on March 15, 2010 (i.e. funding sources,

costs, modification of project etc) with re-approval of the BDC Board of Directors. Motion carried unanimously.

Item 16. Resolution Number 479 was presented. A resolution authorizing an agreement between the Burkburnett Development Corporation and the Burk RV Park for economic incentives-second and final reading.

Motion was made by Commissioner Lindenborn, seconded by Commissioner Thornton to approve Resolution Number 479 as presented. Motion carried unanimously.

Item 17. Resolution Number 480 was presented. A resolution authorizing the City of Burkburnett's intervention of Oncor's Reily-Krum Transmission line case at the Public Utility Commission.

Motion was made by Commissioner Lindenborn, seconded by Commissioner Andrajack to approve Resolution Number 480 as presented. Motion carried unanimously.

Item 18. Mayor Law stated the bylaws for the Burkburnett Development Corporation state that up to two Commissioners may serve as voting members on the Burkburnett Development Corporation. Commissioner Lewis and Dolan currently serve. Mr. Dolan was not re-elected and I propose we appoint Commissioner Lindenborn to replace Scott Dolan.

Kelly Bolan, Executive Director for the Burkburnett Development Corporation addressed the board. Ms. Bolen stated that Scott Dolan wishes to remain on the Board and the bylaws state that up to two Commissioners may serve. Commissioner Lewis fills that appointment of having at least one on the board.

Motion was made by Commissioner Holland, seconded by Commissioner Thornton to leave Scott Dolan on the voting board of the Burkburnett Development Corporation.

Ayes: Commissioners Holland, Thornton, Lewis and Kwas  
Nays: Mayor Law, Commissioner Andrajack  
Abstained: Commissioner Lindenborn

Item 19. Mayor Law recessed to "Executive Session" at 9:30 p.m. to conduct a private consultation with outside legal counsel on a personnel matter in which the duty of an attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Open Meetings Act.

Item 20. The Mayor and Commissioners reconvened at 10:00 p.m. to regular session and take action, if any on matters discussed in “Executive Session”. No action taken.

Item 21. The Commissioners reviewed the monthly reports.

Commissioner Andrajack asked if the \$300,000 TXU fees are based on a percentage of sales.

Mr. Slye reported yes it is based on a percentage of sales and received quarterly, the revenues are a little behind, but it normally catches up in the summer months.

Item 22. Personal Audience Comments to Commissioners/Comments on Agenda Items.

Charles Jackson, 1118 Bishop Road stated he didn’t agree with a statement Mr. Slye made in reference to the Code Enforcement department requiring the city to send out code violation notifications and asked about making a complaint against a city employee.

Mayor Law referred him to take his complaint to City Hall, and then if necessary it would be discussed in Executive Session.

Item 23. City Manager’s report.

- A. Hazardous Elimination Safety Project update. Mr. Slye reported TXDOT is supposed to start working on the County-Ameron project, to line up County Road with Ameron Road. This will be a construction zone for most of the summer.
- B. Texas Community Development Program Project update. Mr. Slye reported on May 25<sup>th</sup>, the City will receive the monies for the water line replacement grant.
- C. Texas Commission Environmental Quality Burn Permit. Mr. Slye reported the property north of the Wal-mart building was struck off to the city in lieu of taxes. Mr. Lewis and Mr. Fred Dwyer made an agreement to clean off the property while he was already clearing some land close to the area. Mr. Dwyer stated he would only charge for the backhoe usage. Now we are researching what we can do with the brush, we are seeing if a burn permit from TCEQ will be issued.
- D. Sales Tax Revenue update. Mr. Slye reported the sales tax is up.

Item 24. Council comments.

Mayor Law-Council Committee Appointments.

Mayor Law stated that instead of having Council appointed Committees, he would call for special called meeting so everyone could attend. However, there are 2 committees that are unique that I would like to make appointments to.

Golf Committee: Commissioner Andrajack

Hotel Occupancy Tax Committee: Chair-Commissioner Lindenborn, Commissioner Holland and Mayor Law.

Commissioner Andrajack stated he appreciated Commissioner Thornton bringing the sex offenders ordinance on the agenda tonight. I think we made the right decision to move forward and I'm excited to see where it leads on the next agenda. Let me say in regards to the contract/agreement bill from Bundy, Young, Sims & Potter, I hope through possible negotiations with that firm, we can come to some type of agreement for a sum of money that our city does owe that firm, whether we agree to the \$45,000 amount of something less than that, whether authorized or not an agent of our city did engage that firm to complete work on behalf of the city and the city does owe them money. Thanks to everyone that came tonight, your comments were appreciated and considered, I think everyone is pleased with the decision to move forward with the sex offender's ordinance.

Commissioner Kwas stated that for once he'd like to commend Mr. Slye for letting the citizens know what is going on around town. I've been approached by many citizens concerning the property next to the Walmart building. Why this doesn't come out openly without being harassed, I don't know. It's a city moving forward supposedly so why not discuss it, put an ad in the paper and let people know what it's all about. I don't know if any costs were involved, but that's another matter, at least you did tell the people without being probed. For the lovely audience, this evening I congratulate you, this has been one heck of a long night, but I hope you all enjoyed what transpired to this point, again this is a City Council that are here to take your concerns and do what we can to adjust or correct, don't be afraid to come forward with your complaints, that is what we are here for, we may not always agree with you and you may not get what you are looking for, but I will listen and I think the rest of the Commissioners will also, that's what we are here for.

Commissioner Lindenborn thanked everyone for coming.

Commissioner Thornton thanked everyone for coming and I want to thank Commissioner Andrajack and the others for agreeing to move forward with the sex offender's ordinance, I look forward in working with everyone on this. I agree with Commissioner Kwas we work for your and if you have a question or concern, come to the meetings, come up and speak or ask questions. I'm more than willing to listen to someone if you approach me out in public, we may not always agree as you can see we don't always agree as a Council but hopefully we

will do what is in the best interest for the citizens on this city. Thank you for coming.

Commissioner Holland reaffirmed what Commissioner Thornton said, thank you for coming out, it may be a wild and bumpy ride, and like others have said, we don't always agree with each other but I think we will move forward for the betterment of the city. On the sex offender law, I think we will get something going and will be good for everybody, like we said earlier, it's not a safe haven here, if will take everyone working together and to keep our eyes on our children and to ensure everything will be safe for them. The other thing, I can't see spending \$45,000 without someone looking into this and find out why somebody did something that was probably not authorized by the Council, need to check on that. I appreciate you coming out, hope you had a good time, I did and I hope to see you at the next meeting.

Commissioner Lewis stated to the three new Commissioners they were baptized with fire. Thanks to everyone for coming and to Commissioner Lindenborn, it's nothing personal but I'd like to see Scott Dolan say on the BDC board since he'd expressed an interest to serve on the board and thanks to the Mayor for putting up with me and letting me sit next to him.

Mayor Law stated for our first Commissioners meeting with new Commissioners, I think it went good; we worked well together tonight even though we didn't all agree and think we will continue to work good together.

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

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Carl Law, Mayor

**ATTEST:**

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Trish Holley, City Clerk