



**MINUTES  
OF THE  
MEETING OF THE  
BENBROOK CITY COUNCIL  
THURSDAY, AUGUST 7, 2008**

The regular meeting of the Benbrook City Council was held on Thursday, August 7, 2008 at 7:30 p. m. in the Council Chambers at 911 Winscott Road with the following Council members present:

Jerry Dittrich  
Dan Tully  
Ron Sauma  
Keith Bailey  
Mark Washburn  
James Schull

Also Present:

Andy Wayman, City Manager  
Joanna King, City Secretary  
Dave Gattis, Deputy City Manager  
David Ragsdale, Comptroller  
Bob Rowley, Engineer  
Sherri Newhouse, Budget Director  
Wade Adkins, City Attorney

Others Present:

Lynn Dalton, Benbrook News  
Ed Gallagher  
Cathy Morris  
Walter Shumac  
Mark Garza – Representing Encana  
Bruce Harwell-Encana  
Shannon Cook  
Nancy Farrar  
Brad Reid  
Nancy McCaskell  
Mike Campbell  
Mark Thrush  
Jake Barron – QuikTrip  
Bill Smith  
Bob Clark  
Mercedes Bolen, Chesapeake  
Dusty Anderson, Chesapeake  
Georgia Cartwright  
Greg Waller  
Joyce Acola  
Janet Ray

Sam Parrish  
Allen Cartwright  
Mary Hicks  
Larry Mills  
John Kell  
Chuck Pelletier  
and approximately 50 other citizens

**I. CALL TO ORDER**

Meeting called to order at 7:30 p. m. by Mayor Dittrich.

**II. INVOCATION  
PLEDGE OF ALLEGIANCE**

Invocation given by Shannon Butler, Youth Director with Tabernacle of Praise  
The Pledge of Allegiance was recited.

**III. MINUTES**

- 1. Minutes of the regular meeting held July 3, 2008**
- 2. Minutes of the regular meeting held July 17, 2008**

Motion by Mr. Sauma, seconded by Mr. Bailey to accept the minutes of the regular meeting held July, 2008 and the minutes of the regular meeting held July 17, 2008 as presented.

Vote on the Motion:

Ayes: Mr. Schull, Mr. Bailey, Mayor Dittrich, Mr. Tully, Mr. Washburn, Mr. Sauma

Noes: None

Motion carries unanimously.

**IV. CITIZEN PRESENTATION**

- 1. Hank Bourke, President Ridglea Country Club Homeowners Association – Location of Pipeline along Winding Way**

This item was withdrawn by applicant.

**V. PRESENTATION BY MAYOR AND COUNCILMEMBERS**

- 1. Appoint Representative to Regional Transportation Council (RTC)**

Mr. Wayman gave the following report: The current representative on the Regional Transportation Council is Mr. Mike Leyman. Mr. Leyman is a councilmember for the City of Mansfield and represents the Cities of Azle, Benbrook, Crowley, Everman, Forest Hill, Kennedale, Mansfield, River Oaks, White Settlement and

Parker County. Mr. Leyman has expressed his interest in representing the jurisdictions for the next two year term.

City Council may choose to select Mr. Leyman or appoint a new representative.

Motion by Mr. Tully, seconded by Mr. Schull to cast the City's vote for Mike Leyman to serve as representative to the Regional Transportation Council.

Vote on the Motion:

Ayes: Mr. Schull, Mr. Bailey, Mayor Dittrich, Mr. Tully, Mr. Washburn, Mr. Sauma

Noes: None

Motion carries unanimously.

**2. Adopt Resolution supporting the discontinuation of the diversion of transportation user revenues to non-transportation uses and the appropriation of all revenue generated from highway user fees and taxes to fund transportation projects**

Mayor Dittrich announced that action on this item be delayed pending recommendation by the Mayors' Council of Tarrant County.

**3. Consider Participation in a Class Action Lawsuit, *City of San Antonio, Texas on Behalf of Itself and All Other Similarly Situated Texas Cities v Hotel.Com, et.al.***

City Attorney Wade Adkins gave the following report: The City has been notified that we have been made a class member in Cause No. SA-06-CA-381-OG in the United States District Court Western District of Texas, San Antonio division. This case is the *City of San Antonio Texas, on Behalf of Itself and All Other Similarly Situated Texas Cities v. Hotel.com. et.al.*

The lawsuit was originally brought by the City of San Antonio, Texas against several well-known internet travel agencies that provide discounted hotel rates to their users. The lawsuit claims that the internet site operators have underpaid the required hotel occupancy taxes to San Antonio and other cities in which they book rooms. More specifically, the defendants paid taxes on the discounted wholesale price of the room, not the actual price paid by the end user of the internet site.

The lawsuit was brought under federal class action rules and is different from most other lawsuits where a plaintiff must choose to initiate the suit. Under the federal class action rules, a group of plaintiffs may band together in a case as long as certain requirements are met. On May 27, 2008, Judge Orlando L. Garcia found that there were enough affected Texas cities to pass a numerosity test and that each city shares a common issue to pass the commonality test.

The lead counsel in this case is from the law firm of Diamond McCarthy, LLP, which is based in Dallas. The Court's June 12, 2008 Class Action Notice states that if a

City chooses to remain a member of the class action, they will not have an obligation to pay any costs or attorney's fees involved in the lawsuit. This essentially means that there is no financial downside to remaining a class member.

The City has a decision to make in regard to its continued participation in the lawsuit:

1. Choose to remain a member of the class action lawsuit and to continue to be represented by Diamond McCarthy, LLP in this matter (no notice required);
2. Choose to remain in the class action lawsuit and to employ its own attorneys (must file documents with the Court prior to August 14, 2008); or
3. Choose to withdraw from the lawsuit (request to be excluded must be sent to class lawyers by August 14, 2008).

Motion by Mr. Schull, seconded by Mr. Tully to participate in the Class Action Lawsuit filed by the City of San Antonio, Texas v Hotel.com, et. al.

Vote on the Motion:

Ayes: Mr. Schull, Mr. Bailey, Mayor Dittrich, Mr. Tully, Mr. Washburn, Mr. Sauma

Noes: None

Motion carries unanimously.

## **VI. PRESENTATION BY PLANNING AND ZONING COMMISSION**

## **VII. REPORTS OF CITY MANAGER**

**G-1788      Accept 2008 certified appraisal roll, set anticipated collection rate, and appoint an officer to calculate and publish the Effective Tax Rate and Rollback Tax Rate**

**G-1794      Vote to place proposal to adopt tax rate of .6775 of \$100 value (2.72% increase from 2007) on the August 21, 2008 and September 4, 2008 City Council Agenda**

David Ragsdale gave the following report: The City received the 2008 certified Appraisal Roll from the Tarrant Appraisal District (TAD) on July 29, 2008. The 2008 certified appraisal roll contains 9,621 parcels of property with an appraised value of \$1,613,738,295. A total of 424 cases remain before the Appraisal Review Board with an estimated maximum value of \$58,060,839.

Summary of the 2008 certified appraisal roll:

Description of Property	Number	Appraised Value
Total Appraised Value	9,571	\$1,613,738,295
ADJUSTMENTS:		
Absolute exemptions	211	59,085,774
Pending ARB cases	129	85,516,952
Incomplete accounts	159	8,598,665
Ag Deferrals	43	12,341,318
Scenic Deferrals	8	<u>226,719</u>
Adjusted Total Appraised Value		1,447,968,867
PARTIAL EXEMPTIONS:		
Over-65	2,006	59,360,275
Homestead	5,930	28,830,146
Disability	95	472,810
Veterans	478	<u>4,628,620</u>
Total Partial Exemptions		93,291,851
Net Taxable Value		1,354,677,016
Minimum Value of Pending ARB Cases		58,060,839
Minimum Value of Incomplete Accounts		<u>8,592,186</u>
2008 TOTAL TAXABLE VALUE		\$1,421,330,041
Estimated Percent of Collections		<u>99%</u>
Estimated Taxable Value Collectible		1,407,116,741
Tax Rate (per \$100)		<u>.697500</u>
2008 Estimated Tax Revenues		\$ <u><u>9,814,639</u></u>

The 2008 tax roll has an estimated increase of 7.93% in taxable value after deducting the value of new construction. State law requires that any increase in revenue from prior year be calculated and published. The budget anticipates a tax rate decrease of two cents (to 67.75 cents per \$100 valuation). However, according to "Truth-in-Taxation" statutes, the anticipated tax rate represents an increase of 2.72% over the effective rate. As a result, State law requires City Council to take a record vote in increase tax revenue.

To comply with "Truth-in-Taxation" requirements, the City Council must accept the certified Appraisal Roll as presented by TAD, set an anticipated collection rate for next year and appoint an officer to calculate and publish the Effective Tax Rate (ETR) and Roll Back Tax Rate (RTR).

Motion by Mr. Sauma, seconded by Mr. Washburn to accept the 2008 certified Appraisal Roll as presented; set 100% as the anticipated property tax collection rate for 2008-09; and, appoint the finance director to calculate and publish the Effective Tax Rate and the Rollback Tax Rate.

Vote on the Motion:

Ayes: Mr. Schull, Mr. Bailey, Mayor Dittrich, Mr. Tully, Mr. Washburn, Mr. Sauma

Noes: None

Motion carries unanimously.

Motion by Mr. Tully, seconded by Mr. Bailey to place the proposal to adopt a tax rate of .6775 of \$100 valuation on the August 21, 2008 and the September 4, 2008 City Council agenda.

Vote on the Motion:

Ayes: Mr. Schull, Mr. Bailey, Mayor Dittrich, Mr. Tully, Mr. Washburn, Mr. Sauma

Noes: None

Motion carries unanimously.

**G-1789 Request for Waiver from EnCana Oil & Gas (USA) Inc. for High Impact Gas Well Permit to drill three gas wells in the H. A. Lounes Survey, Abstract No. 1999 and the H. C. Stevens Survey, Abstract No. 1836**

Mr. Rowley gave the following report: High Impact Gas Wells are those within six hundred feet (600') of a residence, religious institution, public building, hospital, school or public park. High Impact Gas Wells are only allowed if written consent is obtained from all protected property owners or a waiver is granted by City Council.

EnCana Oil & Gas (USA), Inc. has requested a permit for three wells on a pad located south of Stephens Road between Benbrook Boulevard (US 377) and the VFW Hall. The wells are considered high impact because of the proximity to Dutch Branch Park.

Mayor Dittrich opened the public hearing at 7:50 p.m.

The following citizens spoke to the issue:

Mark Garza, counsel for EnCana and Bruce Harwell, Project Manager answered questions from City Council. The only protected use in the application is the parkland and there are no structures involved. All three wells will be drilled on the same pad site; sound protection will be the use of blankets and stacked containers; and gas lift station will be onsite behind enclosed structure.

Dee DeSausa - questioned how the well water in the area will be protected.

Larry Stowe - questioned that if the sign placed at the site did not have the required notice at the time of its placement, if it provides adequate notice of the hearing. Mr. Stowe was advised that the ordinance requires notice be provided to affected property owners within 1000 feet of the pad site and those notices were provided. The fact that the sign was not correct for a period of time did not affect the notice.

Georgia Cartwright - requested City Council approve the waiver.

Greg Waller - question what the effect would be on the water shed and if environmental studies had been performed.

Joyce Acola - stated the wellhead will be on her property and requested approval of the waiver.

Sam Parrish - requested City Council install a signal light at Stevens Drive and US 377 because of the increase of traffic due to drilling. Mr. Wayman advised that the City does not have the authority to install the traffic signal and requested to TxDOT have been denied. He stated the City shares his concerns of the traffic issues.

Mr. Garza - stated that EnCana will investigate the possibility of using an alternate route into the site but could not address the issue at this time.

He stated that he is not familiar with water issues from other area but they are under the Railroad Commission guidelines regarding drill sites and does not foresee local water wells being affected. He advised that they are not required to perform a environmental study, however well operator are required to follow the best practices in regard to run-off.

Nancy Farrar, Customer Service Representative with EnCana advised that she has been involved in the drilling in Tiger Trail area and they have received no complaints regarding changes to well water. She advised test are performed prior to drilling and will continue to test during drilling.

Mayor Dittrich closed the public hearing at 8:24 p.m.

Motion by Mr. Sauma, seconded by Mr. Tully to grant a waiver and issue a high impact gas well permit to EnCana Oil & Gas at the proposed Stagecoach well location.

Vote on the Motion:

Ayes: Mr. Schull, Mr. Bailey, Mayor Dittrich, Mr. Tully, Mr. Washburn, Mr. Sauma

Noes: None

Motion carries unanimously.

**G-1790 Request for Waiver from Chesapeake Energy for High Impact Gas Well Permit to drill a gas well in the J. Rodgers Survey, Abstract No. 1265**

Mr. Rowley gave the following report: High Impact Gas Wells are those within six hundred feet (600') of a residence, religious institution, public building, hospital, school or public park. High Impact Gas Wells are only allowed if written consent is obtained from all protected property owners or a waiver is granted by City Council.

Chesapeake Operating, Inc. has requested a well permit on a pad located south of West Vickery Boulevard behind Tim's Landscaping. The well is considered high impact because of the proximity to residential properties that Chesapeake has not obtained consent.

Mayor Dittrich opened the public hearing at 8:35 p.m.

Mercedes Bolin and Dusty Anderson with Chesapeake Energy addressed City Council with the following information: The location is an ideal pad site due to the existing barriers including the Railroad, two dense tree lines and a wooded lot to the west. These barriers will absorb sound.

Chesapeake was unable to obtain two of the eight waivers from property owners within the six hundred foot distance from the pad site. Contact was never made with one property owner and the other owner requested additional compensation over and beyond the other lessees.

The pipeline route is proposed west of the neighborhood on the Georgia Baker property. This is only a proposed location and the pipeline route team has scheduled a meeting with the neighborhood to discuss routes.

Citizens speaking were:

Mary Hicks – stated she was the one individual that was not contacted by Chesapeake and feels she is entitled to the same compensation.

Larry Mills – stated he has declined to sign the waiver because of his concerns regarding the noise levels the wells will produce and periods of operation. Mr. Mills stated he believed the wells will benefit many at the expense of a few and believes that adequate compensation to owners within the six hundred foot distance should be 3% of the appraised value.

Tom Clark – inquired about the time frame for drilling all ten wells. He stated the extension of time for up to 18 months may not be tolerable due to noise and dust levels.

Janet Ray – spoke on concerns of traffic safety to school buses and pedestrian traffic.

John Kellogg – inquired about the ambient level and when and how they would be measured.

Chuck Pelletier – spoke of his concerns of noise levels and hours of drill operations.

Leion O’Neal – requested information on distribution lines.

Hank Bourke, President of Ridglea Country Club Homeowners Association – spoke in favor of the well site.

Kay Roper – spoke in favor of the site location.

Mayor Dittrich closed the public hearing at 9:35 p.m.

Motion by Mr. Sauma, seconded by Mr. Tully to grant a waiver and issue a permit for a high impact gas well to Chesapeake Operating, Inc. at the proposed Ridglea well location.

Vote on the Motion:

Ayes: Mr. Schull, Mr. Bailey, Mayor Dittrich, Mr. Tully, Mr. Washburn, Mr. Sauma

Noes: None

Motion carries unanimously.

**G-1791        Consider Ordinance banning smoking in portions of City public parks**

Motion by Mr. Schull, seconded by Mr. Bailey to defer this item until discussed in a worksession.

Vote on the Motion:

Ayes: Mr. Schull, Mr. Bailey, Mayor Dittrich, Mr. Tully, Mr. Washburn, Mr. Sauma

Noes: None

Motion carries unanimously.

**G-1792        Consider Ordinance amending speed limit on portions of Benbrook Boulevard (U.S. 377) from I-20 to southern City limits**

Mr. Gattis gave the following report: The current posted speed limits along Benbrook Boulevard (US 377) are 50 miles per hour (MPH) between Lochness Lane and Stephens Road and the southern city limits. In October 2007, the City Manager requested that the Texas Department of Transportation (TxDOT) lower the speed limit on these two segments.

Speed limits cannot be established arbitrarily and must be based on an engineering and traffic study according to State law. The general criterion for establishing

speed limits is the 85<sup>th</sup> percentile speed, which is the speed at which 85 percent of the drivers drive at or below.

TxDOT completed their speed study in February 2008 and, based on the 85<sup>th</sup> percentile speeds, offered to reduce the speed limit from Stephen Road south from 65 MPH to 60 MPH. For the segment between Stephens Road and Lochness Lane, TxDOT said that they could not lower the segment without raising the speed limit between Covington Drive and Stephens Road. As an alternate, TxDOT could leave the posted speed limit between Lochness Lane and Stephens Road unchanged. The City advised that we prefer to leave the speed limit in that section unchanged.

In reviewing Chapter 10.24 of the Benbrook Municipal Code, staff discovered that there were several outdated references to locations along Benbrook Boulevard (US 377) and minor discrepancies between the posted speed limit and the Code. Staff has amended Chapter 10.24 to revise and clarify references to speed limits along Benbrook Boulevard to conform to the posted speed limits and use more current location references.

Motion by Mr. Schull, seconded by Mr. Washburn to adopt Ordinance No. 1266 lowering the speed limit on Benbrook Boulevard (US 377) south of Stephen Road and to revise and update other sections of Chapter 10.24.

Vote on the Motion:

Ayes: Mr. Schull, Mr. Bailey, Mayor Dittrich, Mr. Tully, Mr. Washburn, Mr. Sauma

Noes: None

Motion carries unanimously.

**Ordinance No. 1266 being "AN ORDINANCE AMENDING CHAPTER 10.24 OF THE BENBROOK MUNICIPAL CODE (1985), AS AMENDED, BY REVISING THE SPEED LIMIT ON BENBROOK BOULEVARD (U.S. HIGHWAY 377) SOUTH OF STEPHENS ROAD TO 60 MILES PER HOUR AND TO REVISE REFERENCES TO LOCATIONS ON BENBROOK BOULEVARD (U.S. HIGHWAY 377) THROUGHOUT; PROVIDING FOR A PENALTY FOR VIOLATIONS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN PAMPHLET FORM; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE."**

#### SECTION 7 PENALTY CLAUSE

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance shall be fined not more than Five Hundred Dollars (\$500.00).

SECTION 14  
EFFECTIVE DATE

This ordinance shall be in full force and effect from and after its passage and publication as required by law.

Passed and approved the 7<sup>th</sup> day of August, 2008.

**G-1793      Approve right-of-way license Agreement with QuikTrip for temporary parking**

Mr. Gattis gave the following report: In June, the City approved a final plat of Block 1 of the Sproles Addition (southeast corner of Benbrook Boulevard-US 377 and Sproles Drive). A QuikTrip Convenience Store/Gasoline Station is under construction on Lot 1, Block 1.

As part of the development process, the developer was required to dedicate additional street right-of-way along Benbrook Boulevard to facilitate the widening project and additional right-of-way along Sproles Drive to achieve a 10-foot parkway behind the existing pavement. In addition, the City obtained an additional 2,499 square feet of right-of-way at the intersection to accommodate the enhance intersection improvements proposed in the Benbrook Boulevard Master Plan, including additional pedestrian facilities and landscaping.

Recognizing that the right-of-way for the enhanced intersection will not be required for construction until 2010 or later with the Benbrook Boulevard widening project, QuikTrip has requested temporary use of the right-of-way to provide three additional parking spaces. The City Attorney has drafted a License Agreement to allow the temporary use.

The License Agreement calls for a one-time payment of ten dollars (\$10). The staff has no objection to the nominal \$10 fee since the developer has donated the property to the City, but City Council may want to consider a higher rental rate to avoid establishing a potential precedent of allowing private companies free use of dedicated right-of-way. The City Attorney does not think that the \$10 fee would necessarily establish a precedent as long as we tie it to the donation of land.

Motion by Mr. Tully, seconded by Mr. Sauma to authorize the City Manager to execute the Right-of-Way License Agreement with QuikTrip for 2,499 square feet of right-of-way at the intersection of Benbrook Boulevard and Sproles Drive.

Vote on the Motion:

Ayes: Mr. Schull, Mr. Bailey, Mr. Tully, Mr. Washburn, Mr. Sauma

Noes: None

Abstain: Mayor Dittrich

Motion carries 5-0-1

**VIII. INFORMAL CITIZEN COMMENTS**

**IX. ADJOURNMENT**

Meeting adjourned at 9:50 p.m.

**APPROVED:**

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**Jerry B. Dittrich, Mayor**

**ATTEST:**

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**Joanna King, City Secretary**