



**MINUTES
OF THE
MEETING OF THE
BENBROOK CITY COUNCIL
THURSDAY, JUNE 15, 2006**

The regular meeting of the Benbrook City Council was held on Thursday, June 15, 2006 at 7:30 p. m. in the Council Chambers at 911 Winscott Road with the following Council members present:

Jerry Dittrich
Rickie Allison
Keith Bailey
John Vander Pan
Ron Sauma
James Schull
Larry Stowe

Also Present:

Cary Conklin, City Manager
Joanna King, City Secretary
Dave Gattis, Assistant City Manager
Donna Savage, Assistant to City Secretary
Shawna Cortez, Assistant to City Manager

Others Present:

Dorcas Neuman, Benbrook News
Ed Gallagher
Daniel Tully
Bill Smith
Mr. and Mrs. Ron Rainey
Diane Raffia
Don Lanza
Murphy Kleuser
Norris Williams
Bill Collins
Ronald Witt
Cindia Freiwald
Dan Billings
Eric Counce
Paul Westfall
Keira Koslowsky
Juanita Brown
Anna Claunch
Tommy Loyler
Gary Cox
Charles Fitzgerald
Jim Claunch

Mike Groomer
Dan Burghdoff
and approximately 70 other citizens

I. CALL TO ORDER

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

**II. INVOCATION
PLEDGE OF ALLEGIANCE**

Invocation was given by Elder Jackie Davis with Tabernacle of Praise
The Pledge of Allegiance was recited.

III. MINUTES

1. Minutes of the regular meeting held June 1, 2006

Motion by Mr. Vander Pan, seconded by Mr. Schull to approve the minutes of the June 1, 2006 regular meeting as presented.

Vote on the Motion:

Ayes: Mr. Schull, Mr. Bailey, Mr. Allison, Mayor Dittrich, Mr. Vander Pan, Mr. Stowe, Mr. Sauma

Noes: None

Motion carries unanimously.

IV. PRESENTATION BY PLANNING AND ZONING COMMISSION

PZ-2006-04 Approval of Land Use Plan amendment of the Comprehensive Plan for Area "B" reducing Low Density Single Family use and increasing Commerce use (North of I20, east of Winscott Road, and west of Ridglea County Club Estates)

Mr. Gattis gave the following report: The Land Use Plan is part of the City's Comprehensive Plan. The plan is a guide for ultimate development patterns using broad land use categories. The Land Use Plan looks at the overall picture of the City.

The Zoning Ordinance is a bind ordinance used as a means of achieving land use planning. The Zoning Ordinance looks at details such as specific uses, heights, density, setbacks, etc.

The Land Use Plan category for Low-Density Single Family is:

- Single family detached houses
- Densities up to 6 dwelling units per acre
- Includes “A”, “B”, and “BR” zoning districts

The Land Use Plan category for Commerce is used for commercial and office park environments with some light industrial. This category is intended for a campus atmosphere.

The issues to consider when looking at the Land Use Plan are:

Are there any Environmental constraints?

The proposed area is not in a floodplain
 The area is not protected by TxDOT noise barrier
 NAS Fort Worth JRB noise contours
 Area is within BWA Well 17 wellhead protection zone

Are there any access issues?

There is access from the frontage road with the recent ramp relocation
 Access will be available from a future street from the west
 There is no access to Ridglea Country Club Estates

Is this the best land use for this area?

There is freeway frontage
 Area is adjacent to other Commerce designated land

Does it meet the Goals and Objectives in the Comprehensive Plan?

Increases areas for commercial use from 10.16% to 10.66%
 Balances the ratio of multifamily to single family from 49.2% to 49.4%

The Planning and Zoning Commission considered the item at their April 13, 2006 meeting and unanimously recommended the change of the 28.4 acres from “Low Density Residential” to “Commerce”,

Mayor Dittrich declared the public hearing open at 7:41 p.m. The following citizens spoke in opposition to the Land Use Plan amendment:

Diane Raffia
 Don Lanza
 Murphy Kleuser
 Norris Williams
 Bill Collins
 Ronald Witt
 Cindia Freiwald
 Dan Billings
 Eric Counce

Paul Westfall

The topics of concern included noise pollution, appearance, security, potential increase in crime, and request for a Greenbelt area.

Mayor Dittrich closed the public hearing at 8:12 p.m.

Discussion was held between City Council, staff, and Benbrook Economic Development Executive Director.

Mr. Gattis stated that the Greenbelt area the residents spoke about is not part of the City's Comprehensive Plan. He stated the EDC conducted a Freeway Corridor Study, however, that study was never accepted as part of the Plan.

Mr. Ron Rainey, Executive Director with EDC stated the EDC purchased the 7 acres in question for \$165,448.86. The EDC has since spent approximately \$10,000 in the Land Use Plan amendment process, making the total invested approximately \$175,000.

Mr. Rainey stated that June 15, 2006 he had been contacted by officers with the Ridglea Country Club Homeowner's Association. The Homeowner's Association indicated that they would be interested in purchasing the 7 acres from Mr. Hawkins, the proposed buyer. Mr. Rainey advised he also spoke with Mr. Hawkins who indicated he would be interested in meeting with the Association. Mr. Rainey stated the property is currently owned by the EDC and they have never received a presentation from the Homeowner's Association or offer to purchase the 7 acres.

Mr. Rainey stated that contract with Mr. Hawkins is due to close within 30 days of the rezoning and any delay in the rezoning would not affect the contract.

Following discussion, motion by Mr. Schull, seconded by Mr. Allison to delay action on PZ-2006-04 for 30 days. Discussion continued.

Mr. Dittrich advised City Council that the motion is to delay action for 30 days and will be brought back to Council on the second meeting in July.

Vote on the Motion:

Ayes: Mr. Bailey, Mr. Allison, Mayor Dittrich, Mr. Vander Pan, Mr. Stowe, Mr. Sauma, Mr. Schull

Noes: None

Motion carries unanimously.

PZ-2006-05 Ordinance rezoning 28.424 acres of land in the James Rogers Survey Abstract Number 1265 and the James Rogers Survey Abstract Number 1264 from “A” One Family District to “G” Commerce District (North of I20, west of Block 9 of Ridglea Country Club Estates, and east of the westerly TXU Electric transmission line right-of way)

Mr. Gattis stated that any rezoning of the subject property would be in conflict with the Land Use Plan. He advised that it would be staff’s recommendation to defer this item for 30 days.

Motion by Mr. Allison, seconded by Mr. Vander Pan to delay PZ-2006-05 for 30 days.

Vote on the Motion:

Ayes: Mr. Allison, Mayor Dittrich, Mr. Vander Pan, Mr. Stowe, Mr. Sauma, Mr. Schull, Mr. Bailey

Noes: None

Motion carries unanimously.

V. REPORTS OF CITY MANAGER

A. GENERAL

G-1633 Consider Interlocal Agreement between the City of Fort Worth and the City of Benbrook for Construction and Maintenance of Two Bridges over Walnut Creek

Mr. Conklin gave the following report: The City of Fort Worth approved a preliminary plat in January 2004 for Skyline Ranch, which will ultimately contain 392 lots. Access to Phase 1 would be through Benbrook on Rolling Hills Drive and Woodglen Drive. Fort Worth and the developer met with Benbrook staff in September 2004 about the bridges in Benbrook. Benbrook staff agreed to the bridges provided there was an Interlocal Agreement whereby Fort Worth assumed all maintenance responsibilities. Fort Worth Department of Transportation would not agree.

Both Rolling Hills Drive and Woodglen Drive were originally intended to extend across Walnut Creek. Woodglen Drive originally extended across Walnut Creek, but the structure deteriorated and failed.

In August 2005, the developer removed the barricades in Benbrook at the end of Rolling Hills Drive. Benbrook staff issued a stop work order for any work within Benbrook. Since that time, negotiations have been rolled into larger discussion with Fort Worth about boundary adjustments in both cities.

The consequences of denying the bridges are:

- 1. Negate a 24-acre single-family development in Benbrook.
- 2. Remove Wilbow as a major financial contributor from the Walnut Creek sewer line project.
- 3. Would remove Fort Worth's incentive from interlocal fire agreement for shared services.
- 4. Would end Benbrook/Fort Worth negotiations for boundary adjustments.

Under the proposed Interlocal Agreement:

- 1. Fort Worth assumes maintenance of the two bridges.
- 2. Benbrook agrees to disannex and Fort Worth agrees to annex the footprint of the bridges and approaches.
- 3. Fort Worth agrees to make pavement repairs to Rolling Hills Drive caused by construction traffic.
- 4. Fort Worth agrees to pay proportionate share of traffic signal at RM2871, if warranted.

In a separate informal agreement, Wilbow Development agrees to pay for fire service calls during 2005.

As a good faith step toward the overall boundary agreement, staff recommends that the City Council authorize the City Manager to execute the Interlocal Agreement for the two bridges over Walnut Creek to serve the Skyline Ranch development.

Mayor Dittrich asked if there were anyone in the audience wishing to speak to the item. The following citizens spoke against adoption of the Interlocal Agreement:

Keira Koslowsky
Juanita Brown
Anna Claunch
Tommy Loyler
Gary Cox
Jim Claunch

The main topic of discussion included additional traffic along Rolling Hills Drive and RM2871 and the deterioration of property value due to proposed development.

Mr. Charles Fitzgerald spoke in favor on behalf of the developer.

Following discussion, motion by Mr. Vander Pan, seconded by Mr. Sauma to authorize the City Manager to execute the Interlocal Agreement for the two bridges over Walnut Creek to serve the Skyline Ranch development.

Vote on the Motion:

Ayes: Mayor Dittrich, Mr. Vander Pan, Mr. Sauma, Mr. Schull, Mr. Bailey, Mr. Allison

Noes: Mr. Stowe

Motion carries 6-1.

G-1634 Ordinance Denying Atmos Energy's Statement of Intent to Increase Gas Utility Rates

Mrs. Cortez gave the following report: In 2005, Benbrook and eighty-seven other Atmos Cities Steering Committee (ACSC) cities required Atmos to file support for the reasonableness of its existing rates by December 31, 2005. Atmos filed information that was reviewed by the cities' consultants who determined Atmos' rates to be excessive.

In April 2006, the City adopted an ordinance requiring Atmos to reduce its rates. Atmos appealed the rate action with the Railroad Commission. As part of its appeal, Atmos bonded in its existing rates and filed a Statement of Intent to Increase Gas Utility Rates effective July, 2006.

According to information provided by Atmos, this filing would increase the Company's revenues by \$61 million annually, or 3.6 percent. The average residential bill would increase 5.36 percent, or approximately \$4.02 per month. Commercial customers would see their average bill increase by 5.25 percent, or approximately \$17.16 per month.

The cities' consultants found that the request to increase rates is based upon the information already reviewed by the city in response to the City's show-cause action and is unreasonable.

The proposed ordinance:

1. Denies the rate increase
2. Supports reduction of existing rates
3. Authorizes intervention in appeals/litigation through ACSC
4. Requires prompt reimbursement of ratemaking costs incurred.

Motion by Mr. Schull, seconded by Mr. Allison to adopt Ordinance No. 1208 denying Atmos Energy's Statement of Intent to Increase Gas Utility Rates.

Vote on the Motion:

Ayes: Mr. Vander Pan, Mr. Stowe, Mr. Sauma, Mr. Schull, Mr. Bailey, Mr. Allison, Mayor Dittrich

Noes: None

Motion carries unanimously.

Ordinance No. 1208 being “**AN ORDINANCE OF THE CITY OF BENBROOK, TEXAS DENYING ATMOS ENERGY CORP., MID-TEX DIVISION’S STATEMENT OF INTENT TO INCREASE THE GAS UTILITY RATES IN BENBROOK; SUPPORTING THE REDUCTION OF EXISTING NATURAL GAS DISTRIBUTION RATES CURRENTLY CHARGED BY ATMOS WITHIN THE CITY; AUTHORIZING THE ATMOS CITIES STEERING COMMITTEE (“ACSC”) TO ACCT ON BEHALF OF CITY AND INTERVENE OR OTHERWISE PARTICIPATE IN ANY LITIGATION OR PROCEEDINGS BEFORE ADMINISTRATIVE OR JUDICIAL BODIES; ORDERING ATMOS TO REIMBURSE ACSC FOR ITS COSTS INCURRED IN RATEMAKING PROCEEDINGS OR APPEALS OF SAID PROCEEDINGS; REQUIRING DELIVERY OF THIS ORDINANCE TO ATMOS AND LEGAL COUNSEL; AND FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS ADOPTED IS OPEN TO THE PUBLIC BY LAW.**”

G-1635 Ordinance Denying Atmos Energy’s Request for a Gas Reliability Infrastructure Program Rate Increase

Mrs. Cortez gave the following report: In March 2006, Atmos made a 2005 Gas Reliability Infrastructure Program (GRIP) filing with the Railroad Commission, Benbrook and other cities. The GRIP filing is intent to increase it monthly rates to:

- Residential customers by \$0.51
- Commercial customers by \$1.75
- Industrial customers by \$78.47

In April 2006, the City suspended the increase for 45-days for review. The review revealed the following problems with the filing:

1. Capital structure and component costs do not represent Atmos’ costs but are proxies based on TXU Gas’ circumstances.
2. Rate base amounts show unexplained increases over the amounts in 2003 and 2004 that are not shown to be reasonable.
3. Statement of Intent filed in May 2006 also includes Atmos’ 2005 investment, making the 2005 GRIP filing unnecessary and creating the potential for double-counting/recovery.

The proposed ordinance:

1. Denies the GRIP increase request
2. Authorizes participation in ACSC
3. Authorizes intervention in appeals/litigation through ACSC
4. Requires prompt reimbursement of costs incurred by the City related to the GRIP request

Motion by Mr. Stowe, seconded by Mr. Sauma to adopt Ordinance No. 1209 denying Atmos Energy’s request for a Gas Reliability Infrastructure Program rate increase.

Vote on the Motion:

Ayes: Mr. Stowe, Mr. Sauma, Mr. Schull, Mr. Bailey, Mr. Allison, Mayor Dittrich, Mr. Vander Pan

Noes: None

Motion carries unanimously.

Ordinance No 1209 being **“AN ORDINANCE OF THE CITY OF BENBROOK, TEXAS, DENYING THE REQUEST OF ATMOS ENERGY CORP., MID-TEX DIVISION, FOR AN ANNUAL GAS RELIABILITY INFRASTRUCTURE PROGRAM (GRIP) RATE INCREASE IN THIS MUNICIPALITY, AS A PART OF THE COMPANY’S STATEWIDE GAS UTILITY DISTRIBUTION SYSTEM; APPROVING COOPERATION WITH OTHER CITIES WITHIN THE ATMOS ENERGY CORP., MID-TEX DIVISION DISTRIBUTION SYSTEM AUTHORIZING ACSC TO HIRE LEGAL AND CONSULTING SERVICES AND TO NEGOTIATE WITH THE COMPANY AND DIRECT ANY NECESSARY LITIGATION; AUTHORIZING INTERVENTION AS PART OF ACSC IN ANY APPEAL OF THE CITY’S ACTION TO THE RAILROAD COMMISSION; REQUIRING PROMPT REIMBURSEMENT OF COSTS INCURRED BY THE CITY; FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSES IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND PROVIDING FOR NOTICE OF THIS ORDINANCE TO ATMOS ENERGY CORP., MID-TEX DIVISION.”**

G-1636 Financial Report for Month Ending May 31, 2006

Mr. Conklin gave the following report: General Fund Revenues for the month of May totaled \$599,407. Through May, total collections were \$9,628,437 or 87.90% of the amount budgeted. General Fund Expenditures for May totaled \$1,275,240. At May 31, 2005 revenues exceeded expenditures by \$2,239,715.

May revenues for Benbrook Economic Development Corporation were \$82,104. Through the end of May, expenditures exceeded revenues by \$472,661.

The City had \$12,486,011 in investments at May 31, 2006.

Motion by Mr. Bailey, seconded by Mr. Vander Pan to accept the financial report for the month ending May 31, 2006.

Vote on the Motion:

Ayes: Mr. Sauma, Mr. Schull, Mr. Bailey, Mr. Allison, Mayor Dittrich, Mr. Vander Pan, Mr. Stowe

Noes: None

Motion carries unanimously.

G-1637 Consider Bids for Drainage Improvements at 913 Timberline Drive

Mr. Gattis gave the following report: When the City completes the Timber Creek Channel project next month, it will remove approximately 65 houses along Timber Creek and Dry Branch from the 100-year floodplain. 913 Timberline Drive is a repetitive loss property under the National Flood Insurance Program. It is one of two properties that will not be removed from the 100-year floodplain by the project.

A former owner constructed a retaining wall in the back year that encroaches into the dedicated drainage easement, causing erosion problems. The City purchased the property in January 2006.

The drainage improvements project includes removal of the retaining wall and construction of a rock gabion wall. The project also includes enlarging the storm drain inlet on Timberline Drive. Following the project, the City will either demolish the existing house and resell the raised lot, or elevate the house by two feet to bring it out of the floodplain.

The City opened bids for the retaining wall and curb inlet improvements on May 24, 2006. Laughley Bridge & Construction submitted the low bid of \$59,970.00. Laughley Bridge & Construction has built several projects for the City in the past, including the Timber Creek channel from Timbercreek Road to the park, a private drive bridge on Tara Drive and most recently, the Winscott Road culvert expansion over Timber Creek. The City has been satisfied with their work.

Motion by Mr. Allison, seconded by Mr. Sauma to award the contract for the construction of the Drainage Improvements at 913 Timberline Drive to Laughley Bridge & Construction in the amount of \$59,970.00 to be paid from Account 04-3007-5219.

Vote on the Motion:

Ayes: Mr. Schull, Mr. Bailey, Mr. Allison, Mayor Dittrich, Mr. Vander Pan, Mr. Stowe, Mr. Sauma

Noes: None

Motion carries unanimously.

VI. OTHER MATTERS OF BUSINESS

VII. INFORMAL CITIZEN PRESENTATION

VIII. ADJOURNMENT

Meeting adjourned at 9:45 p.m.

APPROVED:

Jerry B. Dittrich, Mayor

ATTEST:

Joanna King, City Secretary