

**LOCKHART CITY COUNCIL
REGULAR MEETING**

AUGUST 18, 2009

6:30 P.M.

Council present:

Mayor Pro-Tem Frank Estrada
Councilmember Kenny Roland
Councilmember Richard Wieland

Mayor James Bertram
Councilmember Paul Gomez
Councilmember Lew White
Councilmember Richard Banks

Staff present:

Vance Rodgers, City Manager
Peter Gruning, City Attorney
Sandra Mauldin, Economic Dev. Coordinator

Connie Ortiz, City Secretary
Jeff Hinson, Finance Director
Dan Gibson, City Planner

Citizens/Visitors Addressing the Council: Steve Bitonti of Huddle House Restaurant.

Work Session 6:30 p.m.

Mayor Bertram opened the work session and advised the Council, staff and the audience that staff would provide information and explanations about the following items:

A. DISCUSS CITY COUNCIL MINUTES FOR THE JULY 30, 2009, AUGUST 4, 2009, AND AUGUST 13, 2009 MEETINGS.

Mayor Bertram requested corrections to the City Council minutes for the July 30, 2009, August 4, 2009, and August 13, 2009 meetings. There were none.

B. DISCUSS BID AND AWARD OF CONTRACT WITH WESTHILL PAVING, INC., OF SAN MARCOS, TEXAS, FOR CRACK SEALING SERVICES FOR UP TO 80,000 LINEAR FEET FOR A UNIT PRICE OF \$37.4 CENTS PER LINEAR FOOT.

Mr. Rodgers stated that public bids were sought in compliance with State law for the street maintenance of crack sealing services for up to 80,000 linear feet. Three bids were received. Westhill Paving, Inc. had the lowest bid of 37.4 cents per linear foot. Other bids included Four B Paving at \$0.42 per linear foot and Triple R Contracting in the amount of \$1.30 per linear foot. Westhill Paving, Inc. has performed acceptable work for the City of Lockhart in the past and also has other good references.

There was discussion.

C. DISCUSS MASTER UTILITY ADJUSTMENT AGREEMENT CONTRACT WHEREBY CENTRAL TEXAS HIGHWAY CONTRACTORS, LLC, (CTXHC) AGREES TO PAY THE CITY OF LOCKHART FOR THE REPLACEMENT, UPGRADES AND ANY EASEMENTS FOR ITS UTILITY FACILITIES IN CONFLICT WITH THE CONSTRUCTION OF STATE HIGHWAY 130 AT AND NEAR THE INTERSECTION OF U.S. HIGHWAY 183 AND APPROVING THE MAYOR TO SIGN THE AGREEMENT.

Mr. Rodgers stated that after several months of negotiation, CTXHC has finally agreed to approve the points of contention contained in the agreement submitted to them by the City of Lockhart. Peter Gruning, City Attorney, has reviewed the document. This agreement ensures payment to the City of Lockhart for water line removal, replacement, upgrades and any associated easements in conflict with the impending construction of S.H. 130 at and near the intersection of U.S. Highway 183.

Mr. Rodgers provided details about the route of the water line.

D. DISCUSS AN APPEAL BY STEVEN BITONTI FOR A WAIVER OR REDUCTION OF THE IMPACT FEES CHARGED FOR A PROPOSED RESTAURANT AT 1801 SOUTH COLORADO STREET, AS PROVIDED IN SECTION 31-13 "APPEALS", CHAPTER 31 "IMPACT FEES", OF THE LOCKHART CODE OF ORDINANCES, AND BASED UPON THE CALCULATED AMOUNT OF IMPACT FEE DUE AS LISTED IN SECTION 31-13(A)(2).

Mayor Bertram stated that this item would be discussed during the regular meeting portion of the meeting.

E. DISCUSSION REGARDING ADOPTION OF THE 2009 CEMETERY MAINTENANCE TRUST PROPOSED PROPERTY TAX RATE.

Mr. Hinson explained that if the Council chose to issue the cemetery maintenance trust property tax rate, the funds would be required to be placed in a trust or fund that would allow the collected revenue to be used only towards maintenance of a City owned cemetery. He stated that the State law for adherence with the Truth-In Taxation laws does not require a public hearing, which would be set as directed by the Council. The proposed cemetery trust property tax rate is recommended at \$2.48 cents per \$100 property value.

Mr. Gruning explained how the State Statute references the implementation of cemetery tax and how the funds could be utilized.

Mr. Hinson also explained how the State Statute references the implementation and use of the cemetery trust tax and explained the process for setting public hearings. He reminded the Council that the funds could only be used for maintenance of a City owned cemetery.

Mayor Pro-Tem Estrada asked if a future Council could remove the cemetery tax. Mr. Hinson replied that a District Judge would be required to designate a trustee of the cemetery trust if a future Council chose to eliminate the cemetery tax. Mayor Pro-Tem Estrada stated that he did not support the implementation of a cemetery tax. He stated that he would support an increase in property tax that would allow the funds to be utilized for any citywide need, but not a fund that would be allocated only for cemetery maintenance.

Councilmember Banks stated that he did not support several issues as follows: 1) the implementation of the cemetery tax since no other city has utilized or implemented the cemetery tax; and, 2) a salary increase for non-civil service employees. He suggested adoption of the effective tax rate.

Councilmember Gomez stated that he did not support implementation of the cemetery tax and that he would not support a salary increase for non-civil service employees.

Councilmember White stated that he supported the implementation of the cemetery tax. He also stated that he supported an increase in wages for non-civil service employees. He stated that he believed that non-civil service employees with a long tenure should be compensated for their service since a large number of employees could retire and seek employment elsewhere to be paid a higher salary than Lockhart. Civil Service employees would receive a salary increase and he believed that non-civil service employees should also receive a salary increase.

Mayor Bertram spoke in favor of the cemetery tax and in favor of increasing salaries for non-civil service employees. He stated that he believed that non-civil service employees with a long tenure should be rewarded and that they all have taken on additional duties to cover the several vacant positions.

Councilmember Roland stated that he did not support the implementation of a cemetery tax.

There was further discussion.

F. DISCUSSION REGARDING ADOPTION OF THE 2009 COMBINED MAINTENANCE AND OPERATION AND INTEREST AND SINKING PROPOSED PROPERTY TAX RATE FOR THE CITY OF LOCKHART. IF PROPOSED TAX RATE EXCEEDS THE ROLLBACK RATE OR THE EFFECTIVE TAX RATE (WHICHEVER IS LOWER), A RECORD VOTE MUST BE TAKEN TO PLACE A PROPOSAL TO ADOPT THE RATE ON THE AGENDA OF A FUTURE COUNCIL MEETING. IF MOTION PASSES, COUNCIL MUST SCHEDULE AND ANNOUNCE THE DATE, TIME AND PLACE OF TWO (2) PUBLIC HEARINGS REGARDING THE PROPOSED TAX RATE.

Mr. Hinson stated that the combined effective tax rate was \$0.6878 and that the total property tax rate, if the cemetery tax is implemented, would be a total of \$0.7126 cents which was right under the rollback rate. He provided information about the different tax rate assumptions with hotel tax contribution and excess funds.

There was discussion regarding the proposed tax rate options.

Mayor Pro-Tem Estrada spoke in favor of non-civil service employees receiving a small salary increase.

Councilmember Roland stated that he supported a salary increase for non-civil service employees.

There was brief discussion regarding future public hearing dates.

Mayor Bertram announced there would be a recess at 7:15 p.m.

REGULAR MEETING

ITEM 1. CALL TO ORDER.

Mayor James Bertram called the regular meeting of the Lockhart City Council to order on this date at 7:36 p.m.

ITEM 2. INVOCATION, PLEDGE OF ALLEGIANCE.

Councilman Paul Gomez gave the invocation and led the pledge of allegiance to the United States and Texas flags.

ITEM 3. CITIZENS/VISITORS COMMENTS.

Mayor Bertram requested citizens to address the Council. There were none.

ITEM 4-A. HOLD A PUBLIC HEARING ON A REQUEST BY RICHARD HERNANDEZ FOR A ZONING CHANGE AMENDING THE OFFICIAL ZONING MAP FROM CHB COMMERCIAL HEAVY BUSINESS DISTRICT TO RMD RESIDENTIAL MEDIUM DENSITY DISTRICT ON 0.2525 ACRE IN THE BYRD LOCKHART LEAGUE, ABSTRACT NO. 17, LOCATED AT 110 WEST CHINA STREET. [ZC-09-04]

Mayor Bertram opened the public hearing at 7:37 p.m. and requested the staff background report.

Mr. Gibson stated that the owner wishes to make the zoning of his property consistent with the existing use, as well as with the future land use designation of the Lockhart 2020 Comprehensive Plan. The requested RMD classification would be an expansion of the existing RMD zoning of the lot adjacent to the east at 108 China Street, which was similarly rezoned from CHB to RMD in 2004. Although a portion of the block adjacent to the south, across Apple Street, is zoned IL it should ultimately also be rezoned to RMD for consistency with the existing uses and the future land use plan, as was the property at 108 Apple Street recently. Because the proposed rezoning is to a classification that is consistent with the existing use, there will be no change in the residential use and, therefore, no additional neighborhood impact. As a result, the proposed RMD designation is appropriate in this location. There has been no opposition expressed to this proposed rezoning. He stated that the Planning and Zoning Commission and staff recommend approval.

Mayor Bertram requested citizens to address the Council regarding the zoning change. There were none. He closed the public hearing at 7:48 p.m.

ITEM 4-B. CONSIDER ORDINANCE 2009-23 AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF LOCKHART, TEXAS, TO RECLASSIFY THE PROPERTY KNOWN AS 0.2525 ACRE IN THE BYRD LOCKHART LEAGUE, ABSTRACT NO. 17, AND LOCATED AT 110 WEST CHINA STREET, FROM CHB COMMERCIAL HEAVY BUSINESS DISTRICT TO RMD RESIDENTIAL MEDIUM DENSITY DISTRICT.

Councilmember Gomez made a motion to approve Ordinance 2009-23, as presented. Mayor Pro-Tem Estrada seconded. The motion carried by a vote of 7-0.

ITEM 5. CONSENT AGENDA.

Councilmember White made a motion to approve consent agenda items 5A, 5B, and 5C. Councilmember Banks seconded. The motion carried by a vote of 7-0.

The following are the consent agenda items that were approved:

- 5A: Approve City Council minutes for the July 30, 2009, August 4, 2009, and August 13, 2009 meetings.
- 5B: Approve bid and award of contract with Westhill Paving, Inc., of San Marcos, Texas, for crack sealing services for up to 80,000 linear feet for a unit price of 37.4 cents per linear foot.
- 5C: Approve Master Utility Adjustment Agreement contract whereby Central Texas Highway Contractors, LLC, (CTxHC) agrees to pay the City of Lockhart for the replacement, upgrades and any easements for its utility facilities in conflict with the construction of State Highway 130 at and near the intersection of U.S. Highway 183 and approving the Mayor to sign the agreement.

ITEM 6-A. CONSIDER AN APPEAL BY STEVEN BITONTI FOR A WAIVER OR REDUCTION OF THE IMPACT FEES CHARGED FOR A PROPOSED RESTAURANT AT 1801 SOUTH COLORADO STREET, AS PROVIDED IN SECTION 31-13 "APPEALS", CHAPTER 31 "IMPACT FEES", OF THE LOCKHART CODE OF ORDINANCES, AND BASED UPON THE CALCULATED AMOUNT OF IMPACT FEE DUE AS LISTED IN SECTION 31-13(A)(2).

Mr. Gibson stated that Mr. Bitonti is the owner of the vacant property at 1801 South Colorado Street where a building permit is currently pending for a new restaurant. He has submitted a written notice of appeal, as set forth in Section 31-13(c), based upon our calculation of the amount of impact fee due, which is the second of the six appealable administrative actions listed in Section 31-13(a). Section 31-13(b) states that a burden of proof is on the appellant to demonstrate that the amount of fee was not calculated according to the applicable schedule of impact fees. He requested that the Council review the impact fee schedules as shown in their Council packet, along with the worksheet used by staff to calculate the fees for the specific project. Staff checked the calculations and has not been able to find any errors. Mr. Gibson stated that staff initially did reduce the impact fees by \$5,000 due to a reduction in the size of the water meter. Staff is concerned that approval of such an appeal without a valid justification would set a precedent that could make it difficult to collect fees on future projects without similar appeals. Also, all other developments have paid their impact fees, and it would be unfair to give special treatment in this case when there really are no extenuating circumstances other than the owner's financial situation, which is a common concern of all developers.

Mr. Rodgers stated that staff previously worked with the developer to assist in saving money by agreeing to several construction design changes that totaled approximately \$12,000. Original construction design plans were changed as follows:

- Installation of a fire hydrant was changed to be placed on public property, which saved the developer approximately \$3,500.
- Change in the electrical design saved the developer approximately \$4,000.
- Ordering and allowing an inch and one-half water meter saved the developer approximately \$5,000.

Mr. Rodgers stated that additional design changes could possibly add to the cost savings. There was discussion regarding the drainage issues for the restaurant.

Mr. Gibson explained the development process beginning with a plat, discussion of impact fees, building plans, and so forth.

Mayor Bertram requested Steve Bitonti to address the Council.

Steve Bitonti of Huddle House Restaurant stated that he has worked closely with staff in several ways to save money on the development of the restaurant. He thanked staff for their cooperation in amending the original building plans to facilitate the construction of his restaurant. He requested that the Council consider waiving or reducing the impact fees.

Mayor Pro-Tem Estrada spoke against waiving the impact fees.

Councilmember Roland spoke in favor of waiving the impact fees.

Councilmember Gomez spoke against waiving the impact fees.
There was further discussion.

Councilmember Wieland spoke against waiving the impact fees.

Mayor Bertram also spoke against waiving the impact fees, since the ordinance would not allow it.

Mr. Gruning stated that the Council could amend Chapter 31 to accommodate future requests for waiving impact fees. The current ordinance did not allow the waiver as it currently read.

There was further discussion.

Mr. Bitonti stated that he appreciated the staff's assistance throughout the development and construction process.

Councilmember Gomez made a motion to deny the request to waive impact fees. Councilmember Wieland seconded. The motion carried by a vote of 7-0.

ITEM 6-B. DISCUSS AND TAKE APPROPRIATE ACTION REGARDING ADOPTION OF THE 2009 CEMETERY MAINTENANCE TRUST PROPOSED PROPERTY TAX RATE.

Councilmember Banks made a motion not to adopt a cemetery maintenance trust property tax. Councilmember Roland seconded. The motion carried by a vote of 6-1, with Councilmember White opposing.

ITEM 6-C. DISCUSS AND TAKE APPROPRIATE ACTION REGARDING ADOPTION OF THE 2009 COMBINED MAINTENANCE AND OPERATION AND INTEREST AND SINKING PROPOSED PROPERTY TAX RATE FOR THE CITY OF LOCKHART. IF PROPOSED TAX RATE EXCEEDS THE ROLLBACK RATE OR THE EFFECTIVE TAX RATE (WHICHEVER IS LOWER), A RECORD VOTE MUST BE TAKEN TO PLACE A PROPOSAL TO ADOPT THE RATE ON THE AGENDA OF A FUTURE COUNCIL MEETING. IF MOTION PASSES, COUNCIL MUST SCHEDULE AND ANNOUNCE THE DATE, TIME AND PLACE OF TWO (2) PUBLIC HEARINGS REGARDING THE PROPOSED TAX RATE.

Mayor Bertram stated that the current tax rate is .7090 cents and stated that the City Manager's proposed budget could be accommodated at that rate. The proposed tax rate of .7090 cents would fund the proposed wage increase for non-civil service employees, as suggested by the City Manager.

Councilmember White made a motion to adopt the .7090 cents per \$100 valuation property tax rate. Mayor Pro-Tem Estrada seconded.

Councilmember Banks stated that he did not support the salary increase or increased property tax rate. He suggested that the effective tax rate should be adopted at .6878 cents per \$100 valuation.

Councilmember Gomez stated that he did not support an increase of the property tax rate and that he did not support a salary increase for non-civil service employees.

Mayor Bertram requested a vote on the motion.

Record vote in favor of the motion:

Councilmember Kenny Roland, District 1
 Councilmember Lew White, District 3
 Mayor James Bertram
 Mayor Pro-Tem Frank Estrada

Record vote against the motion:

Councilmember Richard Wieland, At-Large
 Councilmember Paul Gomez, At-Large
 Councilmember Richard Banks, District 4

Mr. Hinson stated that the first public hearing would be held on Tuesday, September 8, 2009 at 7:30 p.m. at 308 West San Antonio Street. Second public hearing would be held on Tuesday, September 15, 2009 at 7:30 p.m. at 308 West San Antonio Street. The second public hearing would also include the public hearing regarding the budget, as required by the City's Charter.

ITEM 6-D. APPOINTMENTS TO VARIOUS BOARDS, COMMISSIONS OR COMMITTEES.

Mayor Bertram requested appointments to various boards, commissions or committees. There were none.

ITEM 6-E. PRESENTATION, WORKSHOP, DISCUSSION AND/OR ACTION REGARDING THE FISCAL YEAR 2009-2010 PROPOSED BUDGET, TAX RATE AND RELATED INFORMATION.

Mr. Rodgers stated that there was no information to discuss at this time.

ITEM 6-F. DISCUSSION REGARDING MAINTENANCE AND OPERATING AND CAPITAL BUDGETS AND FUNDING.

Mr. Rodgers stated that there was no information to discuss at this time.

ITEM 6-G. DISCUSSION AND/OR ACTION REGARDING TENTATIVE BUDGET AND TAX RATE ADOPTION CALENDAR.

Mr. Rodgers distributed an updated calendar to the Council. The public hearing dates for the tax rate were revised.

ITEM 7. CITY MANAGER'S REPORT, PRESENTATION AND POSSIBLE DISCUSSION

- City water well conditions.
- Luling water contribution.
- Safe Routes to School Grant – Call for projects at end of August or early September.
- Library architect contract fee negotiations proceeding.
- Keep Lockhart Beautiful – Town Branch cleanup set for Saturday, September 19 at 7:30 am to 1 pm at City Park.
- September 19 at 8:30 pm, Movies in City Park, Kung Fu Panda.

ITEM 8. COUNCIL COMMENTS.

A. Comments and possible discussion by Mayor James Bertram:

- Report on Capital Area Council of Government Executive Board meeting.

ITEM 9. ADJOURNMENT.

Councilmember Wieland made a motion to adjourn the meeting. Councilmember Roland seconded.
The motion carried by a vote of 7-0. The meeting was adjourned at 8:49 p.m.

PASSED and APPROVED this the 1st day of September 2009.

CITY OF LOCKHART

James Bertram, Mayor

ATTEST:

Connie Ortiz, TRMC, City Secretary