

City Council
May 5, 2014

A regular meeting of the Mayor and City Council of the City of Waxahachie, Texas was held in the Council Chamber at City Hall, 401 S. Rogers on Monday, May 5, 2014, at 7:00 p.m.

Council Members Present: John Wray, Mayor
Kevin Strength, Mayor Pro Tem
Chuck Beatty, Councilman
Mark Singleton, Councilman
Mike Ramsey, Councilman

Member Absent: None

Others Present: Paul Stevens, City Manager
Michael Scott, Assistant City Manager
Steve Chapman, City Attorney
Amber Villarreal, Assistant City Secretary

Mayor John Wray called the meeting to order. Assistant City Manager Michael Scott gave the invocation, led the pledge of allegiance and the Texas pledge of allegiance.

CONSENT AGENDA:

- a. Minutes of the regular City Council meeting of April 21, 2014
- b. Minutes of the City Council Work Session of April 21, 2014
- c. Minutes of the regular Planning & Zoning Commission meeting of April 23, 2014
- d. Approve parade route for the 17th Annual Crape Myrtle Festival hosted by the Chamber of Commerce
- e. Approve Crape Myrtle Fireworks display hosted by the Chamber of Commerce

Councilman Chuck Beatty moved to approved Items a. through e. on the Consent Agenda.
Councilman Mark Singleton seconded, **All Ayes.**

Mayor Wray announced there is not an Honorary Councilmember for the meeting.

Mayor Wray presented a Proclamation to Convention and Visitors Bureau Director Laurie Mosley proclaiming May 3-11, 2014 as "National Travel and Tourism Week." Mrs. Mosley recognized various businesses in attendance that supports tourism in Waxahachie. She reported about \$49 million dollars was spent in Waxahachie in 2012 by tourist.

Mayor Wray read a Proclamation proclaiming May 2014 as “National Preservation Month” and presented it to Downtown Development Director Anita Williamson and members of the Heritage Preservation Commission.

Mrs. Anita Williamson reported 216 historic property tax exemption applications were reviewed this year and 207 of those were approved. 11 of the properties approved were first time applicants. Mrs. Williams reported, as a part of the Commissions’ activities, updated coloring books will be delivered to children in the local school district. She recognized the members of the Heritage Preservation Commission in attendance and thanked them for all their hard work.

Mrs. Williamson presented a community beautification grant from Scotts Miracle-Gro to the City of Waxahachie in the amount of \$500 to help with the project at the vacant lots on the east side of the square. The money will be used to buy seeds to beautify the area.

Mayor Wray opened the Public Hearing on a request by Sherry Johnson, for a Site Plan approval within a Planned Development-44-General Retail (PD-44-GR) Zoning District to enclose patio located at 100 Professional Place, being 0.469 acres, Lot 1, Block A, Chapman Plaza - Owner: Barry R. & Caryn G. Moore (ZA 2014-08).

Planning Director Clyde Melick noted the applicant requested approval to enclose the existing car port. He noted two additional parking spaces will be added.

Those who spoke in favor:

Barry Moore, 4 Sargent Place, Waxahachie, Texas

There being no others to speak for or against ZA 2014-08, Mayor Wray closed the Public Hearing.

Mayor Pro Tem Kevin Strength moved to approve the request by Sherry Johnson, for a Site Plan approval within a Planned Development-44-General Retail (PD-44-GR) Zoning District to enclose patio located at 100 Professional Place, being 0.469 acres, Lot 1, Block A, Chapman Plaza - Owner: Barry R. & Caryn G. Moore (ZA 2014-08). Councilman Mark Singleton seconded, **All Ayes.**

Mayor Wray opened the Public Hearing on a request by Josh Millsap, Bury Inc., for a Site Plan approval and Specific Use Permit within a Planned Development-58-General Retail (PD-58-GR)

Zoning District to expand existing HEB grocery store located at 800 N. Hwy. 77, being Lot 1, Block A, 12.111 acres in the H.E. Butt Addition– Owner: Todd Kimling (ZA 2014-09).

Josh Millsap, 5310 Harvest Hill Rd., Dallas, Texas, requested site plan and specific use permit approval for the expansion of the existing HEB grocery store. He noted the request includes variances on landscaping and façade requirements due to site constraints. The expansion will be about 30,000 sf. and will include outside sales.

There being no others to speak for or against ZA 2014-09, Mayor Wray closed the Public Hearing.

City Attorney Steve Chapman presented Ordinance No. 2741 approving ZA 2014-09 and noted the authorization of outside sales will need to be added to the ordinance:

ORDINANCE NO. 2741

AN ORDINANCE AUTHORIZING A SPECIFIC USE PERMIT ON LOT 1 BLOCK A, H. E. BUTT ADDITION, CONTAINING 12.111 ACRES, LOCALLY KNOWN AS 800 N. HIGHWAY 77, IN THE CITY OF WAXAHACHIE, ELLIS COUNTY, TEXAS, BEING PLANNED DEVELOPMENT-58-GENERAL RETAIL (PD-58-GR) TO PLANNED DEVELOPMENT-58-GENERAL RETAIL WITH SPECIFIC USE PERMIT (PD-58-GR w/SUP), FOR A GROCERY STORE, WITH OUTSIDE SALES, INCLUDING FOOD AND BEVERAGE SALES, WITH GASOLINE SALES AND THE EXPANSION OF THE EXISTING HEB GROCERY STORE, AND ORDERING THE CHANGING OF THE ZONING MAP THEREOF IN ACCORDANCE WITH SAID CHANGE.

Councilman Mark Singleton moved to approve Ordinance No. 2741 with the addition of outside sales. Mayor Pro Tem Kevin Strength seconded, **All Ayes.**

Mayor Wray opened the Public Hearing on a request by Rob Baldwin, Baldwin Associates, for a Site Plan approval and Specific Use Permit within a Planned Development (PD) Zoning District to build a skilled nursing facility to be located on Country Meadows Boulevard– Owner: WCE 2013 Charitable Remainder Unitrust (ZA 2014-07). Mayor Wray noted the Applicant requested to postpone the hearing until the next meeting.

Councilman Mike Ramsey moved to continue the Public Hearing on a request by Rob Baldwin, Baldwin Associates, for a Site Plan approval and Specific Use Permit within a Planned Development (PD) Zoning District to build a skilled nursing facility to be located on Country Meadows Boulevard– Owner: WCE 2013 Charitable Remainder Unitrust (ZA 2014-07) to the City Council meeting of May 19, 2014. Councilman Chuck Beatty seconded, **All Ayes.**

Kars Tamminga, P.O. Box 1069, Waxahachie, Texas, requested approval of the Final Plat of Tamminga Farms being a 30.861 acres addition (11 residential lots) in the G.W. Keen Survey, Abstract No. 603 in the ETJ-Owner: Kars Tamminga (FP 2014-11). He thanked city staff for their assistance in the plat process.

Councilman Mark Singleton moved to approve the Final Plat of Tamminga Farms being a 30.861 acres addition (11 residential lots) in the G.W. Keen Survey, Abstract No. 603 in the ETJ-Owner: Kars Tamminga (FP 2014-11). Councilman Mike Ramsey seconded, **All Ayes.**

Mr. Corey Green, Atmos Energy, reported noted on or about February 28, 2014, Atmos Mid Tex filed with the city an application to increase natural gas rates pursuant to the Rate Review Mechanism tariff renewed by the city in 2013. He noted the filing sought a \$45.7 million rate increase system-wide. On behalf of Atmos Steering Cities Committee, Mr. Green recommended approving proposed Resolution No. 1184 denying resolution denying the rate increase request. Economic Development Director Doug Barnes noted the rate increase will automatically take effect on June 1, 2014 and then the procedure continues to the Railroad Commission for a hearing. Mr. Barnes explained the cities then would intervene and file briefs on behalf of the cities which can take 60-90 days. If the decision made by the Railroad Commission is less than what was asked for, Atmos would then refund the customer in the form of a credit over 2-3 months. Mr. Green noted the approximate residential increase would be about \$2/month and \$6/month for commercial.

RESOLUTION NO. 1184

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WAXAHACHIE, TEXAS, DENYING THE RATE INCREASE REQUESTED BY ATMOS ENERGY CORP., MID-TEX DIVISION UNDER THE COMPANY'S 2014 ANNUAL RATE REVIEW MECHANISM FILING IN ALL CITIES EXERCISING ORIGINAL JURISDICTION; REQUIRING THE COMPANY TO REIMBURSE CITIES' REASONABLE RATEMAKING EXPENSES PERTAINING TO REVIEW OF THE RRM; AUTHORIZING THE CITY'S PARTICIPATION WITH ATMOS CITIES STEERING COMMITTEE IN ANY APPEAL FILED AT THE RAILROAD COMMISSION OF TEXAS BY THE COMPANY; REQUIRING THE COMPANY TO REIMBURSE CITIES' REASONABLE RATEMAKING EXPENSES IN ANY SUCH APPEAL TO THE RAILROAD COMMISSION; DETERMINING THAT THIS RESOLUTION WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; ADOPTING A SAVINGS CLAUSE; AND REQUIRING DELIVERY OF THIS

**RESOLUTION TO THE COMPANY AND THE STEERING
COMMITTEE'S LEGAL COUNSEL.**

WHEREAS, the City of Waxahachie, Texas ("City") is a gas utility customer of Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex" or "Company"), and a regulatory authority with an interest in the rates and charges of Atmos Mid-Tex; and

WHEREAS, the City is a member of the Atmos Cities Steering Committee ("ACSC"), a coalition of approximately 164 similarly situated cities served by Atmos Mid-Tex that have joined together to facilitate the review of and response to natural gas issues affecting rates charged in the Atmos Mid-Tex service area; and

WHEREAS, pursuant to the terms of the agreement settling the Company's 2007 Statement of Intent to increase rates, ACSC Cities and the Company worked collaboratively to develop a Rate Review Mechanism ("RRM") tariff that allows for an expedited rate review process controlled in a three-year experiment by ACSC Cities as a substitute to the current Gas Reliability Infrastructure Program ("GRIP") process instituted by the Legislature; and

WHEREAS, the City took action in 2008 to approve a Settlement Agreement with Atmos Mid-Tex resolving the Company's 2007 rate case and authorizing the RRM tariff; and

WHEREAS, in 2013, ACSC and the Company negotiated a renewal of the RRM tariff process for an additional five years; and

WHEREAS, the City passed an ordinance renewing the RRM tariff process for the City for an additional five years; and

WHEREAS, the RRM renewal tariff contemplates reimbursement of ACSC Cities' reasonable expenses associated with RRM applications; and

WHEREAS, on or about February 28, 2014, the Company filed with the City its second annual RRM filing under the renewed RRM tariff, requesting to increase natural gas base rates by \$45.7 million; and

WHEREAS, ACSC coordinated its review of Atmos Mid-Tex's RRM filing through its Executive Committee, assisted by ACSC attorneys and consultants, to investigate issues identified by ACSC in the Company's RRM filing; and

WHEREAS, ACSC attorneys and consultants have concluded that the Company is unable to justify a rate increase of the magnitude requested in the RRM filing; and

WHEREAS, ACSC's consultants determined the Company is only entitled to a \$19 million increase, approximately 42% of the Company's request under the 2014 RRM filing; and

WHEREAS, the Company would only be entitled to approximately \$31 million if it had a GRIP case; and

WHEREAS, the Company's levels of operating and maintenance expense have dramatically risen without sufficient justification; and

WHEREAS, the Company has awarded its executives and upper management increasing and unreasonable levels of incentives and bonuses, expenses which should be borne by shareholders who received a 23% total return on investment in 2013; and

WHEREAS, the Company requested a drastically high level of medical expense that is unreasonable and speculatively based upon estimates; and

WHEREAS, ACSC and the Company were unable to reach a compromise on the amount of additional revenues that the Company should recover under the 2014 RRM filing; and

WHEREAS, the ACSC Executive Committee, as well as ACSC's counsel and consultants, recommend that ACSC Cities deny the requested rate increase; and

WHEREAS, the Company's current rates are determined to be just, reasonable, and in the public interest.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WAXAHACHIE, TEXAS:

Section 1. That the findings set forth in this Resolution are hereby in all things approved.

Section 2. That the City Council finds that Atmos Mid-Tex was unable to justify the appropriateness or the need for the increased revenues requested in the 2014 RRM filing, and that existing rates for natural gas service provided by Atmos Mid-Tex are just and reasonable.

Section 3. That Atmos Mid-Tex shall reimburse the reasonable ratemaking expenses of the ACSC Cities in processing the Company's RRM application.

Section 4. That in the event the Company files an appeal of this denial of rate increase to the Railroad Commission of Texas, the City is hereby authorized to intervene in such appeal, and shall participate in such appeal in conjunction with the ACSC membership. Further, in such event Atmos Mid-Tex shall reimburse the reasonable expenses of the ACSC Cities in participating in the appeal of this and other ACSC City rate actions resulting from the 2014 RRM filing.

Section 5. That the meeting at which this Resolution was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

Section 6. That if any one or more sections or clauses of this Resolution is adjudged to be unconstitutional or invalid, such judgment shall not affect, impair, or invalidate the remaining provisions of this Resolution and the remaining provisions of the Resolution shall be interpreted as if the offending section or clause never existed.

Section 7. That a copy of this Resolution shall be sent to Atmos Mid-Tex, care of Chris Felan, Manager of Rates and Regulatory Affairs, at Atmos Energy Corporation, 5420 LBJ Freeway, Suite 1862, Dallas, Texas 75240, and to Geoffrey Gay, General Counsel to ACSC, at Lloyd Gosselink Rochelle & Townsend, P.C., P.O. Box 1725, Austin, Texas 78767-1725.

After a brief discussion, Councilman Chuck Beatty moved to approve Resolution No. 1184, denying Atmos Mid-Tex requested rate change. Councilman Mark Singleton seconded, **All Ayes.**

City Manager Paul Stevens presented an amended redlined Water Conservation Plan as required by the state. He noted the Plan must be submitted the Water Development Board, TCEQ, and regional water district. The changes made are to bring the city into compliance per TCEQ standards.

Mayor Pro Tem Strength asked if there is a cost to amend the Water Conservation Plan and Mr. Stevens noted the only cost would be a daily fine by TCEQ if the plan is not adopted.

Councilman Mark Singleton asked how often the plan must be updated and Mr. Stevens stated every 5 years.

City Attorney Steve Chapman presented Ordinance No. 2742

ORDINANCE NO. 2742

AN ORDINANCE ADOPTING A WATER CONSERVATION PLAN FOR THE CITY OF WAXAHACHIE, TEXAS, DECLARING AN EMERGENCY, AND SETTING AN EFFECTIVE DATE.

Councilman Mark Singleton moved to approve Ordinance No. 2742 approving the Water Conservation Plan. Councilman Chuck Beatty seconded, **All Ayes.**

CITIZENS' PETITIONS AND REQUEST

None

COMMENTS BY MAYOR, CITY COUNCIL, CITY ATTORNEY AND CITY MANAGER

Mayor Wray thanked everyone for allowing him to serve as Mayor for the past year.

There being no further business, the meeting adjourned at 7:38 p.m.

Respectfully submitted,

Amber Villarreal
Assistant City Secretary