

City Council  
April 3, 2023

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, Waxahachie, Texas, on Monday, April 3, 2023 at 7:00 p.m.

Council Members Present: David Hill, Mayor, Council Member Place 1  
Chris Wright, Mayor Pro Tem, Council Member Place 3  
Patrick Souter, Council Member Place 2  
Billie Wallace, Council Member Place 4  
Travis Smith, Council Member Place 5

Others Present: Michael Scott, City Manager  
Albert Lawrence, Deputy City Manager  
Robert Brown, City Attorney  
Amber Villarreal, City Secretary

**1. Call to Order**

Mayor David Hill called the meeting to order.

**2. Invocation**

**3. Pledge of Allegiance and Texas Pledge of Allegiance**

Reverend Rodney Singleton, Chaplain at Baylor Scott and White Waxahachie, gave the invocation. Mayor Pro Tem Chris Wright led the Pledge of Allegiance and the Texas Pledge of Allegiance.

**4. Public Comments**

Ira Tenpenny, 109 Rosa Street, Waxahachie, Texas, expressed concern with safety and prevention of heat related car deaths of children. He encouraged more education for children, parents, and drivers to prevent heat deaths in vehicles.

Ernie Martinek, 2256 Bells Chapel Road, Waxahachie, Texas, spoke in opposition of Municipal Utility Districts and encouraged City Council to pass the proposed Resolution opposing them.

**5. Consent Agenda**

- a. Minutes of the City Council meeting of March 20, 2023
- b. Renewal of National Sign Plazas agreement
- c. Interlocal Agreement with the City of Burleson for the purchase of various goods and services

**Action:**

*Council Member Billie Wallace moved to approve all items on the consent agenda as presented and authorize the City Manager and/or Mayor to execute all documents as necessary. Mayor Pro Tem Chris Wright seconded, **All Ayes.***

**6. Introduce Honorary Councilmember**

Mayor Hill announced the Honorary Councilmember will attend the April 17<sup>th</sup> meeting.

**7. Consider City of Waxahachie Annual Financial Report for year ended September 30, 2022**

Paula Lowe, Patillo, Brown, & Hill, L.L.P., presented the City of Waxahachie Annual Financial Report for the year ended September 30, 2022. Ms. Lowe reviewed the Independent Auditor's Report noting it is their opinion the City financial statements present fairly in all material respects, the respective financial position of the governmental activities, the business-type activities, the aggregate discretely presented component unit, each major fund, the aggregate remaining fund information of the City of Waxahachie, Texas, as of September 30, 2022, and the respective changes in financial position, and, where applicable, cash flows thereof, for the year then ended in accordance with accounting principles generally accepted in the United States of America. Ms. Lowe reviewed the following financial highlights:

- In fiscal year 2022, the City fell victim to a spoofing attack fraud scheme. In this case, the attacker deceived a City employee into believing he/she was communicating with an existing valid vendor. The City has taken additional steps to prevent this from happening in the future by implementing additional procedures.
- All positive balances in all categories of Statement of Net Position
- Total Fund balance of \$40,364,859
- Unassigned fund balance for the General Fund of \$26,392,273
- "Clean", unqualified opinion, which is the highest level that can be given

Ms. Lowe thanked Finance Director Chad Tustison, Assistant Finance Director Gail Turner, and their staff for their assistance during the audit process.

**Action:**

*Council Member Billie Wallace moved to accept the Annual Financial Report for the fiscal year ending September 30, 2022. Council Member Patrick Souter seconded, All Ayes.*

**8. Continue Public Hearing on a request by Iris Showalter, Owner of Studio Iris, for a Zoning Change from a General Retail (GR) zoning district to Planned Development – General Retail (PD-GR) zoning district, located at 120 North Highway 77 (Property ID 173425) - Owner: 120 NORTH, LLC (ZDC-177-2022)**

Jennifer Pruitt, Senior Director of Planning, presented the case noting the applicant is requesting a zoning change from General Retail District (GR) to a Planned Development District (PD) with a base zoning of General Retail District (GR) to allow for a cosmetic and restorative tattoo establishment. The applicant is proposing to operate the cosmetic and restorative tattoo establishment in Suite A (approximately 550 square feet) in the multi-tenant building at 120 North Highway 77. Ms. Pruitt reviewed the development standards identified in the proposed Ordinance. Based on the details provided in the Staff Report and the present status of the documents associated with the request, the Planning Department recommended approval of the zoning request, given the clarification and definitions of services performed for the proposed cosmetic and restorative tattoo establishment.

Mayor Hill continued the Public Hearing.

There being no others to speak for or against ZDC-177-2022, Mayor Hill closed the Public Hearing.

**9. Consider proposed Ordinance approving ZDC-177-2022**

**ORDINANCE NO. 3366**

**AN ORDINANCE AUTHORIZING A ZONING CHANGE FROM GENERAL RETAIL DISTRICT (GR) TO PLANNED DEVELOPMENT DISTRICT- GENERAL RETAIL DISTRICT (PD-GR) LOCATED 120 NORTH HIGHWAY 77 IN THE CITY OF WAXAHACHIE, ELLIS COUNTY, TEXAS, BEING 0.65 ACRES KNOWN AS PROPERTY ID 173425, AND ORDERING THE CHANGING OF THE ZONING MAP THEREOF IN ACCORDANCE WITH SAID CHANGE.**

**Action:**

*Council Member Billie Wallace moved to approve the Ordinance for ZDC-177-2022, a Zoning Change from a General Retail (GR) zoning district to Planned Development -General Retail (PD-GR) zoning district, authorizing the City Manager and/or Mayor to execute all documents accordingly. Council Member Travis Smith seconded, All Ayes.*

**10. Consider a request by Massey Shaw, Blue Bonnet Trails, LLC, for a Plat extension of Silverthorne Addition, being 32.56 acres, located directly south of 140 Lavender Drive, situated in the B.B. Davis Survey, Abstract No. 290, and W.C. Calder Survey, Abstract No. 235, an addition to the City of Waxahachie (Property ID 182275) – Owner: Blue Bonnet Trails, LLC (SUB-20-2023 AKA SUB-15-2021)**

Ms. Pruitt explained the applicant is requesting a plat extension for Silverthorne Addition, a 32-acre plat for 77 single-family residential lots. The Planning and Zoning Commission approved the plat on April 13, 2021, under case SUB-15-2021. Since the plat is due to expire on April 13, 2023, the applicant is requesting a plat extension for an additional two (2) years. The applicant still needs to receive approval for the associated construction plans. The construction plans were initially submitted to the Public Works and Engineering Department in October 2021 and resubmitted for a second review in October 2022. The applicant did not provide staff with a timeline to complete the construction of the subdivision within the next two years. Based on the details provided in the Staff Report and the present status of the documents subject to the request, the Planning Department recommended approval of the two-year plat extension with the conditions noted below:

1. The applicant shall remove note #2 regarding the traffic impact analysis assessment performed on the subject property and located in the lower left-hand corner of the page on both plat pages prior to filing the plat with the County.
2. The applicant shall revise the ownership on the plat to match the ownership information on the Ellis County Appraisal District prior to filing the plat with the County.

3. The applicant shall revise the plat in the future to revise, add, or remove easements on the plat per the construction plans approved by the Public Works and Engineering Department, subject to review and approval of the City Engineer.
4. The applicant chooses another street name for “Stellar Drive” due to the potential conflict with “Stella Drive” in Ellis County, subject to review and approval of the Planning Director.

Mayor Pro Tem Chris Wright explained he was not supportive of the request due to the developer not building the townhomes in Bluebonnet Trails according to what was approved by the Planning and Zoning Commission and City Council. Council Member Patrick Souter agreed.

Council Member Billie Wallace asked what the process is to ensure compliance and Ms. Pruitt explained the Public Works Department will review the plans and inspect the construction of the infrastructure.

James Moon, on behalf of the owner, asked for clarification on the previous issues mentioned by Mayor Pro Tem Wright.

City Manager Michael Scott explained the previous issue was not related to platting, but with zoning and elevations. The final plans submitted to the Building Department and constructed were not the plans approved by City Council for the Bluebonnet Trail townhomes.

Mr. Moon stated the developer constructed the approved plans submitted to the permitting department. He noted staff did not verify they were the same plans approved by City Council and that was not the developer’s fault. Mr. Scott stated the developer should not have submitted inaccurate plans to the City that were not in compliance with what City Council approved.

Mr. Moon explained the developer is only putting in the infrastructure for this particular development and the residential lots will be offered to local homebuilders for construction, who will have to comply with the development standards in the approved Planned Development. He noted he doesn’t believe the City Council has the authority to deny the plat extension.

Council Member Travis Smith asked if the plat expires will the developer have to start the process over. City Attorney Robert Brown confirmed that is correct.

City Council discussed tabling the item to allow for legal consideration and Ms. Pruitt noted the plat will expire on April 13, 2023 if City Council does not grant the extension.

**Action:**

*Council Member Billie Wallace moved to approve a two-year plat extension for SUB-20-2023, also known as SUB-15-2021, a plat for Silverthorne Addition, authorizing the City Council to sign the associated documents accordingly.*

***The motion failed due to lack of second.***

**Action:**

*Mayor Pro Tem Chris Wright moved to disapprove a two-year plat extension for SUB-20-2023, also known as SUB-15-2021, a plat for Silverthorne Addition, authorizing the City Manager and/or Mayor to execute any documents as necessary, due to the fact the request was brought at the last minute, the item was unable to be tabled to allow for consideration by legal. Council Member Patrick Souter seconded, the vote was as follows: Ayes: David Hill, Chris Wright, Patrick Souter, and Travis Smith. Noes: Billie Wallace.*

***The motion carried.***

- 11. Public Hearing on a request by Gilberto Escobedo, LGE Investment Homes LLC, for a Replat of Lot 1A of the Martin Addition, to create Lot 1AR & 1BR of the Martin Addition, two (2) residential lots, being 0.192 acres, located at 215 Finley Street (Property ID: 175899) – Owner: LGE INVESTMENT HOMES LLC (SUB-180-2022)**

Mayor Hill announced the applicant requested to continue the Public Hearing for SUB-180-2022 to the May 15, 2023 City Council meeting.

- 12. Consider approval of SUB-180-2022**

**Action:**

*Council Member Billie Wallace moved to continue the Public Hearing on a request by Gilberto Escobedo, LGE Investment Homes LLC, for a Replat of Lot 1A of the Martin Addition, to create Lot 1AR & 1BR of the Martin Addition, two (2) residential lots, being 0.192 acres, located at 215 Finley Street (Property ID: 175899) to the May 15, 2023 City Council meeting. Council Member Travis Smith seconded, All Ayes.*

- 13. Public Hearing on a request by Jake Fears, JHF Engineering for a Specific Use Permit (SUP) for a restaurant with a drive-through use (Dutch Bros) within a General Retail (GR) zoning district located at 1995 North Highway 77 (Property ID 262424) - Owner: SAI COMMERCIAL GROUP, LLC (ZDC-5-2023)**

Ms. Pruitt presented the case noting the applicant requests a Specific Use Permit for a restaurant with a drive-through (Dutch Bros) at 1995 North Highway 77. The applicant proposes constructing a 950-square-foot building on a 0.5-acre tract where customers can order food and drinks through the drive-through or the walk-up order window. The establishment will not have an indoor dining area and the building's occupancy will be limited to employees. The establishment has provided a 504-square-foot outdoor seating area for customers. Since the restaurant parking requirement is based on the floor area of the dining area, the applicant has provided six (6) parking spaces for the outdoor seating area to ensure adequate parking for customers. Additionally, the applicant has provided two stacking lanes for the drive-through to manage typical business demands. Typically, only six (6) stacking spaces are required; however, the applicant has provided thirteen (13) stacking spaces for vehicle queuing.

Ms. Pruitt reviewed the architectural elevations provided by the applicant. Each building elevation is composed of a maximum of 85 percent stucco with a horizontal fiber cement accent siding, and cultured stone at the base of the building. The north, east (US Highway 77), and south (Victory Drive) elevations have cultured stone at the base of the building. The west elevation (North Town Boulevard) does not have cultured stone at the base of the building.

Ms. Pruitt noted staff recommends approval of the SUP request with the conditions listed below:

1. The applicant agrees to execute a mutually agreed upon Development Agreement for the development.
2. The applicant must submit a plat application to the Planning Department to replat the subject property in the lot configuration reflected on the site plan.
3. The applicant shall obtain a permit from the City of Waxahachie Building Department before construction.

Mayor Hill opened the Public Hearing.

Those who spoke in favor:

Ira Tenpenny, 109 Rosa Street, Waxahachie, Texas

There being no others to speak for or against ZDC-5-2023, Mayor Hill closed the Public Hearing.

**14. Consider proposed Ordinance approving ZDC-5-2023**

**ORDINANCE NO. 3367**

**AN ORDINANCE AUTHORIZING A SPECIFIC USE PERMIT (SUP) TO ALLOW A DRIVE THROUGH ESTABLISHMENT USE (DUTCH BROS) WITHIN A GENERAL RETAIL DISTRICT LOCATED 1995 NORTH HIGHWAY 77 IN THE CITY OF WAXAHACHIE, ELLIS COUNTY, TEXAS, BEING 0.605 ACRES KNOWN AS PROPERTY ID 262424, AND ORDERING THE CHANGING OF THE ZONING MAP THEREOF IN ACCORDANCE WITH SAID CHANGE.**

**Action:**

*Council Member Billie Wallace moved to approve the Ordinance for ZDC-05-2023, a Specific Use Permit (SUP) for a restaurant with a drive-through use (Dutch Bros), subject to the conditions the staff report, authorizing the City Manager and/or Mayor to execute all documents accordingly. Council Member Travis Smith seconded, All Ayes.*

**15. Consider Development Agreement for ZDC-5-2023**

**Action:**

*Council Member Billie Wallace moved to approve the Development Agreement for ZDC-5-2023. Mayor Pro Tem Chris Wright seconded, All Ayes.*

**16. Consider professional services agreements for architectural services and project management services for the City Hall Renovation Project**

Richard Abernethy, Director of Administrative Services, requested approval of an agreement with Architexas for phase II architectural services and Vidaurri Management Group for project management services for the City Hall Renovation Project. In May 2022, the City Council approved a contract with Architexas to complete a space planning design for the City Hall Renovation Project. The final space plan document with budget costs was completed and discussed at the Council workshop on February 24th. The next step commences construction of the renovation project and will require entering into a second phase of the architectural services to finalize design and bid out the project. In addition, utilizing a project management service will ensure the project meets critical milestones in a timely manner as well as identifying cost-saving options throughout the project.

Mr. Abernethy explained the phase II professional services agreement with Architexas will provide for the development of construction documents to be bid while the Vidaurri Management Group (VMG) agreement will provide for oversight in project organization, planning, schedule management, design, bidding and negotiation, and construction and closeout. The total cost for the architectural services contract is \$496,000 and the VMG contract total is \$293,000. Funding for these contracts are planned expenses and have been allocated within the budget for the City Hall Renovation Project.

**Action:**

*Council Member Patrick Souter moved to approve agreements for the City Hall Renovation Project with Architexas for Phase II architectural services for \$496,000 and Vidaurri Management Group for project management services for \$293,000 and authorize the City Manager to execute all documents as necessary. Council Member Billie Wallace seconded, All Ayes.*

**17. Consider approval of Steele and Freeman as the Construction Manager at Risk for the City Hall Renovation Project**

Mr. Abernethy requested approval of a contract with Steele and Freeman to serve as the Construction Manager at Risk for the City Hall Renovation Project. In September/October 2022, the City advertised for a Construction Manager at Risk (CMAR) for the City Hall Renovation Project. On October 11, 2022 the City received two proposals. After thorough review, staff recommended Steele & Freeman, Inc. to be the CMAR for the project. Steele and Freeman, Inc. is currently the CMAR for Fire Station No. 4 and the Chuck Beatty Municipal Services Building and as such, the City is familiar with the quality of their work.

Mr. Abernethy explained the CMAR will begin working closely with the project architect, Architexas and their role will include planning for the construction phase of the project, but even more important will be to begin the pre-construction services phase, which includes pricing of the various design elements to make sure that what is being designed falls within the project budget.

Mr. Abernethy explained the anticipated cost of this project remains at \$8.75M in construction cost and this project budget figure has been made clear to the architect as well the proposed CMAR. The final construction cost or Guaranteed Maximum Price (GMP) will be brought back to Council in the future for final approval of these expenses. The total cost for this contract is a planned expense and funds are allocated within the budget for the City Hall Renovation Project.

Mr. Scott explained the early involvement of the construction manager in the project assists with the project staying within budget.

**Action:**

*Council Member Billie Wallace moved to approve a contract with Steele and Freeman to serve as the Construction Manager at Risk for the City Hall Renovation Project and authorize the City Manager to execute all documents as necessary. Council Member Travis Smith seconded, All Ayes.*

**18. Consider proposed Resolution opposing special districts, including Municipal Utility Districts, in the City of Waxahachie and its extraterritorial jurisdictions**

Mr. Scott requested approval of the proposed resolution to formally state the City's opposition to the proliferation of special district requests being submitted around Waxahachie and Ellis County. A number of other jurisdictions in the County have passed similar resolutions, including Midlothian, Ferris and Ellis County. He explained while the resolution in itself does not carry weight of a formal limitation on the formation of such districts, it states the City's position and concern with them. The intention of staff, once the resolution is adopted, is to provide a copy of the resolution to various legislators and committee chairs in Austin and staff recommends the adoption of this resolution as presented.

**RESOLUTION NO. 1339**

**A RESOLUTION OPPOSING SPECIAL DISTRICTS, INCLUDING MUNICIPAL UTILITY DISTRICTS, IN THE CITY OF WAXAHACHIE AND ITS EXTRATERRITORIAL JURISDICTION**

**Action:**

*Council Member Patrick Souter moved to adopt the Resolution opposing special districts, including Municipal Utility Districts, within the City of Waxahachie and its extraterritorial jurisdiction. Council Member Billie Wallace seconded, All Ayes.*

**19. Convene into Executive Session for consultation with attorney regarding pending or contemplated litigation as permitted under Section 551.071, Texas Government Code**

Mayor Hill announced at 8:03 p.m. the City Council would convene into Executive Session for consultation with attorney regarding pending or contemplated litigation as permitted under Section 551.071, Texas Government Code.



**20. Reconvene and take any necessary action**

The meeting reconvened at 8:32 p.m.

*No action taken.*

**21. Comments by Mayor, City Council, City Attorney and City Manager**

City Manager Michael Scott acknowledged Finance Director Chad Tustison and Assistant Finance Director Gail Turner for their extensive work to finalize the audit.

Mayor Pro Tem Chris Wright explained that a Municipal Utility District is outside the city limits, draws the use of city services, does not contribute to city taxes, and the developments do not have to comply with rules and regulations. He expressed his opposition to special districts.

Council Member Patrick Souter congratulated Ms. Iris Showalter on working with the City for a positive outcome on her zoning request. He explained City Council must do what is best for the City and he is not tolerant of developers not abiding by city ordinances. Council Member Souter acknowledged Mr. Ira Tenpenny's concern and noted he supports code enforcement to improve the city.

Mayor David Hill thanked Finance Director Chad Tustison and Assistant Finance Director Gail Turner for their hard work.

**22. Adjourn**

There being no further business, the meeting adjourned at 8:36 p.m.

Respectfully submitted,

Amber Villarreal  
City Secretary