

STATE OF TEXAS §
COUNTY OF DENTON §
TOWN OF BARTONVILLE §

The regular monthly meeting of the Bartonville Town Council was held on April 19, 2011, at 7:00 p.m., in the Council Chambers of Bartonville Town Hall, 1941 East Jeter Road, Bartonville, Texas. This was an OPEN MEETING, open to the public, subject to the open meeting laws of the State of Texas, and, as required by law, was duly posted at 3:00 p.m., on Friday, April 15, 2011, at Bartonville Town Hall giving notice of time, date, place, and agenda thereof.

Present:

Ron Robertson, Mayor
Carla Anderson, Mayor Pro Tem
James Ashburn
Bill Reaves
Jim Farrell
Gracie Egan

Absent:

None

Also present: Debbie E. Millican, Town Administrator
Bob Hager, Town Attorney
Kristi Gilbert, Town Secretary
Brownie Browning, Police Officer

Mayor Robertson called the meeting to order at 7:00 p.m.

Call to Order

The Town Council considered the following Consent Agenda. Agenda items were marked with a single asterisk as a part of a Consent Agenda requiring no deliberation by the Council and could be approved with a single motion. Councilmembers were given the prerogative of removing an item from the Consent Agenda for separate discussion and consideration.

Consent Agenda

Councilmember Egan referred to a minor correction in the March 15, 2011, minutes and asked that Ordinance 517-11 be revised to limit the time an employee could spend on outside court activities.

Councilmember Ashburn moved to approve the following consent agenda items as revised: *A) Approval of Minutes: 1) March 15, 2011 Regular Meeting Minutes, 2) March 24, 2011 Special Called Meeting Minutes, and 3) March 30, 2011 Special Called Meeting Minutes; *B Approval of Resolutions: 1) Resolution 2011-11, Amending the General Election Order by Amending the Early Voting Locations and 2) Resolution 2011-12, In Support of All Elements of the Original Dallas/Fort Worth Connector Project, Including Improvements to FM 2499 in Flower Mound and Grapevine and Proposing that the Improvements to FM 2499 be Removed from the Scope of the DFW Connector and, Instead, be Added to the Scope of the SH 121 Section 13 Project; *C Approval of Ordinances: 1) Ordinance 516-11, an Ordinance declaring all property subject to 2011 Ad Valorem Taxation and providing for exemptions and 2) Ordinance 517-11, amending Article 7.100 of the Town of Bartonville Code of Ordinances to provide for the remuneration of Municipal Court Judges and Alternate Judges; *D Approval of 2011/2012 Council Meeting Schedule.

ACTION:

**Approve
Revised Consent**

Councilmember Reaves seconded the motion. For: For: Unanimous. The motion carried by a vote of 5 to 0.

Mayor Robertson briefed the Council on the Lantana Corners 380 agreement and economic impact along the FM 407 Corridor.

Liaison Reports

Del Knowler of 739 Seals Road stated that he was very pleased with how well the April 2nd Clean Up day went. He said he had taken some of the old batteries and salvaged them for \$0.18/pound. Mr. Knowler presented \$100 in proceeds to the town to use towards next year's clean up day. He suggested the town salvage metal next year rather than use an outside vendor. No one else chose to speak during the Citizens' Appearance portion of the meeting for non-agenda items.

Citizens' Input

The Town Council resumed the continued PUBLIC HEARING and consideration regarding Ordinance 514-11, an ordinance amending Town of Bartonville Code of Ordinances, Chapter 14, Article 14.300, Ordinance 361-05, Zoning Regulations for the Town of Bartonville, by granting a Conditional Use Permit to allow an elevated water tank and related facilities on Lot 1, Block A of the Bartonville Water Supply Addition, an approximately 4.735 acre tract of land otherwise known as 1250 I.T. Neely Road. Councilmember Gracie Egan recused herself from deliberations relative to the BWSC's request for CUP approval.

**Public Hearing:
BWSC -CUP**

Mayor Robertson opened the hearing to public comment and asked to hear from the applicant, Bartonville Water Supply Corporation (BWSC).

Hearing Opened

Jim Leggieri, General Manager BWSC, stated he was at the meeting to continue the application process to construct elevated water storage tank at 1250 IT Neely in Bartonville. He said he had been through several meetings. Mr. Leggieri stated that after two and one-half hours at the March 15th meeting, the Council said they had several questions so the meeting was tabled. He said that the Council was to compile a list of questions and send them to the BWSC. Mr. Leggieri said that he had not received any further questions. Mayor Robertson stated that the questions were asked at the council meeting.

Applicant

Mayor Robertson asked to hear from staff. No additional recommendations were made.

Staff

AVFD Fire Chief, Mac Hohenberger stated he would support more water capacity, but the location of storage facilities was not an issue for fire suppression. He said the numbers provided by BWSC, if accurate, could hurt the ISO rate if additional storage was not provided. Chief Hohenberger stated that in calculating the ISO rating, water availability counts for 50%, the Fire District counts for 40%, and dispatch makes up the remaining 10% of the overall rate.

In Favor

Dick Arney spoke in opposition, stating that in 2001 BWSC had made an application that would indicate they wanted ground storage. He said the application was signed by Jim Leggieri, who had stated their intention was to build ground storage. Mr. Arney stated that ground storage could do everything that needed to be done. He said that BWSC was beyond being in compliance at this time. Mr. Arney said that it was a

Opposed

matter of preference, not obligation. He went on to say that Bartonville had 30% of the land space within the water district, but only 16% of customers. Mr. Armeý posed the question "Why here when most of the growth is in Flower Mound?" He said that at the last meeting, they were all stunned when Jim Leggieri stated that he had always intended to have a water tower in that location. He asked, "If that is true then why did he submit an application otherwise?" Mr. Armeý said that Rex Tillerson made a good point by saying, "Allow them to build what they said they would build, a ground storage tank." He said that there had been a consistent pattern for the past ten (10) years that they would build a ground storage tank. Mr. Armeý stated that BWSC was disingenuous and he strongly recommended the council vote it down.

Susan Armeý congratulated the Council on a job well done with Lantana corner. She said that for several weeks we have heard several residents opposing the tower. Mrs. Armeý said that the Town had asked questions that BWSC had not answered. She said that, as a very concerned person, she needed to have those questions answered. Mrs. Armeý summarized by saying that a letter from the State had been submitted stating that elevated storage is not needed. She said that alternative methods could be used when cleaning a tank. Mrs. Armeý said that no information had been provided regarding catastrophic losses so she would have to question where the water went. She referenced an email from BWSC stating that the Tillersons were not opposed and that the Armeý's were ok with it, just not behind their house. Mrs. Armeý said nothing could be further from the truth.

A letter of opposition from Eric Welty was entered into the record (Exhibit 4).

Norma Harrington, a Realtor with Keller Williams Realty, stated that she had a client that had backed out of a purchase upon finding out that he would have a line of sight with a water tower. Ms. Harrington stated that land values would be negatively impacted. She distributed copies of real estate listings for 1,440 new lots in and around Flower Mound would be served by BWSC (Exhibit 1). She stated further that because Bartonville residents comprised only 16% of the BWSC customer base, it was ridiculous to have a tower that services thousands of others. Ms. Harrington said she opposed the tower and asked the council to deny the CUP.

Bruce Monroe, owner of the Yeti Addition, said he was not able to attend the last meeting. Mr. Monroe said that when BWSC purchased property 10 years ago they needed access through his property. He said that he granted access for a water line to go through. Mr. Monroe read excerpts from BWSC stating that it was never their intention to mislead (Exhibit 2). He said that there were no plans to erect an elevated tower on the site and he had lived for the last 10 years believing that there would not be a tower on the property. Mr. Monroe said he would support ground storage, but was opposed to an elevated tower. No one else spoke in opposition.

In rebuttal, Jim Leggieri addressed the catastrophic water loss question from Mrs. Armeý by saying they had never had a catastrophic water loss. He said that BWSC had a water loss policy providing relief to its customers in the event the customer had a major leak. With regard to water sold to gas drillers, Mr. Leggieri stated that last year 442,700 gallons were sold for approximately \$2,209. He said that 2006 revenues from gas well operators comprised approximately 2% of overall sales. He said that in 2008

Rebuttal

10,269,850 gallons were sold to operators and in 2009, 8,018,010 gallons were sold. Referring to a letter sent to Joe Rogers (Exhibit 3) of DCAD, Mr. Leggieri said that he had tried to verify the unsubstantiated statements that water towers cause a decline in property values. He stated that DCAD's David Stroger, responded with, "That to my knowledge, the appraisal has never devalued commercial property because of a water tower and has even seen instances where the values went up."

BWSC Engineer, Kerry Maroney, stated that he had heard the statements that the tower was not needed. He said that two other engineers believed it was needed. Mr. Maroney said it was required by the Texas Water Code and CCN issued by TCEQ to BWSC. He said the CCN covered approximately 10,875 acres. Mr. Maroney said that it was also needed for fire protection to provide adequate fire-flows and adequate emergency storage. In November, he said the TCEQ approved the elevated storage tank for construction. Mr. Maroney said the selected location was the best location from an engineering, water services, fire service and aesthetic standpoint. He said it was the most cost effective. He cited the following usage statistics: Double Oak uses 47% of the water, Copper Canyon uses 19% of the water, Bartonville uses 16%, the unincorporated areas use 15%, and Flower Mound uses 3% (current numbers, not proposed). Mr. Maroney said that the remoteness of the tank is not a TCEQ issue, rather it is an emotional issue, usually wanted by the citizens. He stated that within a 1,000-foot radius around the Double Oak elevated tank, the property values had gone up by a factor of six. He said values had risen by a factor of three around the Lantana tank. Mr. Maroney further added that Argyle property values increase by a factor of three and he predicts that Stargate values will increase by a factor of 44.

Mayor Robertson closed the hearing to public comment.

Hearing Closed

Councilmember Farrell stated that the Double Oak Tower had been in place for 14 years. He asked what the property values would have been without the tower. Mr. Maroney said he had no way of knowing. Councilmember Farrell said he was curious that since drilling and fracking began in 2003, why the provided usage data stopped at 2008.

Discussion

Councilmembers Reaves stated that the control-number of gallons used was based on one singular day in 2006 and asked what the usage was on that day. Mr. Maroney answered that it was 2,016 gallons per customer. Referring to the statement by Mr. Leggieri that no questions were forwarded to him, Councilmember Reaves said that at the last meeting it was asked what caused the huge increase in usage. He said we still do not know. He asked if it was from selling fracking water or if it was from some other unusual circumstance. Mr. Leggieri responded that BWSC did not start selling fracking water until 2007; however, they did sell water to the highway dept. He speculated that there may have been an unusual customer. Councilmember Reaves stated that he would like to see the actual numbers.

Councilmember Ashburn stated that he had expected to see the answers from the last two meetings in his packet for this meeting. He asked why BWSC had not answered the questions from the past two or three months.

Mayor Robertson stated that 2006 was a dry year. He asked if there were more people irrigating that have since realized that the rates are higher and have curtailed usage. Mr. Leggieri said that he did not believe the usage had dropped. He said it depends on if it was a drought year, that typically requires little over a million gallons a day. Mr. Leggieri said it could have been a contractor out there breaking a 16" water main.

Mayor Pro Tem Anderson reiterated that they were asking if there was a catastrophic water loss, if peak demand day was near the average daily usage, or if it was one big spike. Mr. Maroney responded that it was one big spike. Mr. Leggieri responded that it was a gradual change, not one big spike. Ms. Anderson said, "from what we can tell, you don't need the elevated water tower until you hit 2,500 connections." She said that BWSC was just now hitting that number and the Double Oak water tower satisfies that requirement. She went on to say that the TCEQ allows the use of pumps when a tower was down for maintenance. Mr. Maroney said that you could not substitute ground storage for elevated storage. Mr. Leggieri stated that the person from the TCEQ that had said the water system could be operated on a pump system was probably just sitting in an office, having never operated a water system. He stated it would be the equivalent of going to a temp agency and hiring one person to replace Debbie, the Mayor, and the Police Chief.

Mayor Pro Tem Anderson stated that she totally disagreed with BWSC statements regarding property values. However, she did agree with realtors that that had stated it would create a devaluation of property.

Councilmember Reaves said his notes from a previous meeting indicate that ground storage is coming to the Stargate location even with the building of the elevated tank. Mr. Maroney offered that he did not believe there is any way that there could be a third elevated tank.

Councilmember Reaves said he was still requesting to know who purchased water and how much they purchased on that peak day in 2006.

Councilmember Ashburn stated that if the BWSC had the CCN, why they could not just release the Flower Mound area to Flower Mound.

Mayor Robertson said that he had met with Jim Leggieri and representatives of Republic Properties to discuss a possible joint effort. He said the Lantana water tower had to be moved across 407 into Lantana and BWSC need storage capacity. The Mayor said that he was receptive to a joint agreement between BWSC and Republic Properties for a tank within a tank for a total of 1.5 million gallons in capacity. He said that Keller and Westlake had entered into an agreement and built a dual take, so he knew it could be done. He said it would cost Lantana \$1.2 million and BWSC \$1.3 million to build individual tanks and a joint tank would cost \$2.4 million. He said that in conversations with Lantana, they had indicated that they did not want to increase the size of their tower and disturb the neighbors, but the deal was not off the table. He said, however, there may just not be enough monetary incentive reason for either side to participate.

Councilmember Ashburn moved to deny the application for the conditional use permit for an elevated water tank and related facilities. Councilmember Farrell seconded the motion. For: Anderson, Ashburn, Farrell and Reaves. Opposed: None. Abstained: Egan. The motion carried 4-0-1.

ACTION: Deny CUP for Elevated Water Tank

The Mayor called for a recess at 8:26 p.m.
The Mayor reconvened the meeting at 8:32 p.m.

Break

The Council discussed and considered XTO Energy Inc's request for a site specific maximum source noise level for the Ginger Hackle 1H well site located approximately 1,800' north of East Jeter Road and approximately 2,500 feet east of Gibbons Road. Bob Manthei, XTO Energy, stated that XTO was requesting a site specific noise level in order to run the compressor on the property. Town Secretary, Kristi Gilbert, stated that the compressor itself would not be louder than the required 40 dBA and that the report reflects that the ambient noise in the area is louder than the Town's average ambient noise. Ms. Gilbert stated that the site-specific noise level would recognize that the ambient noise level was louder, but the compressor would still be required to be no louder than 40 dBA.

Discussion: Ginger Hackle 1H Site Specific Noise Level

Alan Seals, resident of Denton and property owner at 568 Seals Road, stated that he was in favor of the site-specific noise level. He stated that the area was heavily wooded and the compressor was located 1,100 feet from the nearest house. Mr. Seals provided the Town with copies of the location of the compressor along with photographs (Exhibits 5-7).

Mayor Pro Tem Anderson moved to approve XTO's request for a site-specific noise level utilizing the data provided in Brent Hale's report. Councilmember Ashburn seconded the motion. For: Unanimous. Opposed: None. The motion carried 5 to 0.

ACTION: Approve Specific Noise Level

The Town Council considered a request by Mi Sueño's Restaurant located at 2648 FM 407, Suite 150, for a waiver from the Town's sign regulations to allow the placement of a temporary banner for an extended period of time. David and Lynn Cerda, owners of Mi Sueño's TexMex, thanked the Council for welcoming them into Bartonville. Mr. Cerda stated that they were asking for the waiver, allowing them to display the temporary banner an additional 60 days. He presented the Council with reports indicating a significant increase in business during the times a temporary banner had been in place (Exhibit 8). Mr. Cerda stated they had recently started serving breakfast and would like the additional visibility. Councilmember Reaves stated that the sign ordinance was recently revised to allow for additional time for temporary banner signs. Councilmember Egan inquired if the owner of the Bartonville Town Center had notified the other tenants of the new sign regulations. Ms. Gilbert stated that there was an application for a conditional use permit that had been submitted for a taller monument sign to accommodate space for a new tenant. She went on to say that there was room to make the sign bigger to accommodate current tenants and that the application would be on the May Council agenda. Councilmember Ashburn stated that he would be in favor of a temporary extension, but would like to see a more permanent solution.

Discussion: Mi Sueño's Sign Variance

Annemarie Moore, 1394 Post Oak Lane, stated in opposition, that she thinks it was like the new schools that run out of room and then build temporary buildings everywhere. Mrs. Moore stated she has not been by the restaurant, but she knows they serve breakfast because of advertising in newspapers, not advertising on the street.

Councilmember Ashburn moved to approve the variance request for a temporary banner not to exceed thirty-two square feet in area for two one-week periods or a single two week period for a total of two weeks between April 19th and May 17th. Councilmember Egan seconded the motion. For: Unanimous. Opposed: None. The motion carried 5 to 0.

**ACTION:
Approve
Variance
Request**

The Town Council considered to the Town's Extraterritorial Jurisdiction adjacent to the southernmost Town limits and the east side of Porter Road. The Mayor stated that staff had sent out notices to the subject property owners with four options: 1. property owners may annex by petition; 2. a majority of registered voters can vote to come into the town; 3. enter into a contract to abide by the Town's regulations without paying taxes; or, 4. do nothing. Ms. Millican stated that the Town had received five petitions for annexation. Four registered voters submitted a "vote" three voting against and one voting in favor. She said that it would have to be assumed that the remaining residents have chosen to do nothing. Mayor Robertson suggested that the residents be given more time to get together and decide what course of action they want to take and also offer the Town Hall as a meeting place.

**Discussion:
Southern ETJ**

Troy Norton, a resident of Hawk Road, stated that what was turned in by the four registered voters was a vote not to be annexed. He stated further that he considered the letter a threat. Councilmember Ashburn stated that he did not consider it a threat, but wanted everyone to have the option to make his or her own choice. Ted Lyles, of 7080 Hawk Road, stated that he was not a part of Bartonville and stated that he was not trying to argue, but everyone did see it as a threat to turn the area over to Flower Mound. Mr. Lyles stated that the town was on track with a public meeting, but would like the Council to think about the fact that the gas companies already had a compression station and well sites to north and south. Larry Perry, of 7150 Hawk Road, stated that he was big into communication and wanted everyone to be able to get together and talk it all out.

Councilmember Ashburn moved to table discussion regarding the southern ETJ. Councilmember Farrell seconded the motion. For: Unanimous: Against: None. The motion carried by a vote of 5 to 0.

**ACTION:
Table Southern
ETJ**

The Council discussed and considered awarding the bid for the purchase and removal of the Town owned Greenhouse at 2001 East Jeter Road. Town Administrator Debbie Millican stated that only one bid was received, Gold Landscape, Inc. in the amount of \$1,100.

**Discussion:
Award
Greenhouse Bid**

Mayor Pro Tem Anderson moved to award the bid to Gold Landscape, Inc. Councilmember Egan seconded the motion. For: Unanimous. Opposed: None. The motion carried by a vote of 5 to 0.

**ACTION:
Award Bid**

The Council discussed and considered casting a ballot for up to two candidates for the 2011 Bartonville Water Supply Board of Directors and authorize the execution of the proxy statement for the 2011 Annual Meeting. Councilmember Egan recused herself due to a conflict of interest.

**Discussion: Cast
BWSC Ballot**

Councilmember Ashburn moved to cast the BWSC Board of Directors vote for Larry Kaufman and David Moore. Councilmember Farrell seconded the motion. For: Anderson, Ashburn, Farrell and Reaves. Opposed: None. Abstained: Egan. The motion carried 4-0-1.

**ACTION: Cast
BWSC Ballot**

There were no requests for future agenda items.

Agenda Items

There being no further business to come before the Council, Mayor Robertson declared the meeting adjourned at 9:20 p.m.

Adjournment

APPROVED this the 17th day of May 2011.

Approved:

Ron Robertson, Mayor

(Seal)

Attest:

Debbie E. Millican, Town Administrator