

EL DORADO CITY COMMISSION MEETING

August 7, 2006

The El Dorado City Commission met in regular session on August 7, 2006, at 7:00 p.m. in the Commission Room with the following present: Mayor Brian D. Shepherd, Commissioner Linda Clark, Commissioner Michael A. Fagg, Commissioner Steve Pershall, Commissioner Steve Reynolds, City Manager Herbert E. Llewellyn Jr., Administrative Intern Matt Rehder, Field Engineer Scott Rickard, and Finance Director Dee Anne Grunder. Absent: City Clerk Kendra Porter.

VISITORS

David Yearout	1710 Post Road	El Dorado, Kansas
Tim Connell	P.O. Box 6	El Dorado, Kansas
John Grange	1115 Rim Rock Road	El Dorado, Kansas
Kenna Dice	2100 Hazlett	El Dorado, Kansas
Howard Lachenmayr		Newton, Kansas
Harold Haskell	122 Residence	El Dorado, Kansas
Carl D. Andrews	1730 Cottenwood Dr.	El Dorado, Kansas
James Cook	719 Fredrick Dr.	El Dorado, Kansas
Pat Hicks	1147 S. Arthur	El Dorado, Kansas
Mary & Chet McCoy	336 Simpson Rd.	El Dorado, Kansas
Nellie & Leonard Smith	601 N. High	El Dorado, Kansas
Gerald Watson	125 N. Summit	El Dorado, Kansas
David Ellis	208 S. Summit	El Dorado, Kansas
Jean Plummer	323 ½ N. Main	El Dorado, Kansas
Jim Miller	345 Hunton	El Dorado, Kansas
Martha Gregg	4485 S.W. Santa Fe Lk. Rd.	Towanda, Kansas
David Sundgren	533 Prairie Rd.	El Dorado, Kansas
Linda Baines	253 Post Rd.	El Dorado, Kansas
Dan Hill	1758 S.E. Hwy 77	El Dorado, Kansas
Kirby Melugin	920 ½ N. Main	El Dorado, Kansas
James Hargrove	707 Post Rd.	El Dorado, Kansas
Spencer Stewart	1201 Douglas Rd.	El Dorado, Kansas

CALL TO ORDER

Mayor Brian D. Shepherd called the August 7, 2006, City Commission meeting to order.

INVOCATION

Spencer Stewart, New Life Fellowship, opened the meeting with prayer.

PLEDGE OF ALLEGIANCE

Mayor Brian Shepherd led the Pledge of Allegiance.

CONSENT AGENDA

- a) Approval of the July 17, 2006, City Commission minutes.
- b) Approval of the July 19, 2006, Special City Commission minutes.
- c) Approval of the July 19, 2006, City Commission Work Session minutes.
- d) Approval of the July 26, 2006, City Commission Work Session minutes.

- e) Approval of the July 26, 2006, Special City Commission minutes.
- f) Approval of the August 1, 2006, Special City Commission minutes.
- g) Approval of the Appropriation Ordinance No. 07-06 in the amount of \$1,923,039.60.
- h) Approval of the Engineer's Third and Final Pay Estimate dated July 26, 2006 on Project No. 277, 2006 Sales Tax Street (Vine and Locust) to the Contractor, APAC-Kansas, in the amount of \$8,267.61
- i) Approval of the Engineer's Fifth Pay Estimate dated July 26, 2006 on Project No. 947, Pedestrian/Bicycle Facilities to the Contractor, Cornejo & Sons in the amount of \$63,483.56.

Commissioner Clark moved that the Consent Agenda, as presented, be approved.

Commissioner Reynolds seconded the motion.

Motion carried 5-0.

REZONING TO I-1 AND SPECIAL USE PERMIT TO ALLOW OIL AND GAS EXTRACTION (CASE NO. 06-001 – REZONE/SPECIAL USE)

Interim Planning/Zoning Director David Yearout stated that Howard Lachenmayr, as Lachenmayr Oil Company, is seeking the rezoning and a Special Use Permit for the property between School Road and Boyer Road, south of Third Avenue. The property is presently zoned R-1, Residential – Low Density. The purpose of this request is to authorize, under the El Dorado Zoning Regulations, the drilling of a new oil well on this property. According to the records reviewed for this case, Mr. Lachenmayr has the lease-interest in the minerals on this property. The case was allowed to move through this process even though the owners of the surface are opposing the request. In fact, a valid protest petition has been filed on this case, which results in the requirement of a $\frac{3}{4}$ majority of the entire governing body to approve this case.

Mr. Yearout further stated that the El Dorado Planning Commission held a public hearing on this case, first on May 25, 2006, at which time the case was continued at the request of the applicant to complete negotiations with the surface owners concerning a potential agreement between those two parties. The case was heard again on June 29, 2006, with the report that no agreement had been reached between the surface owners and the applicant. After hearing all of the information and reviewing the testimony for all interested parties, the Planning Commission recommended, by a vote of 6 to 1, denial of both the rezoning and the special use permit.

Harold Haskell, 122 Residence, stated that he felt Mr. Lachenmayr has the right to drill on his property. Mr. Haskell further stated that Mr. Lachenmayr already has an existing well on the property.

Chet McCoy, 336 Simpson Road, stated that when his family moved into the area in 1966, they were aware that they lived near an active oil field. Mr. McCoy further stated that he did not feel it is right for the City to deny the request based on a legal technicality.

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Jim Hargrove, 707 Post Road, representing Lachenmayr Oil Company, stated that the lease has been in production over 90 years. Mr. Lachenmayr was granted approval by prior Commission to drill a salt water disposal well with a fifty foot radius around the drilling site. Mr. Hargrove further stated that Mr. Lachenmayr is willing to release the rest of the area, so there would be no rights to drill elsewhere on the property.

Tim Connell, P.O. Box 6, representing Prairie Land Addition, stated that Mr. Lachenmayr does not own the mineral rights, he is a lessor. Therefore; the tenant should not have the right to request rezoning. Mr. Connell further stated that Mr. Lachenmayr had been informed of the City’s requirements and ignored them.

Interim Planning/Zoning Director David Yearout, stated that according to records and discussions with Mr. Bruce Remsberg, the purpose of salt water drilling was to remove the line running through Township Village. Statute states that Counties are barred from regulating oil and gas production; however, city’s have the authority to regulate. This is not deprivation of existing activity; it is grandfathered and wells can continue as long as they produce. Mr. Yearout strongly urged the City not to encourage spot-zoning.

Howard Lachnemayr, Newton, Kansas, stated that the deed that Prairie Land Addition has to the property is subject to oil and gas lease. Mr. Lachenmayr questioned what was “grandfathered”, and feels he has property rights, and this takes on eminent domain feature.

Commissioner Steve Pershall stated that he has a great respect for both attorneys; however, he is going to follow the El Dorado zoning laws and regulations when voting on this issue.

Commissioner Michael Fagg stated that he has always been directed not to spot-zone and we need to consider what is best for the community. Commissioner Fagg also reminded the Commission that in 1915 the EPA was not in existence.

Mayor Brian Shepherd stated that the land owners purchased the property with the understanding that it was subject to oil and gas lease, and lease rights takes precedence over surface rights.

Commissioner Clark moved to table and send back to the Planning Commission for further review.

Commissioner Reynolds seconded the motion.

ROLL CALL

Position No. 1	Commissioner Steve Reynolds	Yes
Position No. 2	Commissioner Linda Clark	Yes
Position No. 3	Commissioner Steve Pershall	No
Position No. 4	Commissioner Michael Fagg	No
	Mayor Brian Shepherd	Yes

EXECUTIVE SESSION

Commissioner Clark moved to recess into an Executive Session for the purpose of discussing legal issues and non-elected personnel issues, and to reconvene the regularly scheduled meeting in the City Commission room at 9:00 p.m.

Commissioner Pershall seconded the motion.

Motion carried 5-0.

Mayor Brian Shepherd reconvened the meeting at 9:01p.m.

Commissioner Clark moved to extend the Executive Session for the purpose of discussing legal issues and non-elected personnel issues and to reconvene the regularly scheduled meeting in the City Commission room at 9:30 p.m.

Commissioner Reynolds seconded the motion.

Motion carried 4-0. (Commissioner Steve Pershall remained in the conference room).

Mayor Brian Shepherd reconvened the meeting at 9:34 p.m. and stated that no decisions were made at this time.

PROJECT NO. 286 – SANITARY SEWER DISTRICT NO. 181 – PRAIRIE LAND ESTATES FIRST ADDITION

Scott Rickard, Engineering Department, stated that the developer of Prairie Land Estates has requested sewer in the First Addition of the development.

RECEIVING THE PETITION

City Clerk Kendra Porter reported to the Commission that the petition for the construction of sanitary sewers, signed by 100% of the owners, is sufficient for Project No. 286.

Commissioner Michael Fagg stated his concerns with the need of a Phase I Environmental Study prior to consideration of financing this project.

RESOLUTION NO. 2546 AND ORDINANCE NO. S-1268

Commissioner Clark moved that that the Report of Sufficiency be accepted for Project No. 286, for Sanitary Sewer District No. 181, and that Resolution No. 2546, a Resolution of Finding as to Advisability and Resolution Authorizing Improvement combined, be adopted based on the change in ownership of the property and the necessary easements are dedicated, and move that Ordinance No. S-1268, an ordinance authorizing the issuance of bonds in the amount not to exceed \$73,000.00 in payment of the cost of said project, and providing for the issuance of temporary notes pending the issuance of such bond, and further move that the City Manager be instructed to take bids after plans, specifications and estimate of costs are prepared.

Commissioner Pershall seconded the motion.

ROLL CALL

Position No. 1	Commissioner Steve Reynolds	Yes
Position No. 2	Commissioner Linda Clark	Yes
Position No. 3	Commissioner Steve Pershall	Yes
Position No. 4	Commissioner Michael Fagg	No
	Mayor Brian Shepherd	Yes

PUBLIC HEARING FOR PROJECT NOS. 235, 275, AND 281

Scott Rickard, Engineering Department, stated that Project Nos. 235, 275, 281 are complete. The City Commission established this date to spread the special assessments for the following properties.

Project No. 235 – Paving Fifth Avenue (Houser to Emporia)

Preliminary Estimate	\$30,000.00
Final Cost	\$21,351.59
Improvement District Cost	\$21,351.59
City at Large Cost	\$ 0.00

Project No. 275 – Sanitary Sewer-Lot 3 El Dorado Plaza Addition

Preliminary Estimate	\$65,000.00
Final Cost	\$36,371.96
Improvement District Cost	\$36,371.96
City at Large Cost	\$ 0.00

Project No. 281 – 2006 Residential Sidewalks

Preliminary Estimate	\$10,000.00
Final Cost	\$ 7,177.17
Improvement District Cost	\$ 7,041.99
City at Large Cost	\$ 135.19

PUBLIC HEARING

Mayor Brian Shepherd opened the floor for the public hearing.

With no one appearing, Mayor Shepherd closed the public hearing.

ORDINANCE NOS. S-1269, S-1270, AND S-1271

Commissioner Clark moved that Ordinance Nos. S-1269, S-1270 and S-1271 ordinances levying against, and providing for the collection of special assessments for Project Nos. 235, 275, and 281 respectively, be adopted.

Commissioner Reynolds seconded the motion.

ROLL CALL

Position No. 1	Commissioner Steve Reynolds	Yes
Position No. 2	Commissioner Linda Clark	Yes
Position No. 3	Commissioner Steve Pershall	Yes
Position No. 4	Commissioner Michael Fagg	Yes
	Mayor Brian Shepherd	Yes

NORTH MAIN STREET IMPROVEMENT PROJECT – CONDEMNATION OF PROPERTY

Mayor Brian Shepherd stated that the City has approved the North Main Street Improvement Project. In order to complete the project as specified, the City has purchased one property and has entered into negotiations with another property owner.

Negotiations have been on-going to purchase a second property located at 916-922 North Main, but have proven unsuccessful to date. Therefore, the City is initiating the process of condemnation and eminent domain per K.S.A. 26-201, K.S.A. 12-1773, and K.S.A. 12-16, 103.

RESOLUTION NO. 2547

Commissioner Pershall moved that Resolution No. 2547, a resolution authorizing the City Manager to initiate the eminent domain procedures for a property located in the City of El Dorado, be approved, and to set a public hearing for same on August 21, 2006.

Commissioner Clark seconded the motion.

Motion carried 5-0.

FRONTIER HERITAGE FESTIVAL

Mayor Brian Shepherd stated that a committee of the Main Street organization, Frontier Heritage Festival Committee, has initiated plans for a new festival celebrating the heritage of El Dorado. This celebration would possibly include a concert on Friday night, a melodrama on Saturday afternoon, and activities such as horseshoe and saddle making demonstrations. The festival will be a family event with activities for all age groups. The Festival dates will be tentatively June 8-10, 2007.

Jean Plummer, 323 ½ North Main, representing the Frontier Heritage Festival committee, stated that the committee is requesting the use of the east side of the Civic Center as a dirt arena. They are also requesting assistance from the City in providing the dirt for the arena, assistance with lighting, traffic control and other services that may be necessary. They are not requesting funding as that will be through private donations.

Discussion ensued amongst the Commissioners and the City Manager regarding the requests made for the Frontier Heritage Festival.

Commissioner Reynolds moved that the request for assistance from the City for the purposes of hauling and removing dirt and using the facility from the Frontier Heritage Festival Committee tentatively for June 8-10, 2007, be approved.

Commissioner Pershall seconded the motion.

Motion carried 3-1-1 (Commissioner Fagg opposed; Commissioner Clark abstained).

NEW BUSINESS – DISCUSSION ITEMS

Mayor Brian Shepherd opened the floor for discussion items by the City Commission.

Commissioner Steve Pershall summarized some of the numerous extraordinary events in the past year that have affected the current budget.

Commissioner Michael Fagg stated that in the future he would like the Library to explain their budget in more detail. Commissioner Fagg also stated the need to focus on future expenses rather than revenues.

PUBLIC COMMENTS

Mayor Brian Shepherd opened the floor for public comments.

Martha Gregg, Director of Bradford Memorial Library, provided the Commissioners with a revised budget and noted several changes. The Library Board voted to keep the 2.5% COLA in the budget since health insurance is not offered to all employees and the library employees do not receive benefits that City employees receive, such as pool passes and YMCA membership discounts.

David Sundgren, 533 Prairie Road, stated that Commissioner Fagg filed a complaint, which Mr. Sundgren felt was on behalf of the City Commission, with the Real Estate Appraisal Board. Mr. Sundgren stated that he provided the Real Estate Appraisal Board the information they requested, and the Real Estate Appraisal Board dismissed the complaint.

Commissioner Michael Fagg stated that the letter he sent was not on behalf of the City Commission. Commissioner Fagg read a copy of the letter he sent to the Real Estate Appraisal Board.

David Sundgren, 533 Prairie Road, stated that in his opinion the City of El Dorado employs a hard-working staff with many volunteers. Therefore, the Commissioners need to focus on the issues from a higher level and not on every little detail.

Harold Haskell, 122 Residence, read an e-mail from Todd Peterson addressed to the City Commission and the City Manager regarding the airport budget.

Pat Hicks, 1147 South Arthur, thanked the City Commission for being resourceful with the use of tax dollars. Ms. Hick also stated she would like an update on the Hurricane Katrina families that were relocated to El Dorado.

Linda Baines, 253 Post Road, provided an update on the families which relocated to El Dorado from Hurricane Katrina.

Dan Hill, 1758 S.E. Hwy 77, stated that his wife taught one of the Katrina family students, and that the family had never experienced such a giving and loving community. Mr. Hill further stated that El Dorado should be proud.

Mayor Shepherd stated that even though we have our differences, El Dorado is a wonderful town with wonderful citizens.

Mayor Shepherd declared the public comments session closed.

CITY MANAGER'S REPORT

1. City Manager Herb Llewellyn responded to the e-mail from Todd Peterson regarding his recommendations for the airport, and indicated the Airport Attendant's contract will be examined during the Airport Master Plan.
2. City Manager Herb Llewellyn explained the details of the mill levy increase.
3. A Work Session was scheduled for Tuesday, August 8, 2006, at 7:00 p.m. regarding the budget and board appointments.

ADJOURNMENT

Commissioner Pershall moved to adjourn the meeting at 11:30 p.m.

Commissioner Reynolds seconded the motion.

Motion carried 5-0.

City Clerk Kendra Porter

Mayor Brian D. Shepherd