



It Was the Sharpest Exchange Yet at Saturday's Candidates' Forum

By Joe Hyde | Apr. 27, 2015 10:00 am

Can David Nowlin lead the city? Or did incumbent Mayor Dwain Morrison do right by the city in his bulldogging for the controversial trash contract and deserve one more term? These were the two questions that bubbled up again and again at a candidates' forum on Saturday.



Two local newspapers held the forum featuring both candidates for mayor, incumbent Dwain Morrison and challenger David Nowlin. Also participating were Lucy Gonzales and Andrew Justis who are facing off for the Single Member District 4 council seat.

The first hour focused on the SMD 4 city council candidates. The biggest news from the one-hour-long exchange was that Gonzales said she would have voted in favor of the trash contract. Justis punted on the question.

Questions were submitted from the audience on pages from reporter's notebooks provided. The knowledge of the small audience of approximately 50 was higher than the other forums, and the questions pointed, usually encompassing recent hot issues tackled by council. Here is a sampling of the issues discussed.

Can Nowlin Lead?

Nowlin, a newcomer to running for any office at all, was taken to task for his lack of knowledge of the way city council operates.

Here's one of the first questions:

"In an interview [earlier], you said 'I am not Dwain Morrison'. That statement is true because experience appears to be one of the main differences between you two candidates. Please tell us what experience and knowledge you have on our city's overall functions, finances, staff, and departmental policies that you feel gives you that edge over our current mayor?"

Nowlin seemed initially taken aback by the direct challenge to his knowledge of the city when compared to his opponent, a 12-year veteran on the council.

"I know what it's like to sync everything into a business. I have done that more than once. I know what it's like to make decisions under pressure. I believe that's a difference between Mr. Morrison and [me]," Nowlin said.

"I believe we're both in our 60s. A lot of times, it's this age in our life that makes us ready to run a government... I believe for myself, I just believe that my business experience, what I've learned about leadership... And leadership has been a natural thing for me all my life...

I believe making the decisions that I've made in my own business, and my own business practices, and knowing what I know about leadership, that I'm prepared to run this city. And I know there's going to be a learning curve. I'm also prepared for that.

"I've been talking to the right people knowing that when I step into this office that I'm not going to even be able to run the meeting as efficiently as he [Morrison] does, because he does it every time. But it's not rocket science. And the issues of the city, I pay attention to them," Nowlin said.

On the sand depot controversy facing the Zoning Board of Adjustments that Nowlin chairs, a question suggested that Nowlin displayed a lack of leadership, and asked how can he run a city council meeting "when it appeared that you were not comfortable with your role as chairman of the ZBA?"

"First of all, my opponent was telling his constituents, or our citizens, that nothing could be done [to stop the sand depot]. He talks fast, and comes to quick conclusions, but that's not leadership at all. I on the other hand, I told the board (ZBA) let's not talk about it. Let's let this unfold. There's a lot of controversy," Nowlin responded.

Nowlin said that the controversy surrounding the February meeting was boiling over and that he had to take extraordinary measures to keep it under control, such as requiring written statements from those addressing the board. In the end, everything worked out, he said. "It was lengthy, it was stressful, but we got it done," he said.

"Both attorneys on both sides are supporting (my campaign) monetarily and with their votes." He said.

"As far as how I'm going to lead the council, it's going to be with kindness, consideration, and respect. If anyone comes up here to this podium (in front of the dais) to talk or make a request, it doesn't matter if it's one person or 200 people in here, they're going to get my same attention. Everyone has a right to present what they're going to present. I'm not going to cut people off; I'm not going to be rude to other council members... And there's plenty of videos out there if you'd like to go watch them, of the mayor and of myself," he said.

"I'm very considerate of other people and of other members (of the ZBA). When I'm at the ZBA, I don't cut people off, I don't call people by their first names, or pet names. I treat them with respect, call them 'Mr. or 'Ms.' I hardly ever make a motion, rarely do I second (a motion). I let the members do it. I walk through it with leadership, not like a boss," he said.

“As the leader of the city council, you’re going to have to do it with kindness, patience, and consideration of what they (other council members) want,” he said.

How Would Nowlin Have Voted on Outlook on Valleyview?

In February, a developer asked for city council’s endorsement of their application for state funding to help finance a low-income apartment complex in Southland called Outlook on Valleyview. Residents turned out in large numbers to oppose the council action. Mayor Morrison voted against it. Nowlin was asked how he would have voted, for or against the apartments?

“Under that particular circumstance, with that particular turnout of citizens against it, I would vote the way the citizens wanted me to vote. That’s why they put you here, to do their bidding. They don’t put you here to do it your way, they put you here to do it their way, and I would have voted with them,” Nowlin answered.

Fact Checking Mayor Morrison on Transparency

Morrison was asked more specific questions about the trash controversy. The first question was about upfront payments to the city from Republic. If the upfront money that Republic paid the city in the new trash contract caused Republic to charge higher rates than originally proposed, particularly on commercial businesses, was this in effect a hidden tax increase?

Morrison initially deflected, pointing out that he is running a positive campaign and referring the audience to his handouts about his second term agenda. The last page, front and back, is his explanation of the trash contract. He said that the costs of the landfill were going to have to be paid one way or the other, and the contract takes care of all of those expenses by having Republic pay them up front.

Then, reacting to a subtle charge from Nowlin in another exchange that the city withheld releasing the details of the Republic Services original RFP response until a Freedom of Information Act request forced the document into the public’s view, claimed, “Immediately after the contract was signed, both contracts (he meant RFP responses) were immediately put online.”

The trail of paperwork doesn’t support this.

After the final, negotiated contract was released in June, both the proposed contract and the TDS original bid document were available on the city’s website, cosatx.us. Missing was Republic’s original bid document.

The importance of seeing the original bid document was that it gave a true comparison of the two bids before negotiations began. Critics of the trash bid process expressed doubt that the review committee, who decided the winner on Monday after the bids were opened the Friday afternoon before the weekend, made a hasty decision.



Later, a review of the original Republic bid revealed that the city negotiated residential and commercial rates up considerably from the original bid in return for additional upfront cash and lease payments from Republic.

At one point in the debate, Nowlin pointed to this, asking rhetorically, "If I give you \$3.6 million, will you give me \$10 million?"

Texas Disposal Systems said they made a written FOIA request to obtain a copy of the original Republic bid on July 1, 2014, after the trash contract was released to the public and authorized by council (here is the *pdf containing the string of documents and emails requesting it). Then-City Attorney Lysia Bowling, in not releasing the requested bid response to TDS, argued to the Texas Attorney General that the City was concerned that releasing the document may reveal certain proprietary information of the vendor, Republic. The TAG gave Republic 10 days to respond as to why their original bid should not be made public. Republic did not respond.

On Sept. 15, 2014, 75 days after the contract was awarded, the TAG ordered the City to release the original Republic bid. TDS said they received the Republic bid Oct. 8, 2014, over three weeks later.

Charles Lynn Young, a citizen of San Angelo, made his own FOIA request for a copy of both RFP responses on April 1, 2014. That FOIA was eventually denied by the city and the TAG agreed. Young did not pursue obtaining a copy of the original Republic bid after the trash contract was signed. Young's request was made during the contract negotiations; TDS' request was made after the contract was signed. Morrison may have the two requests confused, or was not aware that even after the contract was signed and executed, having the city release Republic's original bid to the public required an FOIA request and TAG opinion.

Morrison mistakenly said Saturday that, "You could go there in the middle of August and read it (on cosatx.us)."

The TDS Residential Rates Were Much Higher

Morrison said that the Texas Disposal Systems' bid for residential trash pickup was higher than Republic's original bid. He was correct. TDS' best pricing for one-time per week residential trash pickup and one-time per week recyclable pickup was \$17.35 per month. The Republic bid was for \$11.54 per month.

"I believe it is inappropriate for Morrison and for news coverage to compare residential rates alone and not also address the differences in what TDS proposed in its RFP response to what Republic was awarded. When figured together, TDS had the lowest cost offer," Gregory said Monday morning.

TDS CEO Bob Gregory argues that the residential rates he submitted were in the blind because his company was not privy to the internal tonnage fees that Republic charges itself at the landfill. His company assumed a \$20 per ton landfill cost in calculating his lowest weekly residential trash and weekly recyclable pickup rate. Gregory said that if the city reduces the recyclable pickups to every other week, TDS' bid was cheaper, at \$14.13 per month, less than the final, negotiated price in the contract.

Gregory also noted that the TDS bid had much lower commercial trash pickup rates, including temporary roll-off pickup and delivery from construction sites.

TDS said that its bid on commercial rates was \$6.666 million less expensive over the term of the contract. "But businesses don't vote," Gregory said.

In the signed contract, Republic and the city made an arrangement where Republic retains most of the tonnage fees as revenue and pays the city a flat rate, yearly lease payment of \$573,000 (part of the millions upfront) and a small "host" fee for each ton, generally around \$2-3 per ton. In other words, Republic's variable costs from tonnage fees aren't \$20 like TDS had to assume, but instead just the ~\$2 per ton host fee.

You Have to Keep the Negotiations Silent Until a Contract is Signed

Morrison said he is for transparency, but also said that the contents of both trash bids were kept confidential by city staff until the contract was signed. He uses a colorful metaphor in describing the city's position. "Nobody that plays cards ever shows their hand before the bets are made."

This is what happened:

Facing an onslaught of criticism over what TDS said were \$9.2 million in alleged overcharges over 14 years by Republic Services in unauthorized "Fuel Charge/Environmental Fees" as well as the perceived lack of transparency of the entire trash company selection process, City Manager Daniel Valenzuela and Operations Director Shane Kelton held a press conference on April 30, 2014, about two months before the final, negotiated contract was revealed, and 86 days before the contract was signed. At that press conference, the contents of TDS' RFP response were disclosed.

Kelton claimed that TDS' proposed rates were 64% higher than Republic's; that TDS offered no lease payment for the existing landfill; that TDS did not propose to provide the City with any upfront payments; and that TDS did not propose to accept the past, present and future liability for the landfill.

Revealing the contents of the TDS bid, or in Morrison's metaphor, 'the city's hand of cards', didn't much matter though. According to the RFP, all of the responses were binding on the proposer for 150 days (or until August 14, 2014). Perhaps by April 30, which was only 30 days into the negotiations that purportedly took almost three months, the card game was over, and the city could show its cards.

A video of the press conference is available online here.

The Landfill is a Valuable Asset

Morrison compared the upfront fees Republic paid for the use of the City of San Angelo landfill to TDS' offer of "nothing". Morrison derided TDS' proposal to operate the landfill in a cost-plus arrangement. "That is writing a blank check from the citizens of San Angelo to TDS," he said.

While acknowledging that the landfill is a valuable asset, Morrison's description of the new contract treats the landfill like it is a liability by having Republic pay for and assume landfill liability. Morrison did not explain what the city was *giving* to Republic to assume the landfill's

liability, a liability that Republic already owned as the result of being the long-term operator of the landfill.

The San Angelo landfill is not used exclusively by the residents of Tom Green County. Trash is hauled from all over the west central Texas region and disposed here. In fact, in the new contract, Republic charges municipalities like Mertzon \$40.50 per ton to deposit their trash in San Angelo's landfill.

In the TDS proposal, the city's solid waste fund would have received 100 percent of that \$40.50 per ton. TDS was willing to negotiate a city-approved cost plus profit margin arrangement to operate the landfill for the city while the city collected all of the revenue. The TDS proposal carried more risk for the city, but more upside potential to realize the value of the landfill as an asset.

In other words, TDS offered to operate the landfill as a business enterprise, much like other city enterprises are run, such as the water department. The city could have realized a profit, or (like the water department) sustained a loss.

TDS *did* offer the city something for the landfill—all of the revenue that it generated.

In the final contract, the mayor and the city chose a less risky arrangement. Republic would guarantee lease payments, make the post-closure fund whole, and etc. (the package of money upfront) but in return, Republic would collect and keep the majority of the tonnage fees charged to everyone who uses the landfill.

(To be fair, TDS said it proposed to have Republic continue to manage the current landfill until it was full, and then work a deal with the city to build a new landfill that would be owned by TDS or the city. In previous statements, Morrison said he is not comfortable with permitting a new landfill.)

You Could Be Burning Your Trash and Hauling it to the Dump Yourself

Morrison said that there was an urgency in approving the contract with Republic because the "best contract in the world, the contract we've had for the past 37 years, expired on July 31, 2014."

"That means on August 1, 2014, we could either go with Republic, we could go with TDS, or you could be burning your trash and hauling it to the dump yourself. There would have been no service," Morrison said.

Morrison said that the city could have negotiated with Republic to extend the old contract, or negotiated a month-to-month option. "But they would have not have been obligated for any of this upfront money, they wouldn't have been obligated to stay with the prices that they came up with. And if they'd gotten word that the other company was giving nothing to start, and was way up here above them in cost, Republic would have pulled their contract," Morrison said.

By the second council meeting in July, when the last ditch effort by opponents of the trash contract to stop it occurred, Morrison dug in and helped push it through on a 4-2 vote because he thought the entire contract, and the terms he saw as favorable to the city that were within it, were in jeopardy.

Conclusion

The forum was hosted by the *San Angelo Standard-Times* and *Conexión Hispana* at the city council chambers inside the McNease Convention Center Saturday morning. The event was the brainchild of *Standard-Times* editor Michael Kelly who introduced the forum as an anecdote to low voter turnout. Forum moderator Dr. Jack Barbour, professor and chairman of the political science department at Angelo State University, read every question submitted, sometimes combining for efficiency two or three that addressed the same issue. The questions from the crowd were all about current city issues, and pointed. Some of the questions submitted were from the opposing campaigns, making the answers and interactions between the candidates exciting and informative.

For Nowlin, his challenge was to convince the voters that, although he lacks the depth of experience at the helm of the city that his opponent has, that he has the leadership skills and the ability to learn quickly in order to be an effective head of the city council, even as a newcomer. For Mayor Morrison, who remained on the defensive throughout the forum over the trash contract, his challenge was to convince voters that he has performed well enough over the past two years to deserve a second term.

Today, April 27, is the first day of early voting. Election Day is May 9.

Here's when and where to vote:

Early Voting

April 27 - May 1, 8 a.m. to 5 p.m.

May 4-5, 7 a.m. to 7 p.m.

Polling Location

Edd B. Keyes Building, 113 W. Beauregard, 2nd floor

Election Day

May 9, 2015, 7 a.m. to 7 p.m.

Polling Locations

- Angelo Bible Church - 3506 Sherwood Way
- Calvary Baptist Church - 2401 Armstrong St.
- Community Hospital - 3501 Knickerbocker Rd.
- First Assembly of God Church - 1442 Edmund Blvd.
- Keating Paint & Body Shop - 5050 N. Chadbourne St.
- Plaza del Sol Apts. - 4375 Oak Grove Blvd.
- Southgate Church of Christ - 528 Country Club Rd.
- St. Ambrose Catholic Church - 8602 Loop 570, Wall
- Veribest Baptist Church - 50 FM 2334, Veribest
- TXDOT - 4502 Knickerbocker Rd. Bldg E
- Belmore Baptist Church - 1214 S. Bell St.

- Christoval Community Center - 20022 Main St., Christoval
- Concho Valley Transit District - 510 N. Chadbourne St.
- Grape Creek ISD Admin. Bldg. - 8207 US Hwy 87 N
- Paulann Baptist Church - 2531 Smith Blvd.
- SA (Public) Housing Authority - 420 E. 28th St.
- Southside Recreation Center - 2750 Ben Ficklin Rd.
- St. Paul Presbyterian Church - 11 N. Park St.
- Wesley Trinity United Methodist Church - 301 W 18th St.