

**MINUTES OF THE
REGULAR CALLED MEETING OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS
March 26, 2008**

A regular called meeting of the City Council of the City of Tyler, Texas, was held Wednesday, March 26, 2008 at 9:00 a.m. in the Council Chamber, City Hall, Tyler, Texas, with the following present:

Mayor: Joey Seeber
Mayor Pro Tem: Chris Simons
Council Members: Nathaniel Moran
Donald Sanders
Ralph Caraway
Steve Smith
Charles Alworth

City Manager: Bob Turner
City Manager Designate: Mark McDaniel
City Attorney: Gary Landers
Assistant City Attorney: Karen Stead
Airport Manager: Davis Dickson
Business Service Manager: ReNissa Wade
Development Services Engineer: Michael Wilson
Director of Neighborhood Services: Brenda Johnson
Chief Financial Officer: Daniel Crawford
Chief Information Officer: Benny Yazdanpanahi
City Fire Chief: Neal Franklin
City Police Chief: Gary Swindle
Communications Director: Susan Guthrie
Director of Parks and Recreation: John Webb
Director of Planning and Zoning: Barbara Holly
Director of Solid Waste: Dan Brotton
Internal Auditor: Keidric Trimble
Traffic Engineer: Kirk Houser
City Clerk: Cassandra Brager

INVOCATION

The Invocation was given by Councilmember Caraway.

AWARDS

A-1 Request that the City Council consider recognizing the staff of Tyler Pounds Regional Airport as recipient of the Airport of the Year Award for 2007 by the Federal Aviation Administration (FAA).

ZONING

**Z-1 APPLICATION Z03-08-036A CITY OF TYLER ON BEHALF OF
NUMEROUS CITIZENS –PHASES 1H, 4-H AND 6B**



Request that the City Council consider a request to change the zoning from “R-2” Two-Family Residential District to “R-1B” Single-Family Residential District on the following 11 lots:

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**Lot 107 of NCB 665B of the Jno. Broughton Subdivision (612 S. Ross Avenue);
Lots 3 and 5 of NCB 543 of the Bellwood Heights Subdivision (1822 and 1902
North Ross Avenue);
Lot 7 of NCB 665A of the Jno. Broughton Subdivision (1316 Connally Street);
Lot 14B of NCB 857 of the Herndon 1st Addition (2514 West Jackson Street);
Lots 16 and 11 of NCB 137 of the Wimberley Douglas Subdivision (1417 and 1425
East Line Street);
Lot 11 of NCB 138 of the Wimberley Douglas Subdivision (1414 E. Line Street);
Lot 11 of NCB 146 of the Wimberley Douglas Subdivision (401 North John
Avenue); and
Lots 6 & 7 of NCB 632 of the J. Swinney Subdivision (1719 and 1723 East Elm
Street).**

(Ord. 0-2008-39)

Councilman Sanders made the motion; seconded by Councilman Smith; motion carried 7-0; approved as presented.

Z-2

APPLICATION Z03-08-033A DENNIS WALKER

**Request that the City Council consider a request to change the zoning from “R-3”
Multi-Family Residential District to “R-2” Two-Family Residential District on Lot
5 of NCB 337, one lot totaling approximately 6,024 square feet located at the
southwest intersection of Hickory Street and Herndon Avenue (231 Herndon
Avenue). (Ord. 0-2008-40)**

Councilman Smith made the motion; seconded by Councilman Sanders; motion carried 7-0; approved as presented.

Z-3

APPLICATION Z03-08-034A DENNIS WALKER

**Request that the City Council consider a request to change the zoning from “R-4”
Multi-Family Residential District to “R-1B” Single-Family Residential District on
Lot 10 of NCB 94 of the Herndon Addition, one lot totaling approximately 4,200
square feet located two lots east of the southeast intersection of Ellis Avenue and
Short Street (702 Short Street). (Ord. 0-2008-41)**

Mayor Pro Tem Simons made the motion; seconded by Councilman Sanders; motion carried 7-0; approved as presented.

Z-4

APPLICATION Z03-08-035A RAYMUNDO MIRANDA

**Request that the City Council consider a request to change the zoning from “M-1”
Light Industrial District to “R-1-B” Single-Family Residential District on Lot 11 of
NCB 62 of the City of Tyler Subdivision, one lot totaling approximately 6,300
square feet located at the southwest intersection of East Oakwood Street and
North Beverly Avenue (488 North Beverly Avenue). (Ord. 0-2008-42)**

Councilman Caraway made the motion; seconded by Councilman Alworth; motion carried 7-0; approved as presented.

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Z-5 **APPLICATION Z03-08-037A J. KIMBERLEY**
Request that the City Council consider a request to change the zoning from “R-3” Multi-Family Residential District to “C-2” General Commercial District on Lot 20A of NCB 328 of the Parks Subdivision, one lot totaling approximately 5,740 square feet located at the southwest intersection of Hickory Street and North Palace Avenue (301 North Palace Avenue). *(Ord. 0-2008-43)*

Councilman Moran made the motion; seconded by Councilman Smith; motion carried 7-0; approved as presented.

Z-6 **APPLICATION Z10-07-106A C-J CONVERSION**
Request that the City Council consider a request to change the zoning from “R-1A” Single Family Residential District to “C-2” General Commercial District on Lots 11, 12, and 15 of NCB 933, three lots totaling approximately 1.2 acres located at the northwest intersection of Smith Street and Old Henderson Highway Road (2520 Old Henderson Highway). *(Ord. 0-2008-44)*

Mayor Pro Tem Simons made the motion; seconded by Councilman Alworth; motion carried 7-0; approved as presented.

Z-7 **APPLICATION Z11-07-008B MICHAEL SUGG**
Request that the City Council consider a request to change the zoning from “R-1A” Single Family Residential District to “PCD” Planned Commercial District on Lot 5 of NCB 852R, one lot totaling approximately 0.22 acres located at the northwest intersection of Britton Avenue and Bellwood Road (3101 Bellwood Road). *(Uphold denial 6:1 so zoning not changed)*

Mike Suggs, owner of Winners Circle – Asked City Council to approve the zoning request because they are at the mercy of the City Council. As of today they are no longer able to meet at the parole office.

Tony Meeks, 3306 Rolling Hill Dr. - Stated that at the time of purchase the Winners Circle thought the property was a commercial property based upon the prior uses. Mr. Meeks stated that there has been some corrective measures that have taken place where policies are in place. Anyone hired by the Winners Circle to do work in their building or any member of their group is not to cross the street to the daycare property, park at the daycare, or even on that side of the street. Only people accepted into the program are people that show a sign of being in recovery.

Eric Broughton, 1426 Manorway – Stated that he was here today to appeal the decision of Planning & Zoning. The Winners Circle peer support network was originally formed by recovering ex -offenders, and is open to those in the community who are committed to living a drug and crime free life. Mr. Broughton stated that the Winners Circle is at the mercy of the City Council because they have no where else to go to hold their meetings.

Gladys Square, 2425 N Cecil St. – Stated that the people of the Winners Circle are trying to prove their worth to the world. Mrs. Square stated that on behalf of the Winners Circle she is asking for City Council to help.

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Ron Price, 4600 Second Ave – Stated that he was here to support the recommendation from the Planning & Zoning Commission to not move forward with the zoning issue regarding this particular project and asked City Council to help find another location for the Winners Circle.

LaKisha Price, 1027 Old Noonday Rd - Stated that she has invested a lot of money into the daycare and she was pretty sure that the city has a lot of vacant buildings that could be used for the Winners Circle to meet.

Councilman Moran – Asked Ms. Price how many kids did she have in the daycare?

LaKisha Price, 1027 Old Noonday Rd - Stated that she has thirty one (31) kids

Councilman Moran - Asked how many workers did she have?

LaKisha Price, 1027 Old Noonday Rd - Stated five (5).

Mayor Pro Tem Simons – Asked the hours of operation?

LaKisha Price, 1027 Old Noonday Rd – Stated 5:45 – 6:00 but sometimes are open until 8:00 and in the process of providing 24 hour care.

Rev. Rufus Pollard, 2909 FM 757 – Stated that he has worked with many inmates for 18 years now and only 50 percent of these guys sustain to what they are doing. If you look at a statistical data you will lose 50 percent of these people and they will get back into drugs. Mr. Pollard stated that he appreciated what the Winners Circle was doing but to put a rehabilitation center in a residential area and across from a daycare center is not “when” one of those ladies will get hurt, because these men are on drugs, it’s just how “bad” is she going to get hurt? As far as sex offenders going through the Probation Officers screening there have been people that have walked up to the center and joined that was not screened.

Myrtle Brown, 709 Duckenfield – Stated that the Winners Circle is a good thing to have but in the wrong place.

Gwendolyn Price, 2212 W. Jackson St. – Stated that there have been two incidents that have occurred from the Winners Circle and if it is put in across the street from the daycare it would be in the wrong place.

Earnest Price Jr., 2212 W Jackson St. – Stated that the program was a good one but just in the wrong location.

Rev. D. C. Brown, 211 E 24th St. – Stated that he supported what the Winners Circle was doing but the location is not the right location for what they are doing. If terms could be met to find another location so the Winners Circle could continue doing the work that they are doing would be great. Rev. Brown asked City Council to uphold and not rezone the building.

Choice Dudley, 2012 Robbins – Stated that his cousin built that building and it was a commercial building when he built it and he was not sure how the permits were lost or mixed up. Mr. Dudley stated that he was in support of this rezoning because the Winners Circle is doing something to change people lives.

Deedra McCloud, 13568 CR 469 – Filled out a card in support of the rezoning but had to go back to work before she was able to speak.

Councilman Moran – Stated that there has been some mentioning about property swaps and the City has not said anything about that being an issue.

Director of Planning & Zoning – Stated that at one of the Planning & Zoning meetings it was suggested that the Winners Circle work with the City on something of that nature, but nothing has come from that yet.

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Councilman Moran – Asked Mr. Suggs if he could address the issue about individuals who had not been sent to him by the parole board but had come and joined privately.

Mike Suggs – Stated that he could not address that issue at this time, but it is his understanding that the individuals that come to the Winners Circle are from the parole board.

Eric Broughton – Stated that yes there have been people from the community to come into the meetings because it is open to the community but they go through a screening process within the Winners Circle group. One of the staple principles is honesty so when someone comes into the Winners Circle they have to tell about their background and no one has admitted to being a sex offender.

Councilman Moran – Asked if a background check was done on people that come in and volunteer for the Winners Circle program, that's not through the parole board?

Eric Broughton – Stated that no more than the honesty of the person.

Councilman Moran – Asked if the organization has looked in the last 6-8 months for alternative location to go to?

Eric Broughton – Stated that they are in search of an alternative location but do not have the funds to relocate. Mr. Broughton stated that this is not a place where people live, it is only a meeting place.

Councilman Moran – Stated that Rev. Pollard and Rev. Brown both spoke in favor of the organization but against the location so Councilman Moran was wondering if both had considered or were considering opening up their church location as a place for Winners Circle to meet if this place was not appropriate.

Rev. Pollard – Stated that his church was located directly in the community so he would get the same response then as we would now?

Rev. Brown - Stated that he was not directly across the street from the daycare but they do work with people but he would be opposed to continual meeting, but if they wanted to meet at some point he would not be opposed to that.

Councilman Sanders – Stated that there was no one in the room that wanted a resolution to this situation any faster than he did. Councilman Sanders stated that he has heard comments from both sides and they are legitimate and they have a right to voice their concerns, but he wished he could be given the same respect to voice his concerns without making a decision. He stated that there was a letter written in support of the Winners Circle and that letter was signed by the officers of the organization, including himself, but this was not speaking for the whole community, it was for the organization. Our most precious and valuable resources are the children and he does not want to do anything to inhibit the children in our City and in our community.

Mayor Seeber – Stated that some good points have been made here today and the Winners Circle is a great organization that is serving needs very well to people. This comes down to two facts. As fortunate as it is, when the Winners Circle brought this property, it was zoned as a residential property and not zoned to do the kinds of things that is being done there now. When you have that fact, plus right across the street from a daycare facility that houses children, I can't vote to overturn what P & Z did with a good conscious. The City should try and help find another place and there were Pastors here that have said this is a good program so there has to be another place that is not so risky or potentially dangerous as right across from a daycare center.

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Councilman Moran - Stated that since there were no formal background checks and since the Winners Circle took on the task without checking the zoning before they went into the facility, he would not be able to vote and have a good conscious if he allowed it to happen across from a daycare.

Councilman Smith – Stated that he would like to encourage Rev. Brown and Rev. Pollard to help the facility find a new location.

Councilman Alworth – Stated that he challenges Rev. Brown and Rev. Pollard to step in and get something going because he really wanted to see the Winners Circle succeed.

Councilman Caraway – Stated that this is tough and when you have to make a decision, some will leave happy and some will leave disappointed. When you look at the makeup of this whole situation and all the information that City Council has received and have to process, it's a situation where someone has to go away not feeling good about the decision they have made. What's even worse is that City Council will have to live with the situation that they make. Councilman Caraway stated that he understands the support for the Winners Circle but at the same time he wanted to know if there was another place in Tyler where it would be permitted for this same situation to happen where you have a daycare?

Councilman Moran made the motion to uphold the denial of the request presented by Planning and Zoning; seconded by Councilman Smith; motion carried 6-1; zoning not changed. (Councilman Sanders opposed)

PRESENTATIONS

P-1 **Request that the City Council consider approving the Comprehensive Annual Financial Report for the fiscal year ending on September 30, 2007, as presented by Prothro, Wilhelmi & Company, P.C.**

Councilman Caraway made the motion; seconded by Councilman Sanders; motion carried 7-0; approved as presented.

P-2 **Request that the City Council consider receiving a presentation regarding a proposed Unified Development Code consolidating and adopting regulations relating to zoning, subdivision design and improvements, plats, landscaping, drainage, streets and thoroughfares, development standards, parking, signage, environmental provisions, permitting, administration and enforcement, historic preservation, and annexation with a planned adoption date of April 9, 2008.**

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ORDINANCES

O-1 **Request that the City Council consider an ordinance amending Tyler City Code Chapter 10 “Planning and Zoning”, by moving Article VI, “Oil and Gas”, to a new Chapter 20 to be titled “Oil and Gas”; moving Chapter 10, Article VII, “Cotton Belt Route Train Depot” to Chapter 12, “Airport”, Article VII and changing the name to “Transit”; changing the name of Chapter 12 to “Airport and Transit”; changing the name of Chapter 12, Article III to “Airport Commercial Activities”; and changing the name of Art VI to “Airport Passenger Facility Charges.”**

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(Ord. 0-2008-45)

Councilman Smith made the motion; seconded by Councilman Caraway; motion carried 7-0; approved as presented.

MISCELLANEOUS

M-1



Request that the City Council consider approving a contract with Siemens ITS to provide temporary traffic field technician support services on an as needed basis with a fee not to exceed \$46,500.00.

Councilman Alworth made the motion; seconded by Councilman Smith; motion carried 7-0; approved as presented.

M-2



Request that the City Council consider approving an economic development incentive agreement with Bellwood-Tyler Property Investment, L.P. for development of a new hotel in west Tyler and a Recreation Maintenance Area agreement for possible improvements and maintenance on City owned land adjacent to the Developer and to be paid for by the Developer subject to City Council approval. *Approved 6:0 (Caraway out for this item)*

City Manager Designate, Mark McDaniel – Stated that on March 5, 2008, the City Council announced support for a new economic development incentive agreement using hotel motel funds and a separate Recreation Area Use and Maintenance agreement subject to the proper paperwork being prepared and all details being worked out to the City Council's satisfaction. State law allows for this type of incentive program using hotel motel funds as long as certain requirements are met.

The hotel and resort area development group has agreed to an economic development agreement that will meet those State law requirements. Additionally, the City has been negotiating with that group for them to provide funds and actual construction and maintenance of specifically approved recreation improvements on City owned land on the shores of Lake Bellwood subject to each specific improvement and use being approved by the City Council. Improvement to 37 acres of City owned property abutting the lake for recreational use is part of 180 acre tract that the City owns around Lake Bellwood.

Councilman Smith – Stated that the City is not leasing, selling, or allowing them to take control of anything that the City owns and will maintain total control of the property.

Sherry Haire read a statement for Jan Wood – Asked that the City Council weigh the positive and negative aspects of this agreement before approval.

Mayor Seeber – Stated that because of the abuses by the Cascades that the City went into this agreement very carefully. The agreement would have walking trails and there is concern about the woods trees and prevent clear cutting.

Joseph Marsey, 157 N Bay Dr. – Stated that he was not against development but there is a real concern of what is happening along the lake.

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Jim Haire, 5801 Regents Row – Stated that he and his wife support Tyler’s new commercial developments and he knows there has to be horse trading along the way, but is opposed to using City park land as currency to compensate developers. Tax revenue can be replaced but not park land, especially like Bellwood.

Mayor Seeber – Stated that the City will retain authority, ownership and the ability to approve or disapprove of whatever is contemplated on that park. By virtue of the Council approval and the public input that would be involved, this is going to be a public access area, not a park, so people can enjoy it.

Jerry Kassaw, 460 Bunker Dr. – Asked City Council to make the area a park area because the Tyler 21 Plan addresses the issues of parks in Tyler. Mr. Kassaw recommended that the City Council step back, look at the big picture, get more citizen input on what they would like to see done, and keep Tyler beautiful by not commercializing this area.

Henry Bell, 315 N. Broadway – Stated that the Convention and Visitors Bureau wanted to send the message that they are extremely excited about this project especially from a conference and full service hotel stand point.

Councilman Smith made the motion; seconded by Councilman Sanders; motion carried 6-0; approved as presented.

M-3



Request that the City Council consider ratifying staff action for payment to Boren – Scott Title Company in the amount of \$553,661.97 for acquisition of right-of-way for Grande Boulevard Phase 2.

Mayor Pro Tem Simons made the motion; seconded by Councilman Moran; motion carried 7-0; approved as presented.

M-4



Request that the City Council consider a donation from Starr Capital Investment, Limited of 3.00 acres with detention pond as a part of the right-of-way acquisition for the Lake Placid Road Extension.

Councilman Sanders made the motion; seconded by Councilman Moran; motion carried 7-0; approved as presented.

M-5

Request that the City Council approve an Engineering Services Contract with Bucher, Willis and Ratliff Corporation in an amount not to exceed \$54,820.00 for the design of two traffic signals.

Councilman Alworth made the motion; seconded by Councilman Sanders; motion carried 7-0; approved as presented.

(These items are considered to be routine or have been previously discussed, and can be approved in one motion, unless a Council Member asks for separate consideration of an item).

CONSENT AGENDA

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- C-A-1** Request that the City Council consider authorizing the City Manager to extend Bid Number 06-018, for one year, April 12, 2008 thru April 11, 2009, to accomplish herbicide treatment of 25.98 miles of Tyler Roadside Rights-of-Way and approximately 6.105 miles of drainage ditches, within the City of Tyler, to Spray Max Incorporated of Tyler, Texas.
- C-A-2** Request that the City Council consider ratifying staff action to purchase one (1) 2-cubic-yard, stationary compactor unit for Solid Waste Management.
- C-A-3** Request that the City Council consider ratifying staff action to purchase one (1), 2-cubic-yard, stationary compactor unit for Solid Waste Management.
- C-A-4** Request that the City Council consider authorizing the City Manager to purchase two compactor receiver units for Solid Waste Management.
- C-A-5** Request that the City Council consider authorizing the City Manager to purchase one Ford F-750 Dump Truck for a total purchase price of \$61,008.00.
- C-A-6** Request that the City Council consider authorizing the City Manager to purchase one Kubota L39TLB Tractor from the low bidder Rose Country Tractor of Tyler, Texas in the amount of \$28,500.00.
- C-A-7** Request that the City Council consider authorizing the Fire Chief to seek Grant Funding Approval through Global Insurance Agency, FM Global Fire Prevention Grant Program, for two Laptop Computers worth \$6,000.00.
- C-A-8** Request that the City Council consider authorizing the Fire Department to seek grant funding approval through the U.S. Department of Homeland Security, Assistance to Firefighter's Grant Program for Protective Equipment.
- C-A-9** Request that the City Council consider authorizing the City Manager to execute a partial release of the sanitary sewer easement associated with Lot 1, NCB 1434-V, Tyler, Texas.
- C-A-10** Request that the City Council consider authorizing the City Manager to award a five-year leasing contract to XEROX for three WorkCentre 4150 copiers to be installed at the Rose Garden, Water Business and Information Technology Departments with a total lease cost of \$25,693.20.
- C-A-11** Request that the City Council consider authorizing the City Manager to enter into a lease agreement with the Baker and Taylor Company for \$19,238 for the lease of books and DVDs and the Brodart Company for \$9,234 for the lease of audiobooks to be placed in the Tyler Public Library.

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C-A-12 Request that the City Council consider authorizing the City Manager to purchase a selection of children's books from Rainbow Book Company for a total purchase price of \$13,361.28.

Councilman Caraway made the motion to approve the entire consent agenda; seconded by Councilman Alworth; motion carried 7-0; approved as presented.

BOARD APPOINTMENTS

B-1 Request that the City Council consider making appointments to various City Boards.

TYLER HEALTH FACILITIES DEVELOPMENT CORP. BOARD OF DIRECTORS

Councilman Moran made the motion; seconded by Councilman Alworth; motion carried 7-0 to appoint the following Board Members:

**Cheryl Simpson
W. Ford Keitzer**

NEIGHBORHOOD REVITALIZATION BOARD

Councilman Moran made the motion; seconded by Councilman Alworth; motion carried 7-0 to appoint the following Board Member:

Harvey Thompson

DISABILITY ISSUES REVIEW BOARD

Councilman Alworth made the motion; seconded by Councilman Moran; motion carried 7-0 to appoint the following Chairman:

Charles Carver

CITY MANAGER'S REPORT

- 1. This is CDBG Week and events @ 10:00 today.*
- 2. Tony Myers at ETMCEMS volunteered to buy defibrillators for City facilities.*
- 3. Caraway – thanks for Fire Department's response to Glass Rec Center, saved man's life.*

Mayor Seeber – Stated that it is not the intent, and there will be no discussion about giving away any city property or control of city property to anyone, that has never been under consideration.

RECESS FOR EXECUTIVE SESSION - City council convened into executive session at 11:19 a.m.

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As allowed by the Texas Open Meetings Law, Chapter 551 of the Government Code, the City Council may consider the following:

-under section 551.071 "Litigation" deliberation regarding the following:

1. pending or contemplated litigation involving Cascades and/or Western Rim developments

Litigation is, by its nature, an on-going process, and questions may arise as to trial tactics, which need to be explained to the City Council. Upon occasion, the City Council may need information from the City Attorney as to the status of the pending or contemplated litigation subjects listed above

As allowed by the Texas Open Meetings Law, Chapter 551 of the Government Code, the City Council may consider the following:

-under section 551.087 "Economic Developments" deliberation regarding the following:

Possible offer of financial or other incentives business prospects and to consider financial information about those prospects with which the City is conducting economic development negotiations that could lead future developments in Tyler.

6 : 0 (Caraway had left) Approve a MOU with the East Texas Symphony Orchestra to provide for a downtown project whereby ETSO will move downtown and lead renovation effort on old Liberty Theatre which City will buy. (A copy to be attached to the Minutes)

City council reconvened from executive session at 11:41 a.m. with no action taken.

ADJOURNMENT

Councilman Alworth made the motion to adjourn the meeting at 12:25 p.m.; seconded by Councilman Sanders; motion carried 6-0; meeting adjourned.

**BARBARA BASS, MAYOR OF
THE CITY OF TYLER, TEXAS**

A T T E S T:

CASSANDRA BRAGER, CITY CLERK