

**MINUTES OF THE
REGULAR CALLED MEETING OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS
FEBRUARY 25, 2009**

A regular called meeting of the City Council of the City of Tyler, Texas, was held Wednesday, February 25, 2009 at 9:00 a.m. in the Council Chamber, City Hall, Tyler, Texas, with the following present:

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

City Manager: Mark McDaniel
City Attorney: Gary Landers
Deputy City Attorney: Steve Kean
Assistant City Attorney: Deborah Pullam
Assistant City Attorney: Karen Stead
Airport Manager: Davis Dickson
Budget/Human Resources Director: ReNissa Wade
Development Services Engineer: Michael Wilson
Director of Neighborhood Services: Brenda Johnson
Chief Financial Officer: Daniel Crawford
City Engineer: Carter Delleney
City Fire Chief: Neal Franklin
City Police Chief: Gary Swindle
Director of Parks and Recreation: John Webb
Director of Planning and Zoning: Barbara Holly
Director of Solid Waste: Dan Brotton
Director of Utilities & Public Works: Greg Morgan
Tyler Transit: Gary Rushing
City Clerk: Cassandra Brager

INVOCATION

The Invocation was given by Councilmember Moran.

Motion by Mayor Pro Tem Alworth to approve the minutes of the December 10, 2008, January 14, 2009 and January 28, 2009 minutes; seconded by Councilman Sanders; motion carried 7 - 0 & approved as corrected.

AWARDS

A-1 Request that the City Council recognize Fire Fighters and Police who demonstrated an outstanding dedication at the 100 block of North Spring Avenue Monday, February 2, 2009.

Mayor Bass and Fire Chief Franklin presented plaques to numerous Fire Departments and Police Chief Swindle presented plaques to numerous Policemen for their support and help demonstrated at the 100 block of North Spring Avenue on February 2, 2009.

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A-2 Request that the City Council recognize Tyler Police Department 2008 Award Recipients.

Chief Swindle recognized the Tyler Police Department 2008 Award Recipients.

ZONING

Z-1 F02-09-021A JOHNNY AND RENEE GROSS ADDITION, FINAL PLAT
Request that the City Council consider an appeal of the Planning and Zoning Commission's denial of the Final Plat relating to the Johnny and Renee Gross Addition, and the applicant's request for a waiver or reduction of development exactions, specifically the escrow requirements for public improvements along Roy Road.
Withdrawn from agenda at request of appellant

Z-2 S02-09-0015B CARDIOVASCULAR ASSOCIATES
Request that the City Council consider recommending a Special Use Permit on Lots 18 and 19 of NCB 293, two lots totaling approximately 0.531 acres of land located one lot north of the northwest intersection of South Broadway Avenue and East Fifth Street (1621 South Broadway Avenue). The property is currently zoned "C-1", Light Commercial District. (O-2009-9)

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

Z-3 Z01-09-001A HOMEWOOD SUITES
Request that the City Council consider approving the final site plan amendment on a portion of Lot 3 of NCB 1450A, totaling approximately 2.18 acres of land located two lots north of the northeast intersection of East Heritage Drive and South Broadway Avenue (7524 South Broadway Avenue). (O-2009-10) approve as recommended by staff.

Director of Planning & Zoning, Barbara Holly – Stated that the original site plan is a four story, 92 rooms extended stay hotel with 94 parking spaces. What they are coming in with today is 110 rooms or actually an additional 18 rooms from the original site plan and additional 11 parking spaces, so they will be losing some landscaping. The neighbors recommended approval of the site plan subject to no visibility from the windows and they should be opaque. The neighbors had a couple of other conditions that they had asked to be put on the sight plan which are the maximum of 65 decibel noise limitation from the hotel, and that the site plan would clarify how the 60 foot buffer from the original plan would be treated (upon construction the required 8 foot wall along the boundary property line, that any tree larger than 6 inches in ddb must be replaced within 120 days with evergreens of similar ddb and at least 15 feet in height). The owners have come back in and they are no longer going to have windows facing the residents. Because P & Z received 11 petitions back from the neighbors they are recommending that the original petition track with this because there is more clarification and that would be a maximum of 65 decibels which is a reasonable limitation, that the landscape language be included on the site plan, and that trees will be replaced within 120 days. Staff, with the changes that have been made to the site plan, does recommend approval of the revised site plan with the changes that were just outlined.

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Mark Priestner, Planning Concepts – Stated that this came out of a requirement from Hilton. Once the site plan was approved by Council last year the plans were put together and submitted to Hilton and they changed their prototype. It was decided that functionally and safety wise the old prototype with having two separate towers connected in the middle of the single floor didn't work so therefore they said they will not allow them to be built any longer. In the beginning we dealt with the neighbors a lot during the original plan and when the changes were looked at in this one it was important again that we look at protecting the neighbors. Where the connection was added between the towers and the rooms was on the furthest west side. The windows on the rear side when they were in place were 350 feet plus to the closest adjacent neighbor and the horseshoe shape limited who it really affected by the middle two properties that were adjacent. The neighbors that showed up at the meeting were concerned with not as much with the rooms, but if there were rooms there, that the landscape language be beefed up and make sure they were protected in visibility. When we went to P & Z with that the decibel requirement was something that was asked for at P & Z; however P & Z did not approve the site plan so it was never added to the plan. Planning Concepts received a petition from the neighbors on Friday and their concerns are with the opaque windows which is something the P& Z talked about. An email was sent to Hilton clarifying could opaque windows be done in the rear where the rooms are located. Hilton said in no uncertain terms if opaque windows were required on this, the project was gone and they would pull it and go back before their review committee. Hilton went back to the drawing board to see how they could still make this work and still protect the neighbors. The concept came up to having a single hall down the second, third and fourth floor and rooms only on the west side therefore we go back to exactly all of the conditions within the foot prints of the original site plan that was approved. Since we are not being allowed to have any windows or rooms that are facing the rear, this is the reason we are asking to go back to the original language because the impact of this development is not any taller than it was, it has all the same footprints, and no setback changes. The neighbors asked for a 60 foot buffer and that was given, we went from a 6 foot wall to an 8 foot wall and we feel we have done everything to protect those neighbors and all the comments that have been heard through the protest letters and the petitions have been those windows facing back and those conditions have been taken out, so we would like to go back to the original conditions. The site plan that is before you on the right hand side has the conditions located on it basically taken from the original. What is not on the plan is the decibel maximum requirement because the ordinance already has built into it the maximum decibel levels for nuisance. The language about beefing up the landscape buffer just goes back to the natural 60 foot undisturbed landscape buffer and not beefing up additional requirements other than how the buffer is already treated in the ordinance.

Councilman Smith – Stated that this was agreed upon and put a period on it at one point in time and then when it was re-brought up then as well the neighbors have come back and added some additional request that was not in the original.

Director of Planning, Barbara Holly – Stated that is correct, and for more clarification.

Motion by Mayor Pro Tem Alworth to approve site plan with the clarification on noise limitation and on the buffer clarification which is the words added by P & Z; seconded by Councilman Smith; motion carried 7 - 0 & approved as presented.



Z-4 Z02-09-006A TYLER STONEGATE DEVELOPMENT

Request that the City Council consider recommending a zoning change from “R-1D”, Single Family Detached and Attached Residential District to “R-MF”, Multi-Family Residential District on Lot 15A of NCB 1544T, one lot totaling approximately 18.585 acres located at the southwest intersection of Paluxy Drive and Stonecrest Boulevard (1857 Stonecrest Boulevard). **(O-2009-11)**

Motion by Mayor Pro Tem Alworth; seconded by Councilman Moran; motion carried 7 - 0 & approved as presented.

Z-5 Z02-09-007A MEZAYEK BUILDINGS LTD No. 1

Request that the City Council consider changing the zoning from “AG”, Agricultural District to “C-1”, Light Commercial District for approximately 14.899 acres located at the southwest intersection of Grande Boulevard and New Copeland Road. **(O-2009-12)**

Motion by Councilman Moran; seconded by Councilman Caraway; motion carried 7 - 0 & approved as presented.

Z-6 Z02-09-008A MEZAYEK BUILDINGS LTD No. 2

Request that the City Council consider changing the zoning from “AG”, Agricultural District to “C-1”, Light Commercial District for approximately 2.21 acres located at the northwest intersection of Grande Boulevard and New Copeland Road. **(O-2009-13)**

Motion by Councilman Moran; seconded by Councilman Caraway; motion carried 7 - 0 & approved as presented.

Z-7 Z02-09-009A CITY OF TYLER



Request that the City Council consider changing the zoning from “M-1”, Light Industrial District to “DBAC”, Downtown Business and Arts District, 42 lots totaling approximately 13.2 acres generally bounded by Border Avenue to the east, Erwin Street to the south, and the Union Pacific Railroad to the north and west. **(O-2009-14)**

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

PRESENTATIONS

P-1



Request that the City Council consider designating John Franklin “Doc” Witt as a Half Mile of History recipient.

Motion by Councilman Moran; seconded by Mayor Pro Tem Alworth; motion carried 7 - 0 & approved as presented.

P-2



Request that the City Council consider designating The Haynes-Brinton House, located at 400 West Third Street, Tyler, Texas, as a Tyler Historic Landmark.

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Motion by Councilman Smith; seconded by Councilman Sanders; motion carried 7 - 0 & approved as presented.

HEARINGS

H-1 APPLICATION A03-09-019A BRIARWOOD DRIVE



Request that the City Council conduct a public hearing and consider public input on the proposed annexation of six properties on Briarwood Drive. The proposed annexation area consists of territory lying adjacent to and contiguous to the present boundary limits



of the City of Tyler, approximately 3.9 acres of land contained in the Briarwood Shadows Subdivision, located west of Loop 323 SSW approximately 1,420 feet southwest of the intersection of Briarwood Drive and Loop 323 SSW (4010, 4016, 4110, 4116, 4122 and 4128 Briarwood Drive).

Director of Planning & Zoning, Barbara Holly - Stated that this is the first of two public hearings.

Ron Stafford, 4122 Briarwood Rd. – Stated that when he was first approached with the proposition of annexation into the City he was told that the golf course of the Cascades as well as All Saints School was petitioning annexation. In order to fulfill this request of the Cascades he would have to be annexed as well because annexation was inevitable. The homeowners had numerous questions regarding this procedure and they were: what are the associated cost that will be incurred by the homeowners, advantages, and the disadvantages? We were promised forthcoming information but have only received cursory information to date. Even today's public hearing was not presented to any of the property owners, our presence here today is the result of a concerned friend that brought this meeting to our attention. Mr. Stafford stated that his research into the matter has revealed that this action appears to be initiated by city staff and not necessarily by the Council. Explanation to the motivation behind this proposal has been described as an attempt to fill in the holes and that this is supported by the property owners. This proposed annexation that is being presented is not supported by the property owners. Our questions remain unanswered and most importantly we stand here today asking the central question, "why us and why now?" It's now presented to this council that the annexation is only for the homes along the golf course and there are neither time tables for the golf course annexation nor any explanation for the initial representations. Now should they choose to speak at this podium my neighbors have endorsed the following statement:

To the Members of the Tyler City Council We, the residents of Briarwood Road respectfully disagree with the proposed annexation, and request that you cast a negative vote on this proposal. The residents did not originate this proposal for annexation, nor do the residents support it. We have been witness to, and suffered the incompassion of developers and other parties as it pertains to our homes along this road, and feel that there have been many misrepresentations about its intentions in this annexation. The city limits in this area have been annexed in a piece milled method with no long term plans or goals presented to the residents.

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Councilman Moran – Asked Mr. Stafford if there were other questions that he needed answered in regards to the annexation that have not been answered to date that the City Council could know about?

Ron Stafford, 4122 Briarwood Rd – Stated that their biggest question is the reasons that they were told are not presented here today and this is being presented like they are in support of the annexation and do not have a choice.

Larry Meckley, 411 Sutherland – Asked that the Mayor not participate in H-1 that deals with property located within the Cascades or matters with the Cascades because there is a conflict of interest between the Mayor and Cascades.

City Attorney, Gary Landers – Stated that the plan for 2009 is that all of the remainder of the Cascade property be annexed into the City. This is based on the fact that it will be voluntary request by Cascades, but if for some reason it does not come as a voluntary request then it's the City's intention to complete the annexation of the entire area. This was brought in as a development agreement where Cascades initially said they wanted to do their development in phases and just annex phases as they went. Several of those phases have occurred but it has really resulted in that the boundary lines are too confusing so that needs to be standardized and that is the plan for this year.

Councilman Smith – Asked if there was any reason that we have to get the residents in before the other stuff is done? That would give them the comfort level to know that what is being said will happen.

Director of Planning, Barbara Holly, - Stated that it is just a matter of time, it can be now or it can be later.

City Attorney, Gary Landers – Stated that except for the two parcels on the east side surrounded by the City property need to be annexed and it is overdue and not having previously completed that annexation it's easier to pick up those other four lots.

Councilman Alworth- Stated that he felt the cart was before the horse.

RESOLUTION

R-1 Request that the City Council consider a Resolution calling an Election for May 9, 2009, to fill the offices of Tyler City Council Members for Single Member Districts 1, 3, and 5 on the Tyler City Council and calling for a joint election with the Tyler Independent School District. (R-2009- 4)

Motion by Mayor Pro Tem Alworth; seconded by Councilman Moran; motion carried 7 - 0 & approved as presented.

ORDINANCE

O-1 Request that the City Council consider adopting an Ordinance amending Tyler City Code Chapters 16, "Solid Waste Disposal Regulations", Chapter 17, "Traffic", and Chapter 18, "Streets", related to Code Enforcement that aid the abatement of public nuisances and violations tending to reduce the value of private property, create health and safety



hazards, or produce urban blight adverse to the maintenance and development of the municipality. It is also requested that the City Council change the name of Chapter 18 from “Streets” to “Code Enforcement”. (O-2009-15)

Motion by Mayor Pro Tem Alworth; seconded by Councilman Caraway; motion carried 7 - 0 & approved as presented.

- O-2** Request that the City Council consider adopting an Ordinance amending Tyler City Code Chapter 4, “Offenses and Miscellaneous Provisions” and Chapter 18, “Streets”, relating to graffiti removal by authorized City Department, adding provisions making property owners responsible for removal of graffiti from property, verifying the Solid Waste Director’s authority to enforce Code Enforcement Ordinances, and providing for a right-of-entry for inspections. (O-2009-16)



Motion by Mayor Pro Tem Alworth; seconded by Councilman Caraway; motion carried 7 - 0 & approved as presented.

- O-3** Request that the City Council consider adopting an Ordinance amending the Tyler City Code Chapter 18 to add a more inclusive definition of “junked vehicle”, and authorizing the Code Enforcement Department to enforce provisions related to “junked vehicles”, and designate Municipal Court Judges as hearing officer for proceedings under this Article. (O-2009-17)



Motion by Mayor Pro Tem Alworth; seconded by Councilman Caraway; motion carried 7 - 0 & approved as presented.

MISCELLANEOUS

- M-1** Request that the City Council consider authorizing the City Manager to enter into an Agreement for Legal Representation with the Houston Law Firm of Beck, Redden and Secrest for the City’s participation in the Class Action Lawsuit against Gexa Energy, L.P. ©

Motion by Councilman Moran; seconded by Councilman Sanders; motion carried 7 - 0 & approved as presented.

- M-2** Request that the City Council consider authorizing the City Manager to execute a contract with ERI Consulting, Incorporated for the consulting/management of the asbestos abatement and demolition of the Downtown redevelopment properties, and to request that the City Council consider adopting an ordinance amending the Fiscal Year 2008-2009 Budget to provide funding for this project. (O-2009-18) ©



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

- M-3** Request that the City Council consider authorizing the City Manager to reject all bids and award the work for site preparation and installation of thirteen restrooms and concession facilities in various City parks in the amount of \$232,211.00, to the City of Tyler Engineering Services Department.



Motion by Mayor Pro Tem Alworth; seconded by Councilman Smith; motion carried 7 - 0 & approved as presented.

- M-4** Request that the City Council consider authorizing the City Manager to approve an Interlocal Agreement for Cooperative Purchasing with the City of Longview. ©

Motion by Mayor Pro Tem Alworth; seconded by Councilman Caraway; motion carried 7 - 0 & approved as presented.

- M-5** Request that the City Council consider ratifying twenty (20) demolition contracts for demolition of unsafe and/or substandard buildings and structures. ©



Motion by Councilman Sanders; seconded by Mayor Pro Tem Alworth; motion carried 7 - 0 & approved as presented.

- M-6** Request that City Council consider authorizing the City Manager to accept a conditional grant from The Baseball Tomorrow Fund in the amount of \$100,000 for the construction of a softball field at Faulkner Park.

Motion by Mayor Pro Tem Alworth; seconded by Councilman Smith; 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).

- C-A-1** Request that the City Council consider authorizing the City Manager to accept the bid of \$45,495.00 from Tex- Sand Sports Turf Specialty, Incorporated of Hawkins, Texas, to construct a second girls' fast pitch softball field at Faulkner Park.

- C-A-2** Request that the City Council consider authorizing the City Manager to purchase two Ford F-750 Dump Trucks for \$120, 520, one F-450 Utility Bed Truck for \$46,119, and two F-350 Flatbed Trucks for \$56,003.

- C-A-3** Request that the City Council consider authorizing the City Manager to purchase two new roll-off solid waste trucks from Dallas Mack Sales/East Texas Mack Sales and B&C Body through the H-GAC and Buyboard purchasing cooperatives and authorize the trade-in of units 683 and 684, bringing the total purchase of the two new units to \$89,076. It is also recommended that the City Council considering authorizing the City Manager to execute the 30 month 80 percent buy back plan.

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C-A-4 Request that the City Council consider authorizing the City Manager to execute an Interlocal Election Contract with Smith County to perform certain joint election services for City Council Election to be held May 9, 2009, as part of the joint election with the Tyler Independent School District. ©

Motion by Councilman Caraway; seconded by Mayor Pro Tem Alworth to approve the entire consent agenda; motion carried 7 - 0 & approved as presented.

APPOINTMENTS TO BOARDS

B-1 Request that the City Council consider making an appointment to the Civil Service Commission Board.

Motion by Councilman Caraway to appoint Darryl Bowdre; seconded by Mayor Pro Tem Alworth; motion carried 7 - 0 & approved as presented.

CITY MANAGER'S REPORT

- Status of City Hall Renovation – Sales tax collections now flat, need to postpone renovation but proceed with some minor adjustments;
- Miscellaneous Items – March 4, 09 Special CC mtg. on annexation, Fire & Police appreciation today emphasize regionalism cooperation, signing earlier today of Interlocal with Smith County.

RECESS FOR EXECUTIVE SESSION – City Council convened into executive session at 10:33 am

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:

Pending or contemplated litigation involving all suits pending against the City filed by: Aguirre-Holt, Clark, Sanders, Smith, Tardy, Tolbert, or Toole;

The three condemnation appeal cases involving R & J, Chapelwood, and TFW;

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.

City Council reconvened from executive session at 11:18 am with no action taken.

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ADJOURNMENT

Motion by Councilman Moran to adjourn the meeting at 11:18 am; seconded by Councilman Simons; motion carried 7 - 0 & meeting adjourned.

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

A T T E S T:

CASSANDRA BRAGER, CITY CLERK