

**MINUTES OF THE
REGULAR CALLED MEETING OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS
NOVEMBER 18, 2009**

A regular called meeting of the City Council of the City of Tyler, Texas, was held Wednesday, November 18, 2009 at 9:00 a.m. in the Council Chamber, City Hall, Tyler, Texas, with the following present:

Mayor: Barbara Bass
Mayor Pro Tem: Donald Sanders
Councilmembers: Charles Alworth
Chris Simons
Ralph Caraway
Sam Mezayek
Mark Whatley

City Manager: Mark McDaniel
Asst. City Manager: Scott Wall
City Attorney: Gary Landers
Human Resources Director: ReNissa Wade
Chief Financial Officer: Daniel Crawford
City Fire Chief: Neal Franklin
City Police Chief: Gary Swindle
Communications Director: Susan Guthrie
Director of Planning and Zoning: Barbara Holly
Director of Solid Waste: Dan Brotton
Director of Utilities & Public Works: Greg Morgan
City Clerk: Cassandra Brager

INVOCATION

The Invocation was given by Councilman Caraway.

MINUTES

Motion by Councilman Alworth to approve the minutes for the June 24, 2009 and October 28, 2009 Council meetings seconded by Mayor Pro Tem Sanders; motion carried 7 - 0 & approved as presented.

ZONING

**Z-1 C09-09-008 TEXAS SPINE AND JOINT (EAST 6TH STREET)
Request that the City Council consider closing a portion of East 6th Street connecting Roseland Boulevard and Donnybrook Avenue. (O-2009- 118)**

Motion by Councilman Whatley to remove this item from table; seconded by Councilman Alworth; motion carried 7 - 0 & approved as presented

Councilman Simons – Stated that in the UDC it states that 42 feet is the maximum height when it's next to a residential. Today you are stating five stories but the UDC clearly states 42 feet next to a residential.

November 18, 2009

Barbara Holly, Director of Planning & Zoning – Stated, “yes for some portions of it but as they step it back it can go higher.” The ultimate development rights for an “Institutional Use” is five stories and when they abut residential they have to start stair stepping it down.

Councilman Simons – Stated that Barbara had mentioned that she was reviewing the bed to parking space ratio which is currently 4 to 1 and you had looked at Longview and others, what are their codes and what is the recommendation for that?

Barbara Holly, Director of Planning & Zoning – Stated that the current code is 1 parking space for every 4 beds. In the prior parking code that was adopted before April 2008 it was 1 for every 4 beds plus 1 for every 2 employees at the peak parking shift. What we will be coming back to Council with is either 1 to 2 beds or use it with some kind of employee count and that will be coming up in one of the amendments to the UDC. They will be providing the old parking count for their beds and they have agreed to do that.

Councilman Whatley – Asked how many parking spaces will be provided under this current plan?

Barbara Holly, Director of Planning & Zoning – Stated that they are in the 360 parking space range.

Larry Meckley, 401 Sutherland - Stated that he is a concerned citizen of Tyler and he is against closing 6th Street and so are the neighbors. Stated that it seems that Spine and Joint was trying to buy the street closure by making a donation to the Bergfeld Park and that really upsets him.

Kimberly Reed, 214 E 1st St – Stated that she heard that the hospital saved this area but she was here to disagree. She was one of the many that chose this area to live in. As a citizen of Tyler, a home owner and a taxpayer who chose this area to help preserve the past history, and the charm, along with the azaleas and dogwoods. This is the residential area that tourist travel to see and experience the charm of the past and the present. This is just one small part of an area that makes Tyler what it is today, so let us preserve the past while we enhance both the past, present and the future, this way the City of Tyler is the winner. With or without the street closure the building expansion will be built. With or without the street closure the hospital will still pay their taxes. With or without the street closure the hospital will still help those in need. With or without the street closure this will still be a great hospital. She encouraged the Council to continue to keep the preservation of this community area which has been rich in its past and it still is today.

Pat Johns, 3909 Glendale – Stated that she has been a resident of Tyler for 39 years. Tyler has long been known for many years as a retirement community and it isn't coincidental that we have outstanding medical facilities in Tyler. Mrs. Johns stated that she is a three-time patient of Spine and Joint Hospital and feels she does not need to go elsewhere because the care is here in Tyler. Spine and Joint Hospital is a beautiful facility which was built where the deserted Montgomery Wards building use to stand. The hospital began as a 20 bed facility and their outstanding reputation has brought patients not only from this area but from out-of-state. Mrs. Johns stated that she has looked over the plans and closing one block of 6th street is not going to cause a traffic back up.

November 18, 2009

Julius Bergfeld, 2001 S. Donnybrook – Stated that he wanted to say his appreciation to all the citizens who have reached out unsolicited because of their love for the town and for the neighborhood. It's good sometimes to reassess what things you really love and what it means to you. The character and the integrity of the neighborhood areas of Tyler should not be desecrated by desire to increase tax base in an area where the use doesn't conform and is not compatible with the area. Proposition 11 recently passed in Texas by over 85% majority prohibiting governments from taking private property for private economic development to increase tax base. This property was donated to the city of Tyler strictly for citizens use as a public street, it was not donated to the city to give to whoever they wanted in the future. As a City Council member and protector of the citizens of Tyler it seems to many citizens that it would be a misuse of authority to close a public street that serves the purpose in the community and is well traveled by the public for which it was donated. This would seem to be a violation of the intent shown by proposition 11 by taking the citizen's property and giving it to Spine and Joint for private economic development to increase the tax base. It does not seem that grounds exist for closing this donated street for public use to give to a private party. The citizens of Tyler do not want the street closed and do not see any legitimate reason for doing so. If 6th street is closed, it is forever and who ever owns this hospital in the next couple of years may have a different idea of what they will do or how it will be operated than the current owners. Let's open new streets and not close existing ones that are well used by the public. Mr. Bergfeld asked City Council to deny the request to close 6th Street and protect the neighborhood areas of Tyler.

Andy Bergfeld, 2001 S. Donnybrook – Asked what is the standard for giving away a City street that is well used to a private entity? Mr. Bergfeld stated that he had not seen a standard put out by the City. If you think of reasons why you try to do this, we think of economic development, increased tax base, increase jobs and with all of these there has to be some kind of reasoning. The hospital has said all along that their current zoning allows them to expand, they can expand where they are, they can create jobs where they are, they can increase the tax base where they are and all of these things can be done without closing the street that the citizens do not want you to close. When you look at that you have to look at what is our standard and surely the standards are not who can make the biggest donation to the city. There are some options and they are: 1. They can build on their existing lot within the master plan development that is currently in place. 2. The city can take the half a million dollars that this property is worth and if it's that important they can go and buy Spine and Joint land in an area where the expansion is welcomed.

Cheryl Penn, 3117 Tallow Oak Circle - Stated that she was here on behalf of her mother Dorothy Wade who has owned the property at 1809 Snead for 40 years. Ms. Wade is against closing 6th Street. Ms. Penn stated that she has a little different perspective on this. She urges the Council to think long and hard about this decision, not because of what you are doing today but because of the slippery slope that you are about to go down. Ms. Penn thinks there will be unintended consequences to closing a public street for private use. What that means is that any group of influential people in the city of Tyler in years to come, when they decide they have a better use for any public street will come to you and ask you to close it, or they come to a future council and say we need this street closed because we have a better idea. I think that you will be hard pressed to deny that request based upon the precedent that you may set today.

November 18, 2009

Allen Ross, 2922 Pollard St – Stated that he has always appreciated the fact that the City of Tyler works to maintain and develop the business core that is our downtown. There are 3 great challenges that face our City these days: 1. To maintain a central business district of vibrant central business district and not to deflect growth to the suburbs and to South Tyler, which we do not want to discourage growth anywhere. 2. Managing traffic on South Broadway and some of the southern arteries. It is right for the City to encourage growth within the central business district and this is part of that district. We can create jobs here and increase revenue which is important because the way that this City pays for infrastructure improvements and park improvement is through the half cent sales tax. The City cannot rightfully discourage growth when that is our business model to pay for infrastructure improvements in the town. The science, engineering and planning has been done that shows that closing 6th Street won't be detrimental to the area. In fact, improving an old shopping center that today is still growing and still vibrant but can be improved is the right thing for the City to do. He encourages the City to close 6th Street and to promote development within our central business district.

Mark Lankford, 709 Dorchester – Stated that he was for the street closure because it does not affect him. If staff believes that additional revenues can be generated then it must be good for Tyler. Traffic issues addressed in Tyler 21 were only in place for political posturing and not intended to prevent development or growth. Drainage easements have been developed as parking lots in other areas of the City without adequate concern or foresight for the negative impact on the existing neighbors or neighborhoods. The removal of trees and vegetation helps traffic and safety as it eliminates visual obstruction.

Nancy Hefner, 223 E. 3rd - Stated that citizens on Roseland support this and some of them are not able to be here today. Ms. Hefner stated that she is concerned about the traffic, impact on the neighborhood, and the ethics of closing this street. Medical Center and Mother Frances have not closed a street and they are enormous drivers of the economic impact in this community and if they can function with over 350 beds each and keep streets open, then why should Spine and Joint be able to close a street in the neighborhood?

Virginia Shull, 1310 Roseland Blvd. – Thanked Mr. Sanders for his comments that were made at the last City Council meeting. She stated that she has been speaking her concerns showing that this is just not a neighborhood concern but a City of Tyler concern and evidently she had been doing a poor job because Mr. Sanders pointed that out at the last City Council meeting. The vote today will not just affect today and next week but years from now when City Council is gone. A standard needs to be set for do we or do we not take a City Street and give it to somebody that just wants to expand. Mrs. Shull stated that if the vote is yes to close this street today then a very dangerous precedent is being set and what will the next entity be told when they want to expand?

Mike Wood, 806 S. Broadway Ave. – Stated that virtually everyday he shops at the Bergfeld Center or passes through it and in doing so makes use of all its streets as necessity dictates. He stated that he finds the clinic's reasons for closing Sixth Street extremely weak. There are some points that were not made

1. Argument by the clinic is that growth is inevitable for a successful business and we need more space.

November 18, 2009

- a. If this is the case, when they bought the property originally why did they not buy enough land for expansion or negotiate an option to have Sixth Street closed at that time?
 - b. If one accepts the argument that growth is inevitable, what is the clinic going to do in the future when expansion is required again by joining property and closing more streets.
 - c. If this is not an option what do you suppose the clinic will do then? (Answer: build elsewhere, move and sell to the highest bidder, the same option they have now?)
2. Argument by the clinic. Because there is precedents for street closure and city property give away it justifies doing it in this situation too.

Rebuttal-Whether the previous street closures were justified is not the issue, the issue is whether Sixth Street should be closed in Bergfeld Center. A significant number of involved citizens have provided good reasons why it should not.

3. Argument by the clinic. There are safety issues for street crossings by patients and clinic staff
- a. If this has been so dangerous after all these years why hasn't the clinic been so concerned to do something about it such as improved signage, reduced speed limits, and use the employees to escort those in need.
 - b. As for the staff testifying about their near accidents, didn't they learn at an early age to look both ways before crossing the street?
 - c. With the low volume of traffic that the clinic has testified to it would seem very easy to cross the street safely if one would just use patience and common sense.
4. Argument by the clinic. We pay taxes and provide jobs. Expansion will provide additional jobs. Rebuttal-No taxes or jobs would be a lost if the clinic just relocated to another property in Tyler and this time buy enough property for future expansion.

5. Argument by the clinic. We are going to make a donation to Bergfeld Park.
Rebuttal-If this donation is contingent on the closure of Sixth Street, it smacks of bribery. If not, take the money, don't close Sixth Street and thank the clinic for being a good corporate citizen.

6. Argument by the clinic. Individuals have lauded the way the old building was remolded and improved; as an improvement to Bergfeld. As a new Tyler resident, the first time he saw the building he wondered why it was in the shopping center because it was totally out of place architecturally. He wondered why a medical facility on that scale was in the shopping center. Tyler has a medical center for such operations as well as other more suitable locations. The council members who voted to allow zoning for a hospital in Bergfeld Center did Tyler a disservice. Please don't compound that area with another one. Please don't close streets and give away public property. The arguments made by the clinic do not justify closure. Respectfully vote against purely corporate interests and vote for the interest of the community, please vote no on closure.

Tony Wall, 1406 Brandywine - Stated that the buck stops here with the City Council. He would just ask that at this point to go back and look at what is good for the City and what are some of the basic facts. In 2000, the Planning and Zoning Committee changed this zoning to Commercial Health District with surgical suites and overnight stays for patients. No written letters of protest were filed and no one spoke in opposition to the request. This was an empty Montgomery Wards building which was in disarray and the trees people are talking about

November 18, 2009

where dying and it is a lot different today. Thirty million dollars was invested in the last few years and it started with the 20 beds and 50 employees and today there has been seven years of improvement and growth in that area, with 235 employees, 11.6 million in payroll, and over 26,000 patients through 2008. We have talked about the quality and what that has done. We also went out and did an economic impact for this project. In 2008 this hospital paid out \$696,000 in sales tax and 371,000 in property tax. 60% of patients travel to Tyler from outside Smith County and spend with local businesses, they don't travel Sixth Street they go through the major thoroughfares. The hospital facilities are full and upgrades need to be made to the parking lot and facilities. Plans for expansion are three operating rooms, three pain procedure rooms, 20 beds and to add and renovate to bring our parking count up to 359 total spaces. A couple of older buildings will be taken down and provide additional landscaping and parking.

Mary Endres, 1610 S. Wall – Stated that closing Sixth Street for the benefit of a private business in this case, Texas Spine and Joint, would be bad public policy for the following reason: 1. It will negatively impact an historical area of the city that is bustling with residents, businesses and visitors to the city. The street in question serves two historical districts as well as an historical shopping center. It runs the length from Troup Hwy to Hwy 155 in the City. The streets in the area specifically 4th, 5th and Donnybrook Street are currently burden with traffic congestion such that motorists are seeking alternate routes and all existing streets that we have are necessary to move the traffic through the area and to provide parking. This street closure is not comparable to other street closures and giving this public street to a private business in this area of the City sends a message of incoherent planning to our citizens.

Woody Roark, 223 E. Elm – Stated that he is one of the old-fashioned folk who strongly believe in public service. Public servants that the Councilmember's are make a lot of personal sacrifices to do their duty and to serve the public interest. This street serves the public. This street is owned by the citizens of Tyler, by the public. The closure of this street will be a vote for the private interest and he would submit respectfully that Council vote ought to be for the public interest against closure.

Susan Emge, 2003 Hilltop – Stated that she supports the closing of Sixth Street between Roseland Blvd and Donnybrook. This area was an eyesore before Texas Spine and Joint renovated the Montgomery Wards building. She feels that if Sixth Street is closed she can depend on Texas Spine and Joint to add on to the hospital in a way that will continue to compliment the surrounding commercial and residential neighborhoods rather than build a five-story building, parking garage and skywalk.

Stacey Ford, 1323 E. 6th St. – Stated that she would rather go through this neighborhood because it is less traffic. Ms. Ford stated that closing the street would be a safe option and would not hurt the neighborhood or businesses in that area.

Mike Carmichael, 1208 S. College Ave – Stated that he owns 11 of the properties located across the street from the Spine and Joint Hospital and he is against the closing of Sixth Street. It will negatively affect the area both from traffic standpoint as well as from a residential historical area and urged that the City Council do not close Sixth Street for this purpose.

Tom Graham, 533 Wilder Way – Stated that he was speaking in favor of Sixth Street and he is one of the original founders of Texas Spine and Joint. When Texas Spine and Joint was

November 18, 2009

initially built it was not planned for this kind of expansion, they did not plan on asking for street closure. Over time the business has built and the pedestrian traffic has greatly increased. When expansion was discussed they decided to ask for this street closure primarily on the safety factor. It does not have to do so much with economics because they are still able to do the expansion. Aesthetically building a one or two story extension would be much nicer than a 4 or 5 story building and they are trying to not make it look like a medical center and not look like Beckham Street.

Janie Menegay, 815 S. Broadway- Stated that this is a different issue than when she came last week. She spoke about the houses on Houston Street and it is too late for intervention on their behalf plus they were privately owned. This is a different issue today. It's not too late to avoid a mistake. The street is publicly owned and you all are in charge of deciding its fate so she would ask that you consider this issue and what you decide will have a lasting impact. Closing the street will be bad for preservation, the people, public policy and bad precedent.

Charles Gordon, 7302 Hollytree Dr – Stated that he understands that this is a big deal to request a street closure but feel like it's the least disruptive way to expand their services. They are doing their best to serve their patients and proud of the fact that they bring a lot of jobs and business to Smith County which otherwise would go elsewhere, so they respectfully ask that Council vote in favor of closing Sixth Street.

Charles Miller, 114 E. 2nd – Stated that he owns the property closest to the Sixth Street closing and he has recently spent several hundred thousand dollars in the immediate area remodeling homes and building new duplexes. Mr. Miller is very much in favor of the closing of Sixth Street because he feels it would not hurt the area. When Spine and Joint moved into the area they saved the area. Texas Spine and Joint has generated business for Bergfeld Center and has enhanced the whole area. Mr. Miller stated that he does not see how this will hurt the area by closing Sixth Street so he is very much in favor of closing the street.

Dr. Michael Russell, 3402 Brixworth - Stated that he was one of the Physicians for the Texas Spine and Joint hospital and he was in favor of the closure. There are neighbors in the neighborhood that appreciate what Spine and Joint has done and are in support of closure of the street. The traffic issue has already been solved and has been looked at by people that do this for a living and there is no change in the area. Anyone that goes down Sixth Street is going to go down Donnybrook, Fifth Street or Broadway already so it will do nothing different. Taxes were brought up last time and someone brought up that Texas Spine and Joint only pay \$30,000 but in fact it's closer to a million. The Texas Spine and Joint hospital is not for sale and that is a rumor. We have looked for partners specifically within Tyler and the hospital is not for sale, so please does not consider that in your computation.

Jimmy Michaels, 2013 Holly Creek Dr. – Stated that the effects that Spine and Joint has had on the community and the neighborhood in Bergfeld has been profound.

Clinton Smith, 1820 S. Sneed – Stated that he is in favor of the closing of Sixth Street and he presented a petition signed by fifteen of his neighbors that requested the closing of a portion of Sixth Street between Roseland Boulevard and Donnybrook Avenue. The citizens do not feel that the closing of Sixth Street was intended to be the shortcut connecting S. Broadway and Beckham. Mr. Smith feels this closure will add to the safety of the surrounding neighborhoods without any negative side effects to traffic flow or visual appeal.

November 18, 2009

Travis Booher, 622 Camellia – Stated that he spoke last time in opposition and there are a lot of reasons for the closure and a lot of reasons against. Personally he is opposed to the closure but wanted to focus on one aspect that he spoke on last time he was here. He stated that he saw this street closure as a gift from the City of Tyler to a for profit entity. He was surprised that no one had discussed the fair market value of this real property to the City of Tyler that's being given away. There have been numbers thrown out there when you read the newspaper. The amount may be \$300,000 may be \$500,000, might be \$200,000 but he is a little surprised that no one has really said here is the value to the City of Tyler. However you want to phrase it, a donation, an investment, a gift, the City of Tyler is taking an asset that has a fair market value and giving it away. He assumed any other asset that's done in the City of Tyler will be done on a competitive bid bases. For some reason this does not seem to apply to this situation and why he is not sure. If the request was for \$250,000.00 in cash or \$300,000.00 in cash or \$400,000.00 in cash from the City of Tyler to a for profit entity, the discussion would be much different. He hopes that City Council will give some thought to this street closure because he opposed it and hopes that City Council would deny this street closure.

Dr Jan Garrett, 8440 Southland Dr. - Stated that Texas Spine and Joint cannot buy this property from the City of Tyler. The value of this property is somewhat irrelevant, and that's not going to change in the future. Whether it's a gift, or investment or how ever you want to put it is immaterial, because they cannot buy it. A lot of things have been discussed today and preservation is one of the key issues that have been brought up by members here today of the City and they are for preservation. Their proposal answers all those questions in the best way and it avoids a building that the opponents would not really like to have and it gives them the opportunity to solve all the issues that are being discussed today. The height issues, the beauty issues, and how it fits in the neighborhood is the best answer by the closing of Sixth Street. They care about Tyler, patients, the citizens of Tyler, the issues of the Azalea Historical District, and their Bergfeld Center friends and closure of Sixth Street will answer all of these issues to everyone's best needs.

Jim Harris, 9243 Chisholm Trail – Stated that he did not think there was any mechanism by which Spine and Joint could buy Sixth Street and they offered to make a donation in order to some how do something in the positive direction. Everybody that is here today cares about Tyler and everyone that spoke in opposition or pro closure of the street are Tylerites and would like to see the right thing done for the City. Our children go to school here and were raised here and this is our city and we care about Tyler. We bought a piece of property and built a hospital and the problem now is that it is full all the time and can't get patients in. The hospital is only twenty beds and it's impacting our ability to deliver care. We are also looking towards the future because if we are this busy now we need to plan ahead. When we looked at what our option where we could build up, build a parking garage, or make a campus and make it cosmetic and aesthetic. That's a better option. He asked City Council to consider the closure of Sixth Street.

Claire Tibiletti, 16690 Driftwood Dr – Stated that she too is an owner of Spine and Joint Hospital and she wanted to reiterate some important points. When the hospital was first opened in December of 2002 they had a choice then to demolish an old building and build something new and shiny and they chose not to do that, they chose to remodel an existing building. Their intention is actually to improve it because they recognize that the parking area is not very attractive and they want to improve that. They also want to make it a campus and want to extend the green areas and make it a safe property for all. It is not their intention to go up 2, 3,

November 18, 2009

or 5 story's which is obviously a point of serious contention to the City Council and they do not want to do that. One important issue that she wanted to speak to directly is the donation. The donation to the City Parks Department is a demonstration of our commitment to the neighborhood. We work there, we want to continue to work there, and we have respect for our neighbors. This donation will be made regardless of the decision by the City Council, it is not a quid pro quo and I do not want it to be interpreted that way. She very respectfully requested that the City Council allow them to incorporate a ROW of the single block of Sixth Street to allow them to grow in a pleasing manner their successful business.

Councilman Simons – Asked if that donation would be evaluated on a fair market value or would they do it on the value of the property that they were receiving?

Claire Tibiletti, 16690 Driftwood Dr – Stated that the comment was never made that the donation was going to be for the value of the property no amount has ever been specified. Ms Tibiletti asked Councilman Simons if he was asking if they could make it for that amount.

Councilman Simons – Stated, “I think you might consider the fair market value of the property”.

Mike Patterson, 210 Mockingbird – Stated that this hospital pays \$41,000.00 a year in property taxes to the City and that should be kept in mind because what you are talking about is turning over an asset worth a lot more than that. More than half of the people that want closure of this street are Doctors or employees at the hospital. It would be like me bringing my family of seven in here and have everyone get up and speak against this, so this is a little misleading. He stated that he was against this because of the traffic concerns. Three of the streets around there are rated D, D and F and I don't think this has really been addressed. You can't take a thousand cars and push them off onto other streets without there been some type of effect on that. We are talking about them wanting to expand this and bring in more business, more customers. This is just going to create more congestion on these streets 5 years, 10 years, 20 years from now. Another concern is the parking and we are talking about 275 employees at the hospital which doesn't include the Physicians alone with increased traffic of patients and people visiting them. He hasn't seen where the City has looked at the ingress and egress Department of Transportation rules regarding this. Also concerned about what effect this will have on the neighborhood. He was disappointed that the staff looked at the traffic and parking but did not consider the neighborhood. If Tyler 21's language means anything then we should have considered what this is going to do to the neighborhood. His main concern is that this is just bad policy to give the street away and he had not heard anything yet today from anybody about why we have to give them the street. It seems to him when you talk about giving away a piece of property whether is worth \$300,000 or \$500,000 there needs to be a very compelling reason. The reason that we have been given today is the same as last time. It is because it is dangerous to cross that street, that's just silly almost insulting. Go over to E.T.M.C and Mother Francis and they have parking lots all over the place where they have to cross the street. E.T.M.C Cancer Center, patient parking is right across the street on Clinic Drive which is a much busier wider street than this. What's telling about that is, that's the best argument that they can come up with is that it's dangerous to cross that street, that's weak. What they have come in here and asked of you is to give them the street because of that reason. The other one is what they are going to do for the city with their economic development.

November 18, 2009

Economic Development does not trump everything. If it did, then any time anybody comes in here and talks about adding onto their business you are going to be asked to turn over streets. When we start looking at this, what is the compelling reason why we have to turn this street loose? They can add on with what they have on the block. Nothing is preventing them from doing that. Someone spoke about proposition 11 which was overwhelmingly passed by the voters here as specifically prohibited by our constitution from the city's going out exercising eminent domain to grab up property for economic development. Were doing a corollary here if you turn around and give them that street. This is a very controversial item and he stated that he had a petition signed by over 125 people that simply said, "We object to the City of Tyler giving away Sixth Street to a private business." You know what the citizens want and he encouraged the Council to listen to the voters and deny the application.

M de la Garza -Graham, 533 Wilder Way - Stated that it was a little difficult to come and defend a project that is basically a win win situation for everybody. She presented a comprehensive plan which is a Tyler 21 vision and it says, "to cultivate an environment friendly to business and Tyler's medical and educational institutions, to sustain policies that allow businesses to flourish, to continue to foster the city's role as the retail hub of a broad region, and to maintain support for the Medical Centers, Colleges and University. Ms. Graham stated that they are part of the community and as Physicians they can live anywhere in the country and with the shortage of Physicians and Nurses across the country they chose to live here and raise their families here. The commercial area is just not Bergfeld Center which has been there for decades. We are not expanding because we want to. It's not a coincidence that Mother Frances has expanded with the Ornelas Tower or it's not a coincidence that Medical Center is actually adding beds and building two more stories, it's that we have a growing population. In order to keep up with the needs of Tyler's medical community, they need to expand and want to expand to provide more for the community. She asked the City Council to consider all the positive things not only that we have done but will continue to do and vote for this closure so that it can be a campus rather than a big building.

Mark Priestner, 3815 Old Bullard Rd – Stated that they are not setting precedent by this closure and a list of 18 closures of improved streets within the last 10 years was located in the City Council packet. This is not something new and they are for non profit businesses. What we are trying to do with this project is to create a campus style that fits within the neighborhood. It is important now and in the future that that connection be kept open between Roseland and Donnybrook through that parking lot. Closing the street does nothing but help increase the parking numbers.

Councilman Alworth – Asked if the three buildings will still be taken out on Fifth Street and if so what is the order of taking them out?

Mark Priestner - Two buildings will be taken out first and then once this is open and operational then the last one will be taken out.

Councilman Alworth – Stated that the plan show fairly substantial landscaping and all of us know that there are trees currently existing on Sixth Street and some of them are good trees. The beauty of Tyler is the trees and he gets very disappointed when he sees developments tearing trees down.

November 18, 2009

Mark Priestner - Stated that they have gone above and beyond in their planning of this to make sure the entrances on the land stay the same and for that reason that they are not touching any of the trees around the perimeter. The trees that are good will be transplanted on site and if the trees cannot be saved then they will go in two to one and replace those.

Councilman Alworth – Stated that what he sees is a plan that provides in keeping with the Tyler 21 and the blueprint for Tyler. This actually improves those series of lots, it doesn't destroy those lots. We are being asked for a street closure and that makes him nervous because he does not like street closures. He considers street closures to be an investment in the future. Councilman Alworth asked that if the street closure is approved that the right of way continues to exist, and improvements in the landscaping.

Councilman Simons – Stated that appendix F is an example of what an alternate proposal would be and was it not ever considered and why wouldn't it not have been considered? Your original proposal shows the pain management on the West side of the building facing Roseland and there is a two story addition to the rear facing east. Was it ever considered to take the pain management section and make a third story which is in the 42 feet, and now pain management is on the addition that you are doing to the rear and your done, the street stays open, end of story.

Mark Priestner – Stated that the height requirements is 42 feet at the set back line which is 12 feet so once you have passed the 12 feet set back it goes up 1 foot per 1 foot.

M de la Garza -Grahm, 533 Wilder Way – Stated yes it has been considered what Councilman Simons asked but there is a medical reason why that couldn't happen. The operating rooms are located in the center of their building and their pain management patients are out patients. They cannot navigate out patients through the operating room area to get to what would be the new addition on the back of the building.

Councilman Simons – Stated that we have heard from the citizens and we have listened and I keep hearing the same message and that message is that they do not want this street closed. This is a public street, public thoroughfare and it would be a travesty to close this street.

Councilmember Simons moved to deny, seconded by Councilmember Caraway; motion failed by vote of 3:4.

After some discussion about the motion and some adjustments, Councilmember Alworth moved the approval of Z-1 (thoroughfare closure) subject to the following conditions and Councilmember Whatley seconded:

1) Closure and abandonment are contingent upon Applicant entering into a voluntary Development Agreement with the City of Tyler that provides for the following requirements to serve the general public:

a) Applicant voluntarily agrees in the event that the building constructed over the abandoned ROW is sold or a controlling interest is sold within 15 years from the date of and adoption of the thorough fare closure ordinance by the City Council, Applicant shall either pay to the City of Tyler the

November 18, 2009

amount of \$300,000 (subject to being increased in accordance with any increases in the CPI from time of this action up to the time of any sale) or said abandoned ROW shall revert to the City of Tyler for public use,

b) That closure and abandonment are contingent upon the City retaining a public easement along or near to the abandoned ROW to be shown on an exhibit based on Applicant's submitted drawings, in order to allow for vehicular traffic to travel and have access between Roseland Blvd. and Donnybrook Ave. at or near the former 6th Street locations,

c) That closure and abandonment not occur until one week prior to beginning of demolition, construction, and/or expansion of buildings for facilities by Applicant,

d) That closure and abandonment not occur until two weeks notice of such action under (c) above is posted at both ends of the ROW subject to closure,

e) That closure and abandonment are contingent upon and will not become effective until and unless the Applicant replats the property within 6 months (or by May 18, 2010) from the date of and adoption of the thorough fare closure ordinance by the City Council,

f) The terms of voluntary Development Agreement may be approved and modified by the City Manager without action of Council providing the intent of the original agreement is kept intact.

2) Closure and abandonment and the Development Agreement are null and void if construction does not begin within 2 years from the date and adoption of the thorough fare ordinance. If replatting had occurred under item (1e) above, Applicant shall replat the subject land to show original ROW within six (6) months of when the contract becomes null and void.

3) Signage-- Monument signs and if the lighting is back lit, then the letters must be carved out, if the lighting is front lit, there is no restriction, but the signage must comply with City ordinances.

4) Parking – to continue to exceed City Code and National Standards, approximately 1 space for each 2 beds, however number of spaces is required to be and also limited to 360 and no multi-story parking garage allowed.

5) Removal of Older Buildings on the northern side of property will occur as soon as possible and be replaced with nice landscaping in that area including berms and additional trees.

Motion carried 5 - 2 & ordinance approved.

Z-2 APPLICATION C11-09-003 LEE CAMPBELL

Request that the City Council consider closing an unimproved section of right of way known as Tucker Street connecting Old Noonday Road and Goss Street. (O-2009-119)

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

Z-3 Z11-09-002 LEE CAMPBELL (3812 TUCKER STREET)
Request that the City Council consider a zoning change from “R-1A”, Single-Family Residential District to “C-1”, Light Commercial District on Lot 5 of NCB 8360, one lot totaling approximately 0.26 acres located south of the southeast intersection of Goss Street and Tucker Street (3812 Tucker Street). (O-2009-120)

Brian Capps – Stated that it has been platted as a joint access agreement through the Bodacious property along the drive aisles through the parking lot up to lots 7 and 9.

Wafford Brown Jr. – Stated that he was concerned about being land locked and not able to get in and out of his property.

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



Z-4 APPLICATION Z11-09-003 ALBERTA LARA PEREZ
Request that the City Council consider changing the zoning from “M-1”, Light Industrial District to “C-1”, Light Commercial District. (O-2009-121)

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

Z-5 Z11-09-004 TAYLOR GARDEN SCHOOL (5320 AND 5330 NEW COPELAND ROAD)
Request that the City Council consider a zoning change from “R-1A”, Single-Family Residential District to “PMF”, Planned Multi-Family District on Lots 4A and 4B of NCB 999, two lots totaling approximately 3.14 acres located south of the southeast intersection of Waterford Court and New Copeland Road (5320 and 5330 New Copeland Road). (O-2009-122)

Motion by Councilman Alworth seconded by Councilman Whatley; motion carried 7 - 0 & approved as presented.



Z-6 APPLICATION Z11-09-005 JEROME MILTON
Request that the City Council consider changing the zoning from “R-2”, Two-Family Residential District to “R-1D”, Single-Family Detached and Attached Residential District. (O-2009-123)

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

Z-7 APPLICATION Z10-09-062 GEORGIA SMITH (1025 W 34th STREET)
Request that the City Council consider changing the zoning from “PUR”, Planned Unit Residential District to “R-1B”, Single-Family Residential District. (O-2009-124)

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

PRESENTATIONS

- P-1 Request that the City Council receive a presentation regarding the United State 2010 Census and adopt a Resolution supporting and authorizing the establishment of a Complete Count Committee in partnership with Smith County. (R-2009-32)**

Motion by Councilman Simons; seconded by Councilman Whatley; motion carried 7 - 0 & approved as presented.

MISCELLANEOUS

- M-1 Request that the City Council consider authorizing the City Manager to accept a proposal from American Forest Management Incorporated to implement a forest management plan and oversee the cutting and marketing of timber on City-owned landfill properties on Farm-to-Market Road 2767. ©**

Motion by Councilman Alworth seconded by Councilman Mezayek; motion carried 7 - 0 & approved as presented.

- M-2 Request that the City Council consider approving the expenditure of \$99,755.00 for Mandated Water Quality Assessment Fee to the Texas Commission on Environmental Quality (TCEQ).**

Motion by Councilman Alworth seconded by Councilman Whatley; motion carried 7 - 0 & approved as presented.

CONSENT

(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 declaring Lot 18, NCB 1509 located on the north side of Wellington Street off Sutherland Drive, part of Hampton Hills Subdivision Unit 2, as surplus property and authorize the City Manager to advertise for bids to sell the property to the highest and best bidder.**
- C-A-2 Request that the City Council consider authorizing the City Manager to purchase one truck chassis for the Street Department.**
- C-A-3 Request that the City Council consider authorizing the City Manager to purchase one Sewer Jetter truck for the Water Distribution Department.**

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

November 18, 2009

BOARD APPOINTMENTS

B-1 Request that the City Council consider the reappointment of Mr. Ron Shaffer to serve on the 9-1-1 Network of East Texas Board of Managers.

Motion by Councilman Alworth seconded by Councilman Mezayek; motion carried 7 - 0 & approved as presented.

B-2 Request that the City Council consider making an appointment to the Planning and Zoning Commission.


Motion by Councilman Simons to appoint Michael Carmichael; seconded by Councilman Caraway; motion carried 4 - 3 & approved as presented.

CITY MANAGER'S REPORT

RECESS FOR EXECUTIVE SESSION

ADJOURNMENT

Councilman Mezayek made the motion to adjourn the meeting at 11:32 a.m.; seconded by Councilman Whatley; motion carried 7-0; meeting adjourned.


BARBARA BASS, MAYOR OF
THE CITY OF TYLER, TEXAS

ATTEST:


CASSANDRA BRAGER, CITY CLERK

