

**MINUTES OF THE
REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS
JULY 26, 2006**

A regular meeting of the City Council of the City of Tyler, Texas, was held Wednesday, July 26, 2006 at 9:00 a.m. in the Council Chamber, City Hall, Tyler, Texas, with the following present:

Mayor: Joey Seeber
Mayor Pro Tem: Steve Smith
Council Members: Nathaniel Moran
Donald Sanders
Derrick Choice (absent)
Chris Simons
Charles Alworth

City Manager: Bob Turner
Deputy City Manager: Mark McDaniel
City Attorney: Gary Landers
Deputy City Attorney: Steve Kean
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 Engineer: Dan Peden
City Fire Chief: Neal Franklin
City Police Chief: Gary Swindle
Director of Parks and Recreation: John Webb
Director of Planning and Zoning: Stephanie Rollings
Internal Auditor: Keidric Trimble
Operations Manager: Greg Morgan
Staff Services Director: Rose Ray
City Clerk: Cassandra Brager

INVOCATION

The Invocation was given by Mayor Pro Tem Smith.

ZONING ITEMS

Z-1 APPLICATION Z07-06-063A KIRIT M. PATEL

Request that the City Council consider a request to change the zoning from “R-1A” Single-Family Residential District to “POD” Planned Office District with final site development plan approval on a 2.55± acre portion of Lot 49 of NCB 1013I, one lot totaling 6.25± acres located 225± feet east of the intersection of South Broadway Avenue and Grande Boulevard (East Extension), fronting 652± feet along the north side of Grande Boulevard (East Extension). *(Ord. No. 0-2006-62)*

Kirit Patel- Property Owner – Stated that he would like to build a three story hotel in this area because he felt it would be an asset for the City of Tyler. Mr. Patel stated that he has tried to work with the neighborhood as much as possible before coming up with the final site plan which is presented here today.

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Steve Dement – 5611 Quail Creek Dr. – Stated that when he and Mr. Halbrooks were considering potential buyers for this property they wanted to sell to a user who would enhance the neighborhood, build a nice facility, and have high end landscaping. Mr. Dement believes that the Hilton Garden Inn would be the proper user of this site.

Gary Halbrooks – 1009 Hudnall – Showed site plans and stated that the design of the development would be aesthetically pleasing, and would have little impact on Broadway traffic congestion.

Ginny Reinhardt – 6304 Sutherland Dr. – Stated that this has been an emotional subject for some of the neighbors and we do not want a hotel in our neighborhood.

Dale Purdy-6109 Sutherland Dr. – Stated that he is against any planned commercial development in the area and felt that if the City Council approved this that it would open up a Pandora's box for other commercial development along that corridor and would destroy the integrity of the neighborhood. Mr. Purdy also asked if the City Council is considering favorable action on this project, that they wait until the Tyler 21 study is complete to find out which direction Tyler needs to go, and whether or not, because of the traffic and the tight corridor, that this would be something that would help the city progress.

Kenneth Shepherd – 318 Sutherland – Stated that he was opposed to any form of commercial development in the area. He stated that this is a perfect spot for a park and felt this project, in public opinion in the neighborhood was planned all along due to the left turn lane and commercial drives going into a vacant residential property.

Mayor Pro Tem Smith – Stated that he was not sure what Mr. Shepherd meant by his statement, "this was planned all along." City Council responds to things when they come up and a plan for the City is what we are working on right now for the future. When an item comes before the Council we make the best decision we can.

Rick Reynolds- 312 Hampton Hill – Stated that the property value is a concern he has and placing a 7 day a week 24 hour business within 200 feet of their homes will not help.

Usha Pendurthi – 6212 Sutherland Dr. – Stated that she conducted a house to house opinion poll and every single person was against the project. Ms. Pendurthi also asked City Council to consider not converting from residential to commercial zoning.

Mayor Seeber – Stated that he was sure someone would build a hotel on the new loop, but that is not the issue here today. The City is not in the position that every time there is a controversy about a piece of property and someone would like for it to be a park to say, "Okay." Rose Rudman Trail will go through that area and will abut commercial development and cross Broadway and then continue down Broadway. Whether this property is developed commercially or not, Rose Rudman Trail will go a long way and it will go through a variety of types of areas. As far as the driveway, this has been discussed many times and the property owners of this property, when we were developing Grande, gave the City 4 acres of right of way so the City could build Grande. The City did not have to purchase the 4 acres from the property owners, it was given to the City. The only thing that they asked is that there be a turn

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and driveway there. The property owners did this knowing it was zoned residential and not knowing whether it would ever be re-zoned or not, but they asked that the City do that. It was an exchange for the donation of the property and they ask that a driveway be placed there.

Nell Patterson- 313 Hampton Hill – Stated that she didn't think this was the right time to agree to this because of the Tyler 21 project and the Pandora's box issue.

Councilman Alworth – Stated that he supports his citizens and residents and in his opinion this hotel is a perfect example of poor land use that has plagued Tyler for many years. The neighborhood that everyone talks about is defined from Rieck Rd. South to Grande and slightly beyond, and from the East side of West Mud Creek to Copeland. What the City is doing is encroaching a commercial development into a neighborhood. A similar problem that did not come before council but went before Planning & Zoning is when Mr. Wisenbaker attempted to put in a development along Rieck Rd. but he withdrew that application because he listened to the citizens in that area. Councilman Alworth wanted to draw attention to zoning request 8 which is on the other side, another piece of commercial property that's going in there. In Councilman Alworth's opinion, to go ahead with this plan at this stage in the game flies in the face of the Mayors vision 21 plan, for which the City has paid over 600,000.00 dollars. It was also stated that the City has a lack of parks and he realizes the City cannot just buy parks every time, but that's also in the vision. Finally, he felt the City had really beaten on these people with the Grande extension and with that said he made the motion to deny this application.

Mayor Pro Tem Smith – Stated that he understood what Councilman Alworth was saying and he agrees with some of the comments made but he is afraid that this is one of those situations where there is no clear cut answer that is real easy and that there is an absolute right and an absolute wrong. The fact of the matter is that this property is right next to some of the most valuable property located in the City of Tyler on South Broadway. The developers have done a nice job of finding a way to develop the property in a manner that's consistent with what they feel like is going to get value out of the property and at the same time doing the best that they can to try and protect the neighbors. When this first came up Mayor Pro Tem Smith remembered some of the concerns that some of the neighbors had at that time and he felt this plan had actually addressed all the concerns laid out to him at that time. Mayor Pro Tem Smith also stated that something will be done with the property and felt this was the most reasonable use of the property, doing the best that can be done to protect the property owners that are currently there.

Councilman Moran – Stated that he appreciated so much of the comments that the neighbors had expressed and he took the comments to heart. He knows this a personal situation for the citizens when there is a building project near your neighborhood. Councilman Moran stated that the citizens and the City of Tyler need to stay in contact so the Tyler 21 vision plan is one of balance, and it is one that balances growth with the values that the citizens hold dear. All the concerns that the citizens spoke about have all been taken care of. One of the greatest problems originally was line of sight and privacy with the back yard of the neighbors and that problem has been resolved now that the hotel has been moved to the other side.

Mayor Pro Tem Smith made the motion to approve Z-1 & Z-2; seconded by Councilman Moran; motion carried 5-1; approved as presented. (Councilman Alworth opposed)

Z-2 APPLICATION Z07-06-064A KIRIT M. PATEL

Request that the City Council consider a request to change the zoning from “R-1A” Single-Family Residential District to “PCD” Planned Commercial District with final site development plan approval on a 3.7± acre portion of Lot 49 of NCB 1013I, one lot totaling 6.25± acres located 225± feet east of the intersection of South Broadway and Grande Boulevard (East Extension), fronting 652± feet along the north side of Grande Boulevard (East Extension).

(Ord. No. 0-2006-63)

Mayor Pro Tem Smith made the motion to approve Z-1 & Z-2; seconded by Councilman Moran; motion carried 5-1; approved as presented. (Councilman Alworth opposed)

Z-3 APPLICATION Z06-06-057B RICK AND LARKIN FORMAN

Request that the City Council consider a request to change the zoning from “R-2” Two-Family Residential District to “AR” Adaptive Reuse District on Lot 5A of NCB 168, .3± acres located at the northeast corner of the intersection of Fannin Avenue and Charnwood Street, fronting 175± feet along the north side of Charnwood Street and fronting 75± feet along the west side of Fannin Avenue (627 South Fannin Avenue).

Mayor left

Larkin Forman, 627 S. Fannin – Stated that she has polled her neighbors and they do not object to this change. Mrs. Forman stated that two properties located within 2 blocks from her site have been converted over to AR that was originally residential. This change will not impact the face of the neighborhood and it will not encroach on the property.

Kristi Armstrong, 615 S Fannin Ave. – Stated that a house in that price range of \$339,000.00 takes anywhere between 90 and 110 days to sale. Ms. Armstrong stated that in that area the houses are old and not everyone wants to live there, so it was asked that this request be tabled so that the Forman house could go back on the market for 6 to 8 months and give it some real time to see if a family would want to move in to it.

Janie Menegay, 6334 Ashmore Lane – Stated that the issue she had with the request is the parking because it will destroy the backyard and it will be hard to sale as a residential lot. Attorneys make a place look visually great but they are destroying the sense of a neighborhood and that’s what matters. Ms. Menegay stated that she would strongly ask that City Council deny this request.

John Musselman, 700 S. Broadway – Stated that Tyler’s character is defined by the neighborhoods and its time to look at the neighborhoods and be aware that we as a community need to maintain them as residential neighborhoods.

Ellen Musselman, 700 S. Broadway – Stated that she does not oppose to using old properties for businesses but their needs to be some standards. Ms. Musselman stated what they oppose is coming into family neighborhoods and changing the zonings.

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Virginia Shull, 1310 Roseland Blvd. – Stated that this is the first historic district and the integrity of the neighborhood needs to be protected. If the City could come up with another type of zoning then the neighborhood would not have a problem with the zonings.

Virginia Duncan, 514 E. Charnwood – Stated that their needs to be residential homes closer downtown and it does need to be completely commercial.

Kathy Shelton, 415 E. Charnwood- Stated that she wanted the neighborhood kept for families and she opposed the zoning change.

Lorraine Lozano 504 E. Charnwood – Stated that the realtor only tried to sell the property for less than 2 months and it was pushed through Planning & Zoning pretty quick. Ms. Lozano asked the City Council to keep the neighborhood in tact.

Mayor Seeber – Stated the concern he has is the parking situation and does not oppose the rezoning for a Law office, but fear once this is done it is out of City Council’s hand when it comes to the changes in the parking situation.

Blake Armstrong – Stated that his office is a small office with two lawyers and five staff members and in a given week the office probably has at least three to four clients come to the office. Mr. Armstrong felt his office could get by very adequately with less than nine parking spots.

Mayor Seeber – Stated that his concern for this property is that clients will have to park in the street because staff and lawyers would take up the nine parking areas.

Councilman Moran – Asked how long the property was on the market and whether or not there’s any other potential buyers for strictly residential use?

Larkin Forman – Stated they did not formally list the property until after the Historic tour and it is on the market for 110 days.

Councilman Smith – Stated that this lot is not appropriate; it just feels that too much is being squeezed into such a tight of a space.

Mayor Pro Tem Smith made the motion to deny; seconded by Councilman Alworth; motion carried 4-2; approved as presented. (Moran & Simons opposed)

Z-4 APPLICATION Z06-06-053B E.J. PHILLIPS/MASSALINA MOSELEY
Request that the City Council consider a request to change the zoning from “R-3” Multi-Family Residential District to “R-1B” Single-Family Residential District on Lot 13A of NCB 364, one lot totaling .314± acres located at the northwest corner of the intersection of Gaston Avenue and Lollar Street, fronting 156± feet along the west side of Gaston Avenue and fronting 53± feet along the north side of Lollar Street (404 North Gaston Avenue).
(Ord. No. 0-2006-64)

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Councilman Alworth made the motion; seconded by Councilman Moran; motion carried 5-0; approved as presented.

Z-5 APPLICATION Z07-06-059A TED BURRIS AND LORNE BURRIS
Request that the City Council consider a request to change the zoning from “R-1B” Single-Family Residential District to “M-1” Light Industrial District on Lots 12 and Lot 12A of Block 778-B, two lots totaling 4.402± acres located 284± feet west of Lot 21 of Block 6, which is located 917± feet south of the intersection of Morningside Drive and NNE Loop 323. (Ord. No. 0-2006-64)

Councilman Simons made the motion; seconded by Councilman Moran; motion carried 5-0; approved as presented.

Mayor return

Z-6 APPLICATION Z07-06-061A CHARLOTTE SESSION
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 Lot 1 of Block 144, one lot totaling .266± acres located at the southeast corner of the intersection of North John Avenue and Locust Street, fronting 180.0± feet along the south side of Locust Street and fronting 67.0± feet along the east side of North John Avenue (215 N. John Ave). (Ord. No. 0-2006-64)

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

Z-7 APPLICATION Z07-06-062A VESTER WIDEMAN BROOKS
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 Lot 7 of Block 851, one lot totaling .496± acres located 398± feet south of the intersection of Turner Avenue and Bellwood Road, fronting 79± feet along the east side of Turner Avenue with a maximum depth of 271.0± feet (810 Turner Avenue). (Ord. No. 0-2006-64)

Councilman Simons made the motion; seconded by Councilman Alworth; motion carried 6-0; approved as presented.

Z-8 APPLICATION Z06-06-56B RAYMOND JOHNSON
Request that the City Council consider a request to change the zoning from “RPO” Restricted Professional and Office District to “C-1” Light Commercial District on Lot 2A of NCB 1013M, one lot totaling .59± acres located 167± feet east of the intersection of Barbee Drive and South Broadway Avenue, fronting 174± feet along the north side of Barbee Drive and fronting 177± feet along the south side of Grande Boulevard (the 100 block of East Grande Boulevard). (Ord. No. 0-2006-64)

Councilman Alworth made the motion to approve with notes that the residential property is well protected by the flood plains, so this is a good use and it would close off one entrance on Barbee; seconded by Mayor Pro Tem Smith; motion carried 6-0; approved as presented.

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Z-9 APPLICATION S07-06-066A STANLEY L. SMITH

Request that the City Council consider a request for a Special Use Permit to allow for the operation of a one-chair beauty shop in a residence for a period of one (1) year on Lot 31 of Block 441, one (1) lot totaling 0.090± acres located 60± feet west of the intersection of Tenneha Avenue and West Nutbush Street, fronting 40.0± feet along the north side of West Nutbush Street with a maximum depth of 98.0± feet (813 West Nutbush Street). The property is currently zoned “R-2” Two-Family Residential District.

Councilman Alworth made the motion to deny; seconded by Mayor Pro Tem Smith; motion carried 6-0; denied as presented.

Z-10 APPLICATION S07-06-067A DAVID WEAVER

Request that the City Council consider a request for a Special Use Permit to allow for two drive-thru windows for coffee sales for an indefinite period on Lot 1A of NCB 908A, one lot totaling .587± acres located at the northeast corner of the intersection of West Elm Street and SSW Loop 323, fronting 102± feet along the north side of West Elm Street and fronting 237± feet along the east side of SSW Loop 323, with a maximum lot depth of 218± feet (3821 West Elm Street). The property is currently zoned “C-2” General Commercial District. (Ord. No. 0-2006-64)

Councilman Moran made the motion; seconded by Councilman Simons; motion carried 6-0; approved as presented.

**Z-11 APPLICATION Z05-06-037A EAST POINTE HOLDINGS, INC./
EAST TEXAS SECOND CHANCE, INC.**

Request that the City Council consider a request to change the zoning “R-3” Multi-Family Residential District to “C-2” General Commercial District on Lot 3 of NCB 1402, one lot totaling 3.92± acres located 696± feet east of the intersection of SSE Loop 323 and Highway 31 East, fronting 417± feet along the north side of Highway 31 East (2902 Highway 31 East).

Councilman Simons made the motion to table for 30 days; seconded by Mayor Pro Tem Smith; motion carried 6-0; Tabled as presented.

Z-12 APPLICATION C07-06-008A DOUGLAS AND SCOTTIE SHRYOCK

Request that the City Council consider a request for the closure of a two hundred twenty-one foot (221') unimproved right-of-way located 140± feet east of the intersection of Augusta Avenue and Rusk Street. The west side of the unimproved right-of-way is adjacent to Lots 5 and 2 of NCB 181. The east side of the unimproved right-of-way is adjacent to Lots 3B and 4B of NCB 181. (Ord. No. 0-2006-65)

Councilman Alworth made the motion to approve contingent upon the property being platted within six months to accommodate the sanitary sewer easement; seconded by Councilman Moran; motion carried 6-0; motion approved.

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PUBLIC HEARINGS

- H-1 Request that the City Council conduct a public hearing to change the name of Lincoln Park to Dr. Emmett J. Scott Park, and consider adopting an Ordinance that changes the name of Lincoln Park located at 1710 North Confederate Avenue, Block 547, Tyler, Texas, to Dr. Emmett J. Scott Park. (Ord. No. 0-2006-66)**

Donnie Gaines – Stated that the Emmett J. Scott Alumnus would like to thank the City of Tyler, City Council and Councilman Derrick Choice for honoring their school and its graduates by renaming Lincoln Park to Dr. Emmett J. Scott Park.

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

RESOLUTIONS

- R-1 Request that the City Council consider adopting a Resolution agreeing to the sale of certain tracts of land located within the City of Tyler city limits and owned by taxing entities including the City of Tyler. (Res. No. R-2006-16)**

David Hudson - Introduced Alisha Williams as a new representative of their firm.

Councilman Alworth made the motion; seconded by Councilman Simons; motion carried 6-0; approved as presented.

ORDINANCES

- O-1 Request that the City Council consider approving an Ordinance adopting the Housing Choice Voucher Program's fiscal year 2006-2007 Administrative Plan and Annual Plan. (Ord. No. 0-2006-67)**

Councilman Moran made the motion; seconded by Mayor Pro Tem Smith; motion carried 6-0; approved as presented.

- O-2 Request that the City Council consider approving an ordinance adopting the fiscal year 2006-2007 Community Development Block Grant (CDBG) and HOME Programs. (Ord. No. 0-2006-68)**

Mayor Seeber – Stated that in addition to Tyler AIDS Services (\$40,000) and Literacy Council (\$30,000) it is recommended from staff that City Council adopt the budget and that an additional \$50,000.00 be allocated between two organizations which are PATH and St. Paul Children's Clinic. There were a number of organizations that applied for funding but were unable to be funded due to the reduction of funds.

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Jana Humphrey, Alzheimer's Alliance – Asked that City Council reconsider funding for the Alliance for 2006-2007 and if CDBG funds are not available they are asking the City to please consider funding their programs through the City's General Fund.

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

O-3 Request that the City Council consider adopting an ordinance amending the Tyler City Code provisions relating to burglary alarms. (Ord. No. 0-2006-69)

Councilman Alworth made the motion; seconded by Mayor Pro Tem Smith; motion carried 6-0; approved as presented.

MISCELLANEOUS

M-1 Request that the City Council review and accept the Revenue, Expenditure and Investment Report for the quarter ending June 30, 2006.

Daniel Crawford, Chief Financial Officer – Stated that the General Fund revenues are projected to be \$962,386 more than budgeted and expenditures are projected to be \$59,937 more than budgeted for fiscal year 2005-2006 based upon information available at the end of the third quarter.

Utilities Fund revenues are projected to be \$985,700 more than budgeted for and expenditures are projected to be \$135,582 more than budgeted fiscal year 2005-2006 based upon information available at the end of the third quarter.

Councilman Alworth made the motion to accept report; seconded by Mayor Pro Tem Smith; motion carried 6-0; approved as presented.

M-2 Request that City Council consider authorizing the City Manager to accept a donation in the amount of \$150,000.00 from the East Texas Communities Foundation for the development of a Sprayground/Playground at Faulkner Park.

Councilman Moran made the motion; seconded by Councilman Sanders; motion carried 6-0; accepted as presented.

M-3 Request that the City Council consider approving the assignment of the tax abatement agreement with TCA Management Company d/b/a Cox Communications to Cebridge Acquisition, LP., and consider approving the assignment of the tax abatement agreement with Workstage, LLC to Merit Tyler Property. ©

Mayor Pro Tem Smith made the motion; seconded by Councilman Alworth; motion carried 6-0; approved as presented.

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- M-4 Request that the City Council consider authorizing the City Manager to execute a new Metropolitan Planning Organization operating contract between the Texas Department of Transportation and the City of Tyler, Texas which is designated the fiscal agent. This contract extends through August 31, 2009. ©**

Councilman Simons made the motion; seconded by Mayor Pro Tem Smith; motion carried 6-0; approved as presented.

- M-5 Request that the City Council consider authorizing the City Manager to execute a lease, with Gentry Parkway Youth Council, for the City owned property located at 3200 Garden Valley Road (Lot 28, NCB 1262), Tyler, Texas for a term of 15-years. ©**

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

CONSENT AGENDA

(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 awarding the contract for the 2006 Asphalt Overlay Program, Capital Improvement Project Number 06-01-432-2630, to the low bidder, Reynolds & Kay, Ltd., in the base bid amount of \$294,860.00 and to include the additive alternate bid streets up to the maximum budgeted amount of \$300,000. ©**
- C-A-2 Request that the City Council approve the 2006 Slurry Seal plans and specifications and authorize advertising the project for bid.**
- C-A-3 Request that the City Council authorize the City Manager to purchase a carousel aerator gear box in the amount of \$37,911.00 from Shermco Industries, Inc., of Dallas, Texas for the Southside Wastewater Treatment Plant.**
- C-A-4 Request that the City Council consider awarding bid number 06-034 to the low bidder Seating Solutions in the amount of \$59,737 for the purchase of new seating for the Bergfeld Amphitheatre.**
- C-A-5 Request that the City Council authorize the City Manager to purchase Sprayground Equipment for Faulkner Park from Kraftsman Playground and Park Equipment of Spring, Texas through the BuyBoard Purchasing Cooperative in the amount of \$123,259.50.**
- C-A-6 Request that the City Council consider authorizing the City Manager to enter into an agreement with Lewis & Ellis, Inc. in the amount of \$15,000 for Health Insurance Actuarial Professional Services for the GASB 45 project. ©**

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Councilman Alworth made the motion to approve the entire consent agenda; seconded by Councilman Simons; motion carried 6-0; approved as presented.

CITY MANAGER'S REPORT

1. *Ewing Landfill closure*
2. *Tyler Library Book Fair this week*
3. *Boards applications accepted thru Friday of next week*

NO EXECUTIVE SESSION PLANNED

ADJOURNMENT

Mayor Pro Tem Smith made the motion to adjourn the meeting at 11:28 a.m.; seconded by Councilman Alworth; motion carried 6-0; meeting adjourned.

**JOSEPH O. SEEBER, MAYOR OF
THE CITY OF TYLER, TEXAS**

A T T E S T:

CASSANDRA BRAGER, CITY CLERK