

**MINUTES OF THE
REGULAR CALLED MEETING OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS
February 23, 2011**

A regular called meeting of the City Council of the City of Tyler, Texas, was held Wednesday, February 23, 2011 at 9:00 a.m. in the Council Chamber, City Hall, Tyler, Texas, with the following present:

Mayor: Barbara Bass
Mayor Pro Tem: Ralph Caraway
Councilmembers: Martin Heines
Donald Sanders
Mark Whatley
Sam Mezayek
Jason Wright

City Manager: Mark McDaniel
City Attorney: Gary C. Landers
Deputy City Attorney: Steve Kean
Human Resources Director: ReNissa Wade
Development Services Engineer: Michael Wilson
Chief Financial Officer: Daniel Crawford
City Engineer: Carter Delleney
City Fire Chief: Tim Johnson
City Police Chief: Gary Swindle
Communications Director: Susan Guthrie
Director of Planning and Zoning: Barbara Holly
Director of Solid Waste: Dan Brotton
Housing Service Manager: Andy Davis
Budget/Internal Auditor: Keidric Trimble
Director of Utilities & Public Works: Greg Morgan
Traffic Engineer: Peter Eng
City Clerk: Cassandra Brager

INVOCATION

The Invocation was given by Mayor Pro Tem Caraway.

MINUTES

Motion by Mayor Pro Tem Caraway to approve the February 9, 2011 minutes; seconded by Councilmember Wright; motion carried 7 - 0 & approved as presented

EMPLOYEE AWARDS – RECOGNITIONS, SERVICE

A-1 Service Awards

We would like to recognize the following employees for their years of service and commitment to the City of Tyler. At this important milestone, we express our sincere appreciation for your dedication and for the special contribution you make to our organization. This employee represents over 25-years of service with the City of Tyler.

Service Awards

| DATE OF HIRE: | FIRST NAME: | LAST NAME: | POSITION: | DEPARTMENT: | YEARS OF SERVICE: |
|---------------|-------------|------------|-------------|-------------|-------------------|
| 01/27/86 | Ignacio | Medina | Crew Leader | Streets | 25 |

A-2 Blue Print Award

Request that the City Council consider recognizing a City Employee as the Blueprint Blue Ribbon Award winner for February 2011, for placing the highest premium on responsiveness to citizens' needs.

Mayor Bass presented Brenda Johnson with the Blueprint Blue Ribbon Award for February 2011, for placing the highest premium on responsiveness to citizens needs.

ZONING

Z-1 APPLICATION Z02-11-012 BILLY LANGLEY (2102 LINDBERGH DRIVE)

Request that the City Council Consider changing the zoning from "R-1A", Single-Family Residential District to "C-1", Light Commercial District. (O-2011-12)

Motion by Councilmember Whatley; seconded by Councilmember Wright; motion carried 7 - 0 & approved as presented.

Z-2 APPLICATION Z02-11-015 DENNIS WALKER (406 EAST BERTA STREET)

Request that the City Council Consider changing the zoning from "C-1", Light Commercial District to "AR", Adaptive Reuse District. (O-2011-13)

Motion by Councilmember Heines; seconded by Councilmember Sanders; motion carried 7 - 0 & approved as presented.

PUBLIC HEARINGS

H-1 Request that the City Council consider conducting a public hearing and adopting an Ordinance amending Tyler City Code Chapter 4 relating to a renewal of the juvenile curfew ordinance. (O-2011-14)

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

RESOLUTION

R-1 Request that the City Council consider adopting a Resolution initiating annexation proceedings, authorizing a service plan, and setting the dates, times and places for public hearings on the proposed annexation of approximately 98.664 acres of land located along the Grande Boulevard extension on the west side of State Highway 110, known as Abstract A0616 V Loupy Tracts 32A, 32, 33, 34; Abstract A0690 L McGuire Tracts 8E, 8, 29; Lots 10 and 11 of Block 1 of the Tyler South Commercial Park, Unit 2; 13650, 13660,

13661, 13670, 13671, 13680, 13681, 13690, 13691 Sydney Road; 9800, 9810, 9820, 9821, 9830, 9831, 9840, 9841, 9850, 9851, 9861 Star Road; and 13970 State Highway 110 South. (R-2011-8)

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

ORDINANCE



O-1 Request that the City Council consider adopting an Ordinance to establish the Cumberland Neighborhood Conservation District Overlay to be placed on 89 properties generally bounded by Paluxy Drive and Wilder Way and adjacent to Cumberland Road, Cherokee Trail, Wilder Trail, Wilana Drive, Oak Creek Circle, and Butterfield Circle.

Councilmember Heines – Read into the records the restrictions covering Cumberland Acres Estates – Lots 3 thru 17, Covenants & Restrictions on and for the Cumberland Estates Subdivision – Unit 1, Amendment to restrictions covering Cumberland Acres Estates Lots 3, 4, 5 and 5A and Cumberland Road. (See attached)

Kara Camp, 606 Cumberland Rd – Stated that their area is unique with large lots and a country feel. It's unique because several different people developed the area at several different times, so there are over five to six sets of unenforced deed restrictions. Someone cannot enforce a deed restriction unless they are in that same subdivision. Mrs. Camp stated that they were all one neighborhood. When they saw the NCD ordinance they thought it would be a great way to have one instrument not stricter than deed restrictions but one instrument that was written by the neighbors to preserve the physical features and property value.

Christie Adams, 726 Cumberland Rd. – Stated that she has subdivided her 4.6 acre tract to have a 2 acre tract because her brother will be building a house right next to her. Mrs. Adams stated that she very much respects her neighbors for trying to protect the neighborhood and very much respects all the work that they have put into it to do this. Mrs. Adams had some concerns that were raised by Mr. Heines, particularly the one where he mentioned about the people out there who already live in subdivisions that have deed restrictions within their subdivision regulations. If you are going to talk about 87% of the owners out there wanting to support this the first thing you ought to do is throw out those people who already have these deed restrictions in place, but are unwilling to enforce them in whatever method that they have available to them right now. Mrs. Adams stated that she does not mind living near Academy Sports, but doesn't want additional commercial development in the area.

Ty Beard appearing for James Clark, 1418 Cumberland Rd. – Mr. Beard read a statement by Mr. Clark that stated that he has resided at 1418 Cumberland Rd for over 12 years. Mr. Clark owns 15 acres and like a lot of others has spent a lot of time, effort and money improving his home and property. The residents will be forced into new restrictions that they do not agree with (i.e. planting a tree if one is cut down). It is Mr. Clark's land and he should be able to do with it as he pleases. Mr. Clark is opposed to the restrictions of his land and suggested that those in favor should form a separate subdivision and draw up deed restrictions that they like and leave the other people alone. Mr. Beard finished with Mr. Clark's response and then asked

the City Council if this is such a great idea, then it seems to him that the people who are proposing it could convince the reasonable property owners in this neighborhood that it is a good idea. Now the neighborhood wants the Council to force their agenda on the people that disagree. What is the City Council being asked to protect against? It seems to Mr. Beard that property owners that pay good money for their property are going to be stripped of their rights against their will.

Marjorie Mustard, 1545 Cumberland Rd. – Stated that she worked with Mrs. Kara Camp in putting the Neighborhood Conservation District together. Mrs. Mustard said the proposed overlay guidelines do not include a tree ordinance, rather it is suggested that people replace trees. Mrs. Mustard stated that what they are trying to do in the Neighborhood Conservation District proposal is to have an overlay to protect the whole neighborhood. Their goal is to keep the commercial properties from crawling into their neighborhood.

Sam Snyder, 1215 Wilder Way – Stated that he does not agree that the city should get into the business of appointing czars because Mr. Snyder does not need anyone telling him what he needs to do with his property.

John Soules, 1401 Cumberland Rd. – Stated that he never received the notice that was mailed out. Mr. Soules stated that he was speaking against the District Overlay that was being proposed before the City Council. Mr. Soules spoke for the preservation of property rights and for less government. Mr. Soules stated that the City has no business taking an overlay district on if not everyone agrees.

Paul Manziel submitted a statement for the record (please see attached- Exhibit B)

Mike Carmichael, 1208 S. College Ave. – Stated that he was asked to be on this committee to evaluate the process and work through what the residents wanted for their area. Mr. Carmichael stated that he was skeptical about it when it started because he did not think that they would be able to get anywhere near the percentage of people to even want to do this. As the committee went through the process he thought they did a good job coming up with requirements that met the needs of the majority of the residents. Mr. Carmichael said he believes this concept is good to protect the neighborhood and should pass.

Jimmy Negem, 1308 Cumberland Rd. – Stated that he was against the Cumberland Road Neighborhood Conservation Plan primarily for 3 main reasons: 1. It will unreasonably restrict the use of his property. 2. It will diminish the value of his property - If City Council passes this plan along with the deed restrictions that go with it then it will be incumbent on the city to act as a police force. 3. It restricts a potential buyer out of the neighborhood.

Ivor McKeown, 1515 Cumberland Rd. – Filled out card stating that he was against Cumberland Neighborhood Conservation District Overlay.

Mike Patterson, 210 Mockingbird, Historical Preservation Board – Stated that over five years ago a committee showed up for meetings and had lots of interviews and surveys and came up with Tyler 21. One of the things that the City of Tyler has on its website with regards to Tyler 21 is from a former Mayor who said, “With this plan we can insure that every step we take in the future is in line with what our citizens want.” Now there is a situation where 85% to

86% of people that live there have told the City Council that they want this. That is a super majority anyway it is looked at, that is a mandate. After the committee came up with Tyler 21 an ordinance was enacted allowing the creation of Conservation Districts as well as Historic Districts. This council has twice within the last few months adopted unanimously Historic Districts. Mr. Patterson stated that he is a little perplexed on some of the comments that are being made here along with some of the questions that were being asked about enforcement issues. Mr. Patterson stated the thing that he does not understand is the perplexity in why the residents cannot have a Conservation District? What is that going to do that will change what City Council is attempting to do through the deed restrictions and subdivision requirements? Is that is the road that City Council really wants to go down? Mr. Patterson asked the council, rather than summarily deny this to consider tabling this until they have an opportunity to take a look at it before they tell the residents they cannot have their conservation district. The residents have spent over a year working on this and they came down to city hall with their petition and this council said here is your committee, go to work. The committee went off and did their work; they followed everything; got approved all the way through; they have a super majority, a mandate; and now it's back in City Council lap. Is City Council going to tell them, "Sorry" you can't have this? Under Tyler 21 the first thing it mentions under Historic Preservation is the creation of a Conservation District.

Harold Wilder, 835 Ashford Court – Stated that he is a developer of Wilder Way subdivision and was here to speak on behalf of the proposed NCD for the Cumberland Road area. Mr. Wilder stated that he was interested in the Neighborhood Conservation District because he would like to continue to see it maintained like it has been since the 1960's and the way to do it is with this ordinance. Cumberland Road is the gateway to Wilder Way and when Mr. Wilder developed Wilder Way and Wilder Trail he tried to follow the same theme as Cumberland Road. The whole area is very unique and there is no other like it. It is an area that the residents and the City of Tyler are very proud of. The residents have expressed their desire to have this ordinance for their neighborhood by signing petitions. The City does not get involved in forcing deed restrictions. Mr. Wilder stated that he has always been told that is left up to the property owners. Some of the deed restrictions there on Cumberland Road have expired and they expired in 1991. Some of the owners were not made aware that there was a deed restriction on their property. The ordinance is the only way to get this done properly even though there may be certain deed restrictions for the 100 foot set-back. This does not cover every house in the area so 1 or 2 or even 4 houses could do whatever they wanted. Now is the time to have the Conservation District because there are many other problems that may have to be handled later.

Ernie Clark, 4205 Stonebrook Lane - Stated that a group of people have gotten together to decide what they want to put in their neighborhood. The residents should have to pay for all the time that the City staff has put in on this project and all inspections it will take in the future. The City should attach some type of annual fee, maybe a \$500.00 dollar per property owner to reimburse the city because tax payers do not want to enforce a regulation on a personalized zoning district. What will be next, will there be an Elderly Conservation District where you have to be 55 and older and no kids can live there?

Motion by Councilmember Wright to deny; seconded by Councilmember Mezayek; motion carried 7 - 0 & denied as presented.

Councilmember Wright – Stated that while this City Council body has the final decision he wanted to commend the work that has been done. Several times throughout the conversation today we heard Tyler 21 mentioned multiple times. First and foremost absolutely Tyler 21 set this ordinance in place; however the ordinance states that you still have to come before this body. This City Council body still trumps Tyler 21. This is still representative government. This is not pure democracy (i.e. mob rule) so Councilmember Wright wants people to be clear that this City Council body does not for one moment take lightly the work that was performed and or the number of people that has asked for this to be passed. Councilmember Wright stated that he heard reference to reneging, but Council is just saying no and they've worked hard. No one has reneged here. This ordinance was set in place and went through to fruition exactly the way it was written. The reason why this country has a representative form of government is so that there is not mob rule. City Council also defines what this could lead to. There are bodies in Washington DC, most notable the Environmental Protection Agency. The voters didn't vote on the EPA. The voters didn't vote on its establishment and do not vote for its Chair or its members but they make laws that govern us. Unelected officials determine the outcome of the way we conduct business. He is in agreement that we want to make sure we are cautious not to go down that road. He stated he was very sensitive to what his neighbors want in his district. The issue at hand is not to defeat what they have started; it's how it is executed. Is City Council taking power away from their hands and placing it into this body? The people who are impacted most by the decisions that are being made are the ones that should govern this. The people closest to the outcome should determine this. It should not be passed to this body because someone does not want to sue or upset their neighbor but they want the City to do it. He thinks tabling is cowardly and a decision has to be made. In his opinion this is a day to show that this is not the right way to go but it serves as a great purpose and has awakened a lot of people to restrictions and power in ordinances that they didn't even know that they had that know this group will start putting in place. Councilmember Wright expressed to the residents anything that he could do as their councilman short of approving this Conservation District as it exists he would be willing to do.

Councilmember Mezayek – Stated that in reading the ordinance there is some language in there that actually says 80% must be residential use and residential zoned that lead to some interpretation by staff as to what is residential zone. Agriculture is not one of the residential zones. AG is a special purpose zoning. Councilmember Mezayek stated that he would like to see the neighborhood retained as residential. When they stripped the land use out of the restrictions they went away from everything that they were trying to accomplish. Councilmember Mezayek stated that he would like to see the City immediately look at the residential zoning requirements and establish an Estate Lot Zoning with setbacks and maybe use the guidelines this group has come up with.

Motion by Councilmember Heines; seconded by Councilmember Wright; motion carried 7-0 to direct staff to move forward on establishing an Estate Residential Zoning and once such zoning is created that the fees for such a change would be waived for all applicants who were within the proposed Cumberland Neighborhood Conservation district.

MISCELLANEOUS

- M-1 Request that the City Council consider amending Tyler City Code Chapter 19, "Utilities", Article X, with an updated Water Conservation and Emergency Demand Management Plan. (O-2011-15)**

Motion by Councilmember Mezayek; seconded by Councilmember Whatley; motion carried 7 - 0 & approved as presented.

- M-2 Request that the City Council consider declaring the attached lots as surplus property and authorize the City Manager to dispose of these properties in accordance with State law and subject to final City Council approval.**

Motion by Mayor Pro Tem Caraway; seconded by Councilmember Wright; 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 ratifying staff action for the emergency roof replacement of Liberty Hall by Merit Roofing Systems, Inc. in the amount of \$70,020.**
- C-A-2 Request that the City Council consider ratifying an expenditure of \$25,602.05 for Down payment, Closing Cost, and Principal Reduction to East Texas Title to assist Homeowner in the purchase of City-Owned Property located at 1321 W. Paul Street.**
- C-A-3 Request that the City Council consider declaring certain City of Tyler vehicles and miscellaneous vehicle parts as surplus and authorize for auction.**
- C-A-4 Request that the City Council consider authorizing the City Manager to award an engineering contract to Iteris, Inc. in the amount of \$69,700, for the expansion of the City of Tyler Adaptive Control System along Loop 323. ©**
- C-A-5 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: (R-2011-9)**
- 1. 1010 Charleston;**
 - 2. 1231 W. 31st; and**
 - 3. 501 W. South Town Drive (Pending lien).**

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

CITY MANAGER'S REPORT

- 1. FY 2010-2011 Budget document provided**

February 23, 2011

2. State budget situation, Texas cities like Tyler are different than most cities across U.S.A. in that only approx. 1% of City budget is money from State, federal grants are a different source of revenue; concerns about Legislation passing unfunded mandates or raising fees
3. Monthly utility bills – have an increase linked to cost of gasoline
4. At next meeting in March there will be a quorum

RECESS FOR EXECUTIVE SESSION – NO EXECUTIVE SESSION

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

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

1. **Appeal of Condemnation & TCEQ docket involving TTUC (Algonquin)**

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

ADJOURNMENT

Motion by Mayor Pro Tem Caraway to adjourn the meeting at 11:13 am; seconded by Councilmember Sanders; motion carried 7 - 0 & meeting adjourned.



BARBARA BASS, MAYOR OF
THE CITY OF TYLER, TEXAS

ATTEST:


CASSANDRA BRAGER, CITY CLERK