

**MINUTES  
REGULAR COUNCIL MEETING  
DECEMBER 10, 2013**

The City Council of the City of Midlothian convened in a Regular Meeting in the Council Chambers of City Hall, 104 West Avenue E, with the meeting open to the public and notice of said meeting posted as prescribed by V.T.C.A., Government Code, Chapter 551, with the following members present to-wit:

Bill Houston	§	Mayor
Wayne Sibley	§	Councilmember Place 1
Mike Rodgers	§	Councilmember Place 2
Jimmie L. McClure	§	Councilmember Place 3
Joe Frizzell	§	Mayor Pro Tem Place 4
T. J. Henley	§	Councilmember Place 5
Ted Miller	§	Councilmember Place 6

**REGULAR AGENDA**

Mayor Houston called the meeting to order at 6:02 p.m. with notice of the meeting duly posted and a quorum present. Councilmember Henley gave the invocation and led in the pledges.

**2013-478 ANNOUNCEMENTS/PRESENTATIONS**

**a. Community Affairs calendar**

December 14 and 15 – MidTowne Christmas Home Tour benefitting Mission Midlothian  
December 16 – Annual Reindeer Dash 5k Walk/Run benefitting Midlothian Special Olympians  
December 19 – Midlothian Chamber of Commerce Jingle Mingle at the Midlothian Civic Center

**b. Administrative announcements related to personnel**

Appreciation expressed by City Manager regarding Public Works/Streets Department, Fire Department and Police Department personnel's response and extra hours worked during the recent ice storm.

**2013-479 CITIZENS TO BE HEARD**

None to be heard.

**CONSENT AGENDA**

**2013-480 CONSIDER AND ACT UPON MINUTES FROM CITY COUNCIL MEETINGS OF NOVEMBER 5 AND NOVEMBER 12, 2013**

**2013-481 CONSIDER AND ACT UPON AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF MIDLOTHIAN, TEXAS AND THE DEPARTMENT OF PUBLIC SAFETY TO AUTHORIZE MIDLOTHIAN POLICE DEPARTMENT TO PURCHASE ALCOHOL BLOOD TEST KITS**

**2013-482 CONSIDER AND ACT UPON AN ORDINANCE CREATING A MUNICIPAL COURT OF RECORD KNOWN AS MIDLOTHIAN MUNICIPAL COURT NO. 1 AND ESTABLISHING JURISDICTION**

**2013-483 CONSIDER AND ACT UPON APPROVAL OF A RESOLUTION AUTHORIZING THE REINDEER DASH 5K RUN/WALK. THE EVENT WILL BE HOSTED BY THE MIDLOTHIAN INDEPENDENT SCHOOL DISTRICT ON MONDAY, DECEMBER 16TH, 2013, IN ACCORDANCE WITH ZONING REQUIREMENTS FOR SPECIAL EVENTS AS ESTABLISHED BY THE CITY OF MIDLOTHIAN ZONING ORDINANCE 2013-24, AS AMENDED, SECTION 2.04 (USE TABLE) (CASE NO. SEP06-2013)**

Councilmember Sibley moved to approve the Consent Agenda as presented. Motion was seconded by Councilmember Miller and carried unanimously (7-0).

## PUBLIC HEARINGS

- 2013-484 CONDUCT A PUBLIC HEARING AND ACT UPON AN ORDINANCE TO REZONE ± 1.100 ACRES FROM AGRICULTURAL (A) DISTRICT TO SINGLE FAMILY ONE (SF-1) DISTRICT. PROPERTY IS LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF KIRK ROAD AND LON HAYES, IN THE CITY OF MIDLOTHIAN, TEXAS (CASE NO. Z03-2013-08)**
- 2013-485 CONDUCT A PUBLIC HEARING AND ACT UPON AN ORDINANCE FOR A SPECIFIC USE PERMIT (SUP) TO ALLOW A DAYCARE ON PROPERTY CURRENTLY ZONED SINGLE FAMILY ONE (SF-1) DISTRICT. PROPERTY CONTAINS ± 1.100 ACRES AND IS LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF KIRK ROAD AND LON HAYES, IN THE CITY OF MIDLOTHIAN, TEXAS (CASE NO. SUP01-2013-09)**

*Items 2013-484 and 2013-485 were considered and discussed together, however separate action was taken by Council.*

Mayor Houston opened the Public Hearings and Kevin Lasher presented the Items for discussion. The applicant, Raj Gill, 571 Kirk Road, Midlothian, TX, addressed Council regarding the requested masonry variance to the proposed daycare facility. With no further public input received, Mayor pro tem Frizzell moved to close the Public Hearings for Items 484 and 485. Motion was seconded by Councilmember Henley and carried unanimously (7-0). Mayor pro tem Frizzell moved to approve Item 2013-484 as presented. Motion was seconded by Councilmember Henley and carried unanimously (7-0). Councilmember Henley moved to approve Item 2013-485 subject to the denial of the variance request to delay the construction of the masonry exterior for two years. Motion was seconded by Councilmember Sibley and carried unanimously (7-0).

- 2013-486 CONDUCT A PUBLIC HEARING AND ACT UPON AN ORDINANCE TO REZONE ±83.68 ACRES FROM MEDIUM INDUSTRIAL (MI) AND LIGHT INDUSTRIAL (LI) DISTRICTS TO HEAVY INDUSTRIAL (HI) DISTRICT. THE PROPERTY IS LOCATED IN THE RAILPORT BUSINESS PARK BEING A PART OF THE SAMUEL G. HAYNIE SURVEY, ABSTRACT NO. 526, WILLIAM MULLEN SURVEY, ABSTRACT NO. 748, BUCKNAM CANFIELD SURVEY, ABSTRACT NO. 196 AND THE MOSES LAPHAM SURVEY, ABSTRACT NO. 648. THE SUBJECT PROPERTY IS LOCATED APPROXIMATELY 2,200 FEET SOUTHEAST OF U.S HWY 67 AND SOUTHWEST OF RAILPORT PARKWAY IN THE CITY OF MIDLOTHIAN, TEXAS (CASE NO. Z01-2013-03)**

Mayor Houston opened the Public Hearing and Kevin Lasher presented the request intended to clean up zoning boundaries and allow heavier uses on the subject property. With no public input received, Mayor pro tem Frizzell moved to close the Public Hearing. Motion was seconded by Councilmember Sibley and carried unanimously (7-0). Mayor pro tem Frizzell moved to approve Item 2013-486 as presented. Motion was seconded by Councilmember Rodgers and carried unanimously (7-0).

**2013-487 CONDUCT A PUBLIC HEARING TO CONSIDER AND ACT UPON AN ORDINANCE TO REZONE ± 30.29 ACRES FROM THE CURRENT AGRICULTURAL (A) DISTRICT TO A PLANNED DEVELOPMENT DISTRICT (PD) FOR RESIDENTIAL USES (SINGLE FAMILY LOTS RANGING FROM 7,500 SF TO 9,000 SF +) AND OPEN SPACES. PROPERTY IS IN THE P.W. LOWE SURVEY, ABSTRACT NO. 661 AND G.W. SMITH SURVEY, ABSTRACT NO. 1074 AND GENERALLY LOCATED AT THE NORTHEAST INTERSECTION OF MOCKINGBIRD LANE AND ONWARD ROAD, IN THE CITY OF MIDLOTHIAN, TEXAS (CASE NO. Z04-2013-11)**

Mayor Houston opened the Public Hearing and Kevin Lasher presented the Item. Mark Shelton, engineer for Civil Solutions, speaking on behalf of the applicant, addressed Council questions regarding fencing and open areas. With no further public input received, Councilmember Sibley moved to close the Public Hearing. Motion was seconded by Mayor pro tem Frizzell and carried unanimously (7-0). Mayor pro tem Frizzell moved to approve Item 2013-487 as presented, subject to the following additional conditions:

Two (2) open area lots totaling at least 1.92 acres shall be provided along Parkview Drive and behind Greenbriar Court and shall serve as detention ponds for this development (as indicated on the site plan). The detention area located at Lot 18, Block 4 shall also have an additional playground equipment with a wrought iron fence at the south side.

An 8-foot high upgraded wooden fence (i.e. board-on-board) with a top trim cap shall be constructed along the southern property lines adjacent to the City-owned lot and the church-owned lot as shown in Exhibit C for the purpose of screening any associated noise and visual impact. A wrought iron fence (approximately three or four feet in height) shall be required for the open space lot at the northwest corner of Parkview Drive and Summer Lane.

Motion was seconded by Councilmember Sibley and carried unanimously (7-0).

**2013-488 CONDUCT A PUBLIC HEARING AND ACT UPON AN ORDINANCE TO REZONE ±5.688 ACRES FROM AGRICULTURAL (A) DISTRICT TO SINGLE FAMILY - ONE (SF-1) DISTRICT. PROPERTY IS LOCATED IN THE GB GLOVER SURVEY, ABSTRACT 1219, AND IS LOCATED WEST OF SINGLETON ROAD AND SOUTH OF FM 875, IN THE CITY OF MIDLOTHIAN, TEXAS (CASE NO. Z02-2013-05)**

Mayor Houston opened the Public Hearing and Kevin Lasher presented the rezoning request creating five (5) one-acre lots for custom homes. With no public input received, Mayor pro tem Frizzell moved to close the Public Hearing. Motion was seconded by Councilmember Sibley and carried unanimously (7-0). After further discussion by Council regarding access to the lots from Singleton Road, Mayor Houston moved to approve Item 2013-488 as presented, subject to the condition that no more than three driveway cuts be approved onto Singleton Road. Motion was seconded by Councilmember Miller and carried unanimously (7-0).

**2013-489 CONDUCT A PUBLIC HEARING AND ACT UPON AN ORDINANCE FOR A SPECIFIC USE PERMIT (SUP) TO ALLOW INSTALLATION AND USE OF RADIO ANTENNAS TOWERS AT 1) WASTEWATER TREATMENT PLANT (1750 AUGER ROAD); 2) RAILPORT LIFT STATION (3031 RAILPORT PARKWAY); 3) EAST LIFT STATION (800 E. AVENUE F) AND 4) SOUTHEAST LIFT STATION (5078 EAST US HIGHWAY 287), ALL LOCATED IN THE CITY OF MIDLOTHIAN, TEXAS (SUP02-2013-12)**

Mayor Houston opened the Public Hearing and Kevin Lasher presented the SUP request from Trinity River Authority. With no public input received, Mayor pro tem Frizzell moved to close the Public Hearing. Motion was seconded by Councilmember Sibley and carried unanimously (7-0). Councilmember Sibley moved to approve Item 2013-489 as presented. Motion was seconded by Councilmember Rodgers and carried unanimously (7-0).

#### **REGULAR AGENDA**

**2013-490 CONDUCT AND ACT UPON A RESOLUTION INITIATING PROCEEDINGS TO ANNEX APPROXIMATELY 137.85 ACRES OF LAND DESCRIBED AS OAK HOLLOW ESTATES OUT OF THE J. L. BLANTON SURVEY, ABSTRACT NO. 1284, ELLIS COUNTY, TEXAS (THE "ANNEXATION AREA"); BY DIRECTING CITY STAFF TO FINALIZE THE BOUNDARY DESCRIPTION AND LAND AREA TOTAL FOR THE ANNEXATION AREA, BY SETTING THE DATE AND LOCATION FOR TWO (2) PUBLIC HEARINGS, AND DIRECTING STAFF TO PREPARE THE REQUIRED SERVICE PLAN. (CASE NO. AX01-2013-18)**

Item presented by Kevin Lasher. Councilmember Sibley moved to approve Item 2013-490 as presented. Motion was seconded by Councilmember Miller and carried unanimously (7-0).

**2013-491 CONDUCT AND ACT UPON A RESOLUTION INITIATING PROCEEDINGS TO ANNEX APPROXIMATELY 604 ACRES OF LAND OUT OF THE J.P. PEAK SURVEY, ABSTRACT NO. 881, THE J. PONDEXTER SURVEY, ABSTRACT NO. 882, THE S. SMITH SURVEY, ABSTRACT NO. 973, THE J.B. ORR SURVEY, ABSTRACT NO. 818, THE E. SULLIVAN SURVEY, ABSTRACT NO. 1012, THE A.J. CORNEIUS SURVEY, ABSTRACT NO. 1285, THE N.N.J.J. & B.L. EDWARDS SURVEY, ABSTRACT NO. 339, THE E.A. BRALY SURVEY, ABSTRACT NO. 184, AND THE M.H. DAVIS SURVEY, ABSTRACT NO. 278, ELLIS COUNTY, TEXAS (THE "ANNEXATION AREA"); AND DIRECTING CITY STAFF TO FINALIZE THE BOUNDARY DESCRIPTION AND LAND AREA TOTALS FOR THE ANNEXATION AREA, BY SETTING THE DATE AND LOCATION FOR TWO (2) PUBLIC HEARINGS, AND DIRECTING STAFF TO PREPARE THE REQUIRED SERVICE PLAN. (CASE NO. AX02-2013-23)**

Item presented by Kevin Lasher. Councilmember Sibley moved to approve Item 2013-491 as presented. Motion was seconded by Councilmember McClure and carried unanimously (7-0).

**2013-492 CONDUCT AND ACT UPON A RESOLUTION INITIATING PROCEEDINGS TO ANNEX APPROXIMATELY 824 ACRES OF LAND OUT OF THE R. BERRY SURVEY, ABSTRACT NO. 42, THE M.E.P. & P.R.R. CO. SURVEY, ABSTRACT NO. 760, THE B. CANFIELD SURVEY, ABSTRACT NO. 196, AND THE A.J. RUGELY SURVEY, ABSTRACT NO. 924, ELLIS COUNTY, TEXAS (THE "ANNEXATION AREA"); BY DIRECTING CITY STAFF TO FINALIZE THE BOUNDARY DESCRIPTIONS AND LAND AREA TOTALS FOR THE ANNEXATION AREA, BY SETTING THE DATE AND LOCATION FOR TWO (2) PUBLIC HEARINGS, AND DIRECTING STAFF TO PREPARE THE REQUIRED SERVICE PLAN. (CASE NO. AX03-2013-24)**

Item presented by Kevin Lasher. Mayor Houston moved to approve Item 2013-492 as presented. Motion was seconded by Councilmember Miller and carried unanimously (7-0).

**2013-493 CONSIDER AND ACT UPON APPROVING THE EXPENDITURE OF FUNDS FOR PAVEMENT RESURFACING SERVICES FOR WALNUT GROVE ROAD WITH APAC-TEXAS, INC. IN AN AMOUNT NOT TO EXCEED \$275,000**

Adam Mergener presented the request for pavement resurfacing services. Councilmember Henley moved to approve Item 2013-493 as presented. Motion was seconded by Councilmember Sibley and carried unanimously (7-0).

**2013-494 CONSIDER AND ACT UPON A PROPOSAL FROM HOTEL DEVELOPER, GATEHOUSE CAPITAL, FOR A 60-DAY INITIAL STUDY PERIOD TO DEVELOP A FULLY VETTED PROGRAM FOR THE DEVELOPMENT OF A 100-120 KEY UPSCALE HOTEL WITH SOME MEETING SPACE AND FOOD AND BEVERAGE OFFERING TO BE LOCATED ADJACENT TO THE MIDLOTHIAN CONFERENCE CENTER AND CAPITALIZE ON THE CONFERENCE CENTER ACTIVITY**

Larry Barnett and Tami Tobey presented the request to fund a hotel study from Midlothian Community Development Corporation (4b) funds. Mayor pro tem Frizzell moved to approve Item 2013-494 as presented subject to city attorney approval of the finalized contract. Motion was seconded by Councilmember McClure and carried unanimously (7-0).

**2013-495 CONSIDER AND ACT UPON AN ORDINANCE AMENDING THE FY 2013-2014 GENERAL FUND BUDGET APPROPRIATIONS IN THE AMOUNT OF \$75,428.29 FROM THE GENERAL FUND UNRESERVED FUND BALANCE FOR EXPENDITURES ENCUMBERED BUT NOT YET EXPENDED FROM THE FY 2012-2013 GENERAL FUND BUDGET; IN ACCORDANCE WITH CHAPTER 102, LOCAL GOVERNMENT CODE; APPROPRIATING VARIOUS AMOUNTS THEREOF; REPEALING CONFLICTING ORDINANCES AND RESOLUTIONS; INCLUDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE**

Item presented by Chris Dick. Councilmember Sibley moved to approve Item 2013-495 as presented. Motion was seconded by Mayor pro tem Frizzell and carried unanimously (7-0).

**2013-496 CONSIDER AND ACT UPON AN ORDINANCE AMENDING THE FY 2013-2014 GENERAL FUND BUDGET APPROPRIATIONS IN THE AMOUNT OF \$242,847 FROM THE GENERAL FUND UNRESERVED FUND BALANCE FOR EXPENDITURES NOT ENCUMBERED NOR EXPENDED FROM THE FY 2012-2013 GENERAL FUND BUDGET; IN ACCORDANCE WITH CHAPTER 102, LOCAL GOVERNMENT CODE; APPROPRIATING VARIOUS AMOUNTS THEREOF; REPEALING CONFLICTING ORDINANCES AND RESOLUTIONS; INCLUDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE**

Item presented by Chris Dick. Councilmember McClure moved to approve Item 2013-496 as presented. Motion was seconded by Councilmember Sibley and carried unanimously (7-0).

**2013-497 CONSIDER AND ACT UPON AN ORDINANCE AMENDING THE FY2013-2014 UTILITY FUND BUDGET APPROPRIATIONS IN THE AMOUNT OF \$215,470.39 FROM THE UTILITY FUND UNRESERVED FUND BALANCE FOR EXPENDITURES ENCUMBERED BUT NOT YET EXPENDED FROM THE FY2012-2013 UTILITY FUND BUDGET; IN ACCORDANCE WITH CHAPTER 102, LOCAL GOVERNMENT CODE; APPROPRIATING VARIOUS AMOUNTS THEREOF; REPEALING CONFLICTING ORDINANCES AND RESOLUTIONS; INCLUDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE**

Item presented by Chris Dick. Councilmember Sibley moved to approve Item 2013-497 as presented. Motion was seconded by Councilmember Rodgers and carried unanimously (7-0).

**2013-498 CONSIDER AND ACT UPON AN ORDINANCE AMENDING THE FY 2013-2014 UTILITY FUND BUDGET APPROPRIATIONS IN THE AMOUNT OF \$513,655 FROM THE UTILITY FUND UNRESERVED FUND BALANCE FOR EXPENDITURES NOT ENCUMBERED NOR EXPENDED FROM THE FY 2012-2013 UTILITY FUND BUDGET; IN ACCORDANCE WITH CHAPTER 102, LOCAL GOVERNMENT CODE; APPROPRIATING VARIOUS AMOUNTS THEREOF; REPEALING CONFLICTING ORDINANCES AND RESOLUTIONS; INCLUDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE**

Item presented by Chris Dick. Councilmember Sibley moved to approve Item 2013-498 as presented. Motion was seconded by Councilmember Rodgers and carried unanimously (7-0).

**2013-499 CONSIDER AND ACT UPON A RESOLUTION AUTHORIZING THE MIDLOTHIAN CITY ATTORNEY, ACTING ON BEHALF OF THE CITY OF WAXAHACHIE AND THE CITY OF MIDLOTHIAN, TO INSTITUTE EMINENT DOMAIN PROCEEDINGS AGAINST KEN THOMPSON, FOR THE ACQUISITION OF 7.118 ACRES OF LAND, IN FEE SIMPLE, SITUATED IN THE J. R. LEATH SURVEY, ABSTRACT NO. 634, LOCATED IN ELLIS COUNTY, TEXAS. SUBJECT PROPERTY TO BE ACQUIRED IS FULLY DESCRIBED IN THE PROPOSED RESOLUTION. SUBJECT PROPERTY IS TO BE ACQUIRED FOR DRAINAGE AND OTHER PUBLIC USES FOR THE MIDWAY REGIONAL AIRPORT**

Don Stout presented the Item, reporting that TxDOT Aviation has re-entered into negotiations with the property owner, however, if no agreement is reached, the eminent domain proceedings will be filed with the appropriate court. Mayor pro tem Frizzell moved to approve Item 2013-499 as presented. Motion was seconded by Councilmember Sibley and carried unanimously (7-0).

*Council moved to Executive Session at 8:20 p.m. for the purpose of discussing Item 4 with the following present: Mayor Houston, Mayor pro tem Frizzell, Councilmembers Sibley, Rodgers, McClure, Henley, Miller; City Manager, Assistant City Manager, City Attorney, City Engineer, Planning Director and Robert Brown, legal counsel of law firm Brown & Hofmeister.*

#### **EXECUTIVE SESSION**

- 1. SECTION 551.087 DELIBERATION REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS**
- 2. SECTION 551.072 REAL ESTATE: DELIBERATE AND CONSIDER THE ACQUISITION OF REAL PROPERTY AND EASEMENTS**
- 3. SECTION 551.071 LEGAL: CONSULTATION WITH ATTORNEY REGARDING SUPREME COURT OF TEXAS CAUSE NO. 10-0150, ECOM REAL ESTATE MANAGEMENT, INC. V. CITY OF MIDLOTHIAN, TEXAS.**
- 4. SECTION 551.071 LEGAL: CONSULTATION WITH ATTORNEY BASED ON AN ETHICAL DUTY TO ADVISE REGARDING POTENTIAL LITIGATION**

*Council reconvened in Regular Session at 9:40 p.m. with no action taken in Executive Session.*

#### **REGULAR AGENDA**

**2013-500 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #1: ECONOMIC DEVELOPMENT**

The Item was not discussed in Executive Session.

**2013-501 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #2: REAL ESTATE**

The Item was not discussed in Executive Session.

**2013-502 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #3: ECOM**


The Item was not discussed in Executive Session.

**2013-503 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #4:  
CONTEMPLATED LITIGATION**

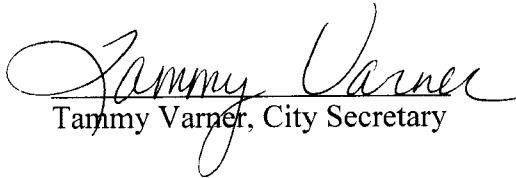
No action was taken following Executive Session.

**2013-504 ADJOURN**

With there being no further business to discuss, Mayor Houston adjourned the meeting at 9:40 p.m.

  
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Bill Houston, Mayor

ATTEST:

  
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Tammy Varner, City Secretary