

**MINUTES  
REGULAR COUNCIL MEETING  
APRIL 9, 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
Jason Kyle	§	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 6:03 p.m. with notice of the meeting duly posted and a quorum present. Councilmember Henley gave the invocation and led in the pledges.

**2013-114 ANNOUNCEMENTS/PRESENTATIONS**

**A. Community Affairs calendar**

April 11 – Last day to register to vote in the May 11 City Council Election

April 13 – 8am-12pm - City Wide Spring Clean Up Day at the Public Works Service Center.

April 13 – 7:30am-2pm – Kids Fishing Derby at the site of the future Community Park

April 27 – 10am – 9pm Spring Fling & 125<sup>th</sup> Birthday Bash, events include 5K4Kids, Arts & Crafts Fair, Cupcakes, Car Show & 8<sup>th</sup> Street Dance.

**B. Proclamation designating May as Motorcycle Safety Month**

*The proclamation will be presented at the April 23 Council meeting.*

**C. Administrative announcements related to personnel**

None were received.

**2013-115 CITIZENS TO BE HEARD**

None were received.

**2013-116 RECEIVE AN UPDATE ON VARIOUS CITY BOARD AND COMMISSION MEETINGS AND ACTIVITIES**

None were received.

**CONSENT AGENDA**

**2013-117 CONSIDER AND ACT UPON MINUTES FROM CITY COUNCIL MEETING OF MARCH 26, 2013**

**2013-118 CONSIDER AND ACT UPON A RESOLUTION AUTHORIZING THE 5K 4KIDS AND FUN RUN. THIS EVENT WILL BE HOSTED BY THE MIDLOTHIAN INDEPENDENT SCHOOL DISTRICT EDUCATION FOUNDATION (MISDEF) AND IS SCHEDULED FOR SATURDAY, APRIL 27, 2013, IN ACCORDANCE WITH A SPECIAL EVENT PERMIT AS ESTABLISHED BY THE CITY OF MIDLOTHIAN ZONING ORDINANCE 89-13 AS AMENDED, SECTION 4.4 (CASE NO. RES09-2012-51)**

**2013-119 CONSIDER AND ACT UPON A RESOLUTION AUTHORIZING THE ANNUAL SPRING FLING ARTS AND CRAFTS FAIR, MIDLOTHIAN'S 125<sup>TH</sup> BIRTHDAY BASH, AND THE 8<sup>TH</sup> STREET DANCE INCLUDING THE TEMPORARY CLOSURE OF N. 8<sup>TH</sup> STREET BETWEEN W. MAIN STREET & FIRE STATION NO. 1 AND W. AVENUE F BETWEEN N. 8<sup>TH</sup> STREET AND PLAZA DRIVE (AS INDICATED ON MAP ON ATTACHMENT 1). THIS EVENT IS HOSTED BY THE MIDLOTHIAN CHAMBER OF COMMERCE AND THE CITY OF MIDLOTHIAN AND SCHEDULED FOR SATURDAY, APRIL 27, 2013, IN ACCORDANCE WITH THE ZONING REQUIREMENTS FOR THIS TYPE OF EVENT, AS ESTABLISHED BY THE CITY OF MIDLOTHIAN ZONING ORDINANCE 89-13, AS AMENDED, SECTION 4.4 (CASE NO. RES10-2012-53)**

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

<b>PUBLIC HEARINGS</b>
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**2013-120 CONDUCT A PUBLIC HEARING TO CONSIDER AND ACT UPON AN ORDINANCE TO REZONE ± 68.371 ACRES FROM THE CURRENT AGRICULTURAL (A) DISTRICT TO A PLANNED DEVELOPMENT (PD) WITH MINIMUM LOT SIZES OF 8,400 AND 20,000 SQUARE FEET. PROPERTY IS IN THE W.W. RAWLS SURVEY, ABSTRACT NO. 915 AND LOCATED WEST OF FM 663 AND ± 670 FEET SOUTH OF HARVEST HILL, IN THE CITY OF MIDLOTHIAN, TEXAS (CASE NO. Z03-2012-25)**

Mayor Houston opened the Public Hearing and John Taylor reported to Council that the applicant has requested that the Item be continued to an undetermined date. It was noted that the Planning and Zoning Commission voted unanimously to approve the rezone request on March 19, 2013. Staff has received approximately 33 PON forms in response from property owners within 200 feet, all in opposition, representing a 40% response, which triggered the supermajority vote requirement.

Speakers in opposition were:

Scott Perlmutter 2022 White Tail Dr.	Sara Lucia 2820 Starwashed Dr.	Allen Conte 234 Brookdale
Tina Gage 717 Buckhorn Court	Casey Mattingly 218 Ashlawn Dr.	Wayne Leubner 201 Brook Meadow Ct.

Speakers voiced opposition to the proposed development, citing the high density, traffic on FM663, overcrowding of schools, potential increase in crime and requesting controlled growth in Midlothian.

Non-speakers in opposition were:

Pam Shelley 706 Buck Horn Court	George & Mary Wallace 713 Buck Horn Court	Gina Raybourn 3032 Clearview Dr.
Betty Peck 2205 Goose Down Court	Calvin Cheatham 702 Buck Horn Court	David Gross 910 Elk Horn Dr.

Brian Lucia  
1130 Sweetaire

Mayor pro tem Frizzell moved to continue the public hearing to a future unspecified date. Motion was seconded by Councilmember Kyle and carried unanimously (7-0).

**2013-121 CONDUCT A PUBLIC HEARING TO CONSIDER AND ACT UPON AN ORDINANCE FOR A SPECIFIC USE PERMIT (SUP) TO ALLOW A DOG TRAINING FACILITY AT 2030 STARWASHED ROAD. PROPERTY IS ZONED AGRICULTURAL (A) DISTRICT, CONTAINING ± 2.5 ACRES, AND GENERALLY LOCATED ON EASTSIDE OF STARWASHED ROAD AND 200 FEET SOUTH OF WALTER STEPHENSON ROAD. (SUP04-2012-40)**

Mayor Houston opened the Public Hearing and John Taylor presented the Item for a dog training facility that was approved by the Planning and Zoning Commission on March 19, 2013. With no public input received, Councilmember Kyle moved to close the Public Hearing. Motion was seconded by Councilmember Sibley and carried unanimously (7-0). Councilmember Kyle moved to approve Item 2013-121 as presented. Motion was seconded by Councilmember Miller and carried unanimously (7-0).

**2013-122 CONDUCT A PUBLIC HEARING TO CONSIDER AND ACT UPON AN ORDINANCE FOR A SPECIFIC USE PERMIT (SUP) TO ALLOW A SECONDARY DWELLING UNIT ON 1335 TOWER ROAD. PROPERTY IS LOCATED IN THE AGRICULTURAL (A) DISTRICT, CONTAINS ± 2.173 ACRES AND GENERALLY LOCATED NORTH OF TOWER ROAD AND ± 3,204 FEET EAST OF F.M. 663, IN THE CITY OF MIDLOTHIAN, TEXAS (CASE NO. SUP02-2012-43)**

Mayor Houston opened the Public Hearing and John Taylor presented the Item that was approved by the Planning and Zoning Commission on March 19, 2013. Council discussed concern regarding access to the secondary dwelling structure. With no public input received, Councilmember Kyle 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 2013-122 as presented, subject to an all-weather driving surface be provided for access purposes to the new secondary structure. Motion was seconded by Councilmember Henley and carried unanimously (7-0).

<b>REGULAR AGENDA</b>
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**2013-123 CONSIDER AND ACT UPON AN ORDINANCE REPEALING ORDINANCE NO.'S. 483 (05-12-81), 98-58, 2005-61 AND 2008-47 IN THEIR ENTIRETY AND ADOPTING A NEW FLOOD DAMAGE PREVENTION ORDINANCE BY ESTABLISHING REGULATIONS TO MINIMIZE FLOOD LOSSES AND REMAIN IN COMPLIANCE WITH FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) REGULATIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY CLAUSE FOR VIOLATIONS OF OR NON-COMPLIANCE WITH THIS ORDINANCE; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTION; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

Mike Adams gave a presentation on the new FEMA updates and studies that have been completed pertaining to the Flood Insurance Study, Flood Insurance Rate Maps and the final flood elevation determination for the City of Midlothian. Mr. Adams explained that the flood management regulations and the new maps must be adopted by Council in order for the City to remain in the National Flood Insurance Program. Councilmember Henley moved to approve Item 2013-123 as presented. Motion was seconded by Councilmember Kyle and carried unanimously (7-0).

2013-124 CONSIDER AND ACT UPON A RESOLUTION AUTHORIZING DON HASTINGS, CITY MANAGER, ACTING ON BEHALF OF THE CITY OF MIDLOTHIAN, TO MAKE A FINAL OFFER TO LINDA PAULINE TODD GENTRY AND DAVID EUGENE GENTRY IN THE AMOUNT OF \$1,457 FOR THE ACQUISITION OF A WATER LINE AND SANITARY SEWER EASEMENT DESCRIBED AS 0.072 ACRES/3,146 SQUARE FEET AND TWO TEMPORARY CONSTRUCTION EASEMENTS DESCRIBED IN TOTAL AS 0.192 ACRES/8,388 SQUARE FEET, LOCATED IN THE J.L. BLANTON SURVEY, ABSTRACT NO. 1284, MIDLOTHIAN, ELLIS COUNTY, TEXAS, AS DESCRIBED IN EXHIBIT "A" AND SHOWN IN EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF FOR ALL PURPOSES, SAID EASEMENTS ARE FULLY DESCRIBED IN THE PROPOSED RESOLUTION.

Item 2013-124 was delayed until after Executive Session.

*Council moved to Executive Session at 7:52 p.m. for the purpose of discussing Items 1, and 3 with the following present: Mayor Houston, Mayor pro tem Frizzell, Councilmembers Sibley, Rodgers, Kyle, Henley, Miller; City Manager, City Attorney and City Engineer.*

#### EXECUTIVE SESSION

1. SECTION 551.071 LEGAL: CONSULTATION WITH ATTORNEY REGARDING CAUSE NO. 3-07-CV-1351-N, TEXAS CENTRAL BUSINESS LINES CORPORATION V. CITY OF MIDLOTHIAN
2. SECTION 551.087 DELIBERATION REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS
3. SECTION 551.072 REAL ESTATE: DELIBERATE AND CONSIDER THE ACQUISITION OF REAL PROPERTY AND EASEMENTS
4. 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.
5. SECTION 551.071 LEGAL: CONSULTATION WITH ATTORNEY BASED ON AN ETHICAL DUTY TO ADVISE REGARDING POTENTIAL LITIGATION

*Council reconvened in Regular Session at 8:10 p.m. with no action taken in Executive Session.*

#### REGULAR AGENDA

2013-124 CONSIDER AND ACT UPON A RESOLUTION AUTHORIZING DON HASTINGS, CITY MANAGER, ACTING ON BEHALF OF THE CITY OF MIDLOTHIAN, TO MAKE A FINAL OFFER TO LINDA PAULINE TODD GENTRY AND DAVID EUGENE GENTRY IN THE AMOUNT OF \$1,457 FOR THE ACQUISITION OF A WATER LINE AND SANITARY SEWER EASEMENT DESCRIBED AS 0.072 ACRES/3,146 SQUARE FEET AND TWO TEMPORARY CONSTRUCTION EASEMENTS DESCRIBED IN TOTAL AS 0.192 ACRES/8,388 SQUARE FEET, LOCATED IN THE J.L. BLANTON SURVEY, ABSTRACT NO. 1284, MIDLOTHIAN, ELLIS COUNTY, TEXAS, AS DESCRIBED IN EXHIBIT "A" AND SHOWN IN EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF FOR ALL PURPOSES, SAID EASEMENTS ARE FULLY DESCRIBED IN THE PROPOSED RESOLUTION.

Councilmember Kyle moved to authorize the City Manager to make a formal offer to Linda Pauline Todd Gentry and David Eugene Gentry in the amount of \$1,457 for the acquisition of a water line and sanitary sewer easement and two temporary construction easements as described in the above shown caption. Motion was seconded by Councilmember Henley and carried unanimously (7-0).

**2013-125 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #1: TEXAS CENTRAL BUSINESS LINES**

No action taken following Executive Session.

**2013-126 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #2: ECONOMIC DEVELOPMENT**

The Item was not discussed in Executive Session nor was action taken.

**2013-127 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #3: REAL ESTATE**

No action taken following Executive Session, with the exception of action on Item 2013-124 as set out herein.

**2013-128 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #4: ECOM**


The Item was not discussed in Executive Session nor was action taken.

**2013-129 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #5: CONTEMPLATED LITIGATION**

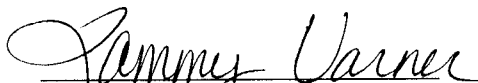
The Item was not discussed in Executive Session nor was action taken.

**2013-130 ADJOURN**

With there being no further business to discuss, Mayor Houston adjourned the meeting at 8:12p.m.

  
Bill Houston, Mayor

ATTEST:

  
Tammy Varner, City Secretary