

MINUTES
REGULAR COUNCIL MEETING
JUNE 25, 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.

2013-237 Administer Oath of Office to Councilmember Place 3

Municipal Judge Kent Traylor administered the oath of office to Jimmie L. McClure, Councilmember Place 3. Mayor Houston presented a set of commemorative bookends to Jason Kyle, outgoing councilmember for Place 3. All members of council expressed their thanks and gratitude to Mr. Kyle for his service to the City.

2013-238 Fire Department badge pinning ceremony

Fire Chief David Schrodt introduced and administered the oath of office to the following Fire Department personnel:

<u>Firefighter:</u>	<u>Engineer</u>	<u>Lieutenant</u>	<u>Captain</u>
Eli Fincher	Brandon Rogers	Matt Golman	Scott Smith
Michael Barker, III	Brad Bryan		
Samuel Villa			
Caleb Bondurant			
Lance Silas			
Stefan Schloemp			

Family members for each individual were in attendance to receive and conduct the badge pinning portion of the ceremony.

2013-239 Announcements/Presentations

a. Community Affairs calendar

July 1 9:00 a.m. - Wildflower & Bird Walk at Mockingbird Nature Park
July 3 9:30 p.m. Fireworks Display at MISD Stadium (Senior Food Pantry fundraiser to begin at 6:00 p.m.)
July 4 10:00 a.m. Midlothian Independence Day Parade through downtown
July 19-20 2013 Quilt Show at the Midlothian Conference Center

b. Administrative announcements related to personnel

None were received

2013-240 CITIZENS TO BE HEARD

None to be heard

2013-241 RECEIVE AN UPDATE ON VARIOUS CITY BOARD AND COMMISSION MEETINGS AND ACTIVITIES

None were received.

PUBLIC HEARINGS

2013-242 CONTINUE A PUBLIC HEARING TO CONSIDER AND ACT UPON AN ORDINANCE FOR A REVISED ZONING ORDINANCE TO REPLACE THE CURRENT ORDINANCE 89-13, AS AMENDED, TO REFORMAT AND REORGANIZE THE EXISTING ZONING ORDINANCE BY CREATING NEW SECTIONS AND SUBSECTIONS, AND INCLUDING ILLUSTRATIONS (CASE NO. OZ03-2012-43)

Mayor Houston opened the Public Hearing and John Taylor presented the amendment that is intended to simplify, reorganize and reformat the existing Zoning Ordinance that has been amended 84 times since 1989. Mayor pro tem Frizzell moved to continue the Public Hearing until July 9. Motion was seconded by Councilmember Sibley and carried unanimously (7-0).

REGULAR AGENDA

2013-243 CONSIDER AND ACT UPON MINUTES FROM CITY COUNCIL MEETINGS OF JUNE 3 AND JUNE 11, 2013

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

2013-244 CONSIDER AND ACT UPON A BID AWARD TO XIT PAVING AND CONSTRUCTION, INC. FOR THE JUSTICE CENTER ACCESS DRIVEWAY IN A TOTAL ALTERNATE BID AMOUNT OF \$164,774.29 AND CHANGE ORDER NO. 1 IN A DEDUCTIVE AMOUNT OF \$25,339.52, FOR A REVISED TOTAL CONTRACT AMOUNT NOT TO EXCEED \$139,434.77.

Mike Adams presented the request for a new access driveway to the Justice Center off of N. 9th Street. The Item will be discussed further after Executive Session.

2013-245 CONSIDER AND ACT UPON A CHANGE ORDER TO THE CONTRACT WITH GAW CONSTRUCTION SERVICES FOR THE INSTALLATION OF NEW PARKING AREAS TO BE LOCATED AT HAWKINS SPRING PARK WITH 56 ADDITIONAL PARKING SPOTS, MOUNTAIN PEAK PARK WITH 25 ADDITIONAL PARKING SPOTS, AND A 226' SIDEWALK EXTENSION AT MOUNTAIN PEAK PARK FROM VISTA RIDGE DR. IN THE AMOUNTS OF: MOUNTAIN PEAK PARK PARKING - \$37,450.20, HAWKINS SPRING PARK PARKING - \$75,653.80, AND MOUNTAIN PEAK PARK SIDEWALK EXTENSION - \$15,000; FOR A TOTAL CONTRACT AMOUNT NOT TO EXCEED \$134,509.20, INCLUDING A 5% CONTINGENCY OF \$6,405.20

Billy King presented the request for additional parking spaces and the sidewalk extension at Mountain Peak Park. Councilmember Henley raised concerns about the need for the additional parking spaces proposed for Hawkins Spring Park. After Council discussion regarding the current traffic congestion at Hawkins Spring Park and the proposed timeline for the opening of the new Community Park, Councilmember Sibley moved to approve Item 2013-245 as presented. Motion was seconded by Mayor pro tem Frizzell and carried by a vote of 4-3, with Councilmembers Rodgers, Henley and Miller voting in opposition.

2013-246 CONSIDER AND ACT UPON A PROPOSED TRI-PARTY DEVELOPMENT AGREEMENT WITH MIDLOTHIAN NH, LLC (“THE DEVELOPER”) AND MIDLOTHIAN ECONOMIC DEVELOPMENT (“MED” AKA “4A”) INTENDED TO INCENTIVIZE THE CONSTRUCTION OF A SKILLED NURSING FACILITY BY CONDITIONALLY COMMITTING TO REIMBURSE THE DEVELOPER UP TO \$150,000 OF CITY MONIES, AND UP TO \$150,000 OF MED MONIES, TOWARD THE COST OF CONSTRUCTING 650± FEET OF SILKEN CROSSING EXTENDED SOUTH OF GEORGE HOPPER ROAD

Due to a potential conflict of interest, Mayor Houston excused himself from the dais for Items 2013-246 and 2013-247, with Mayor pro tem Frizzell assuming control of the meeting.

John Taylor presented the request to approve the tri-party development agreement to incentivize the construction of a skilled nursing facility. The approximate cost for the road extension is \$300,000, with the City and Midlothian Economic Development equally sharing in the funding of the project. Councilmember Sibley moved to approve Item 2013-246 as presented. Motion was seconded by Councilmember Miller and carried by a vote of 6-0-1, with Mayor Houston in abstention.

2013-247 CONSIDER AND ACT UPON A REQUEST FOR APPROVAL OF INCENTIVES REGARDING PROJECT TREASURE

Larry Barnett presented the Item requesting Council approval for expenditure of the necessary funds to incentivize the skilled nursing facility project. Councilmember Sibley moved to approve Item 2013-247 as presented. Motion was seconded by Councilmember Henley and carried by a vote of 6-0-1 with Mayor Houston in abstention.

Mayor Houston returned to the dais and resumed control of the remainder of the meeting.

2013-248 CONSIDER AND ACT UPON A PETITION ACCORDING TO TEXAS LOCAL GOVERNMENT CODE, SECTION 43.28, FOR THE VOLUNTARY ANNEXATION OF ± 2.66 ACRES OF LAND, KNOWN AS RAILPORT BUSINESS PARK ADDITION, LOT 1, BLOCK 4, GENERALLY LOCATED IN THE J.E. HAWKINS SURVEY, ABSTRACT 461 AND THE JOHN W. BURKS SURVEY, ABSTRACT 113 AND IS LOCATED ± 2,475 FEET NORTHEAST FROM THE EASTERN END OF KEMP RANCH CROSSING, IN THE CITY OF MIDLOTHIAN, TEXAS; AND, IF THE PETITION IS GRANTED, ADOPT AN ORDINANCE TO ANNEX THE AREA LYING WITHIN THE EXTRATERRITORIAL JURISDICTION (ETJ) OF THE CITY OF MIDLOTHIAN. THE PETITION WAS FILED WITH THE CITY ON JUNE 6, 2013, ACCORDING TO TEXAS LOCAL GOVERNMENT CODE, SECTION 43.028 AND IS CONTIGUOUS AND ADJACENT TO THE PRESENT BOUNDARIES OF THE CITY OF MIDLOTHIAN, TEXAS. (CASE NO. AX01-2012-79)

John Taylor presented the voluntary annexation request, noting that the property meets all of the state criteria necessary for voluntary annexation. Mayor pro tem Frizzell moved to approve Item 2013-248 as presented. Motion was seconded by Councilmember Sibley and carried unanimously (7-0).

2013-249 **CONSIDER AND ACT UPON AN ORDINANCE ACCORDING TO TEXAS LOCAL GOVERNMENT CODE, SECTION 43.028 EXTENDING THE MUNICIPAL BOUNDARY LIMITS OF THE CITY OF MIDLOTHIAN, TEXAS, BY VOLUNTARY ANNEXATION OF ± 2.66 ACRES OF LAND, KNOWN AS RAILPORT BUSINESS PARK ADDITION, LOT 1, BLOCK 4, GENERALLY LOCATED IN THE J.E. HAWKINS SURVEY, ABSTRACT 461 AND THE JOHN W. BURKS SURVEY, ABSTRACT 113 AND IS LOCATED ± 2,475 FEET NORTHEAST FROM THE EASTERN END OF KEMP RANCH CROSSING, IN THE CITY OF MIDLOTHIAN, TEXAS; AND, ADJOINING THE PRESENT BOUNDARY LIMITS OF THE CITY OF MIDLOTHIAN; PROVIDING THAT THE ANNEXED PROPERTY SHALL BE SUBJECT TO THE AD VALOREM TAXES LEVIED BY THE CITY OF MIDLOTHIAN AND THAT THE INHABITANTS OF THE ANNEXED PROPERTY SHALL BE ENTITLED TO ALL RIGHTS AND PRIVILEGES OF ALL THE REGULATIONS OF THE CITY OF MIDLOTHIAN NOW IN EFFECT AND HEREINAFTER ADOPTED; PROPOSED ANNEXATION BEING FULLY DESCRIBED IN EXHIBIT "A" OF THE ATTACHED ORDINANCE HERETO AND MADE A PART OF FOR ALL PURPOSES OF VOLUNTARY ANNEXATION PROCEDURES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION OF THIS ORDINANCE (CASE NO. AX01-2012-79)**

John Taylor presented the voluntary annexation ordinance noting that the subject property will be annexed into the City as "Temporary Ag" use. Councilmember Sibley moved to approve Item 2013-249 as presented. Motion was seconded by Councilmember McClure and carried unanimously (7-0).

Council moved to Executive Session at 6:54 p.m. for the purpose of discussing Items 2, 3 and 4 with the following present: Mayor Houston, Mayor pro tem Frizzell, Councilmembers Sibley, Rodgers, McClure, Henley, Miller; City Manager, City Attorney, Mike Adams, John Taylor, Alberto Mares and Larry Barnett (each for their respective Items).

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 8:26 p.m. with no action taken in Executive Session.

REGULAR AGENDA

2013-244 CONSIDER AND ACT UPON A BID AWARD TO XIT PAVING AND CONSTRUCTION, INC. FOR THE JUSTICE CENTER ACCESS DRIVEWAY IN A TOTAL ALTERNATE BID AMOUNT OF \$164,774.29 AND CHANGE ORDER NO. 1 IN A DEDUCTIVE AMOUNT OF \$25,339.52, FOR A REVISED TOTAL CONTRACT AMOUNT NOT TO EXCEED \$139,434.77.

Mayor pro tem Frizzell moved to table Item 2013-244 to a future date. Motion was seconded by Councilmember Miller and carried unanimously (7-0).

2013-250 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #1: TEXAS CENTRAL BUSINESS LINES

The Item was not discussed in Executive Session; no action was taken.

2013-251 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #2: ECONOMIC DEVELOPMENT

Larry Barnet, Midlothian Economic Development CEO was present in Executive Session; no action was taken.

2013-252 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #3: REAL ESTATE

City Engineer Mike Adams was present in Executive Session; no action was taken.

2013-253 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #4: ECOM

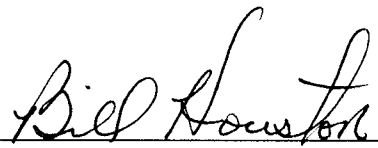
Planning Director John Taylor and Planning Manager Alberto Mares were present in Executive Session; no action was taken.

2013-254 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #5: CONTEMPLATED LITIGATION

The Item was not discussed in Executive Session; no action was taken.

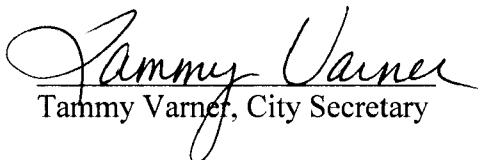
2013-255 ADJOURN

With there being no further business to discuss, Mayor Houston adjourned the meeting at 8:28 p.m.



 Bill Houston, Mayor

ATTEST:


 Tammy Varner, City Secretary