

**MINUTES OF REGULAR MEETING OF THE CITY COUNCIL OF THE  
CITY OF LUFKIN, TEXAS, HELD ON THE  
5TH DAY OF OCTOBER, 1993 AT 5:00 P.M.**

On the 5th day of October, 1993 the City Council of the City of Lufkin, Texas, convened in regular meeting in the Council Chambers of City Hall with the following members thereof, to wit:

Louis A. Bronaugh	Mayor
Don Boyd	Mayor pro tem
Percy Simond	Councilman, Ward No. 1
Larry Kegler	Councilman, Ward No. 3
Bob Bowman	Councilman, Ward No. 4
Jack Gorden, Jr.	Councilman, Ward No. 5
Tucker Weems	Councilman, Ward No. 6
C. G. Maclin	City Manager
Darryl Mayfield	Asst. City Manager/Finance
Ron Wesch	Asst. City Manager/Public Works
Tommy Deaton	Asst. City Attorney
Atha Stokes	City Secretary

being present when the following business was transacted.

1. Meeting was opened with prayer by Rev. N. C. Simmons, Minister, Mt. Beulah Baptist Church.

2. Mayor Bronaugh welcomed visitors present.

3. **APPROVAL OF MINUTES**

Minutes of the Regular Meeting of September 21, 1993 were approved on a motion by Councilman Don Boyd and seconded by Councilman Bob Bowman. A unanimous affirmative vote was recorded.

4. **PUBLIC HEARING - TAX ABATEMENT/ENTERPRISE ZONE - GENE CARRIER - EAST TEXAS ASPHALT COMPANY - SPENCE AND LOOP 287**

Mayor Bronaugh opened Public Hearing to consider request of Gene Carrier on behalf of Eastex Asphalt Company for the purpose of granting a Tax Abatement within the Enterprise Zone on property located at the corner of Spence and Loop 287.

Gene Carrier, Vice President/General Manager of East Texas Asphalt Company, stated that his company is planning a new asphalt production facility for Lufkin, which will feature higher production volume, cleaner emissions, easier access for customers and better raw material management. Mr. Carrier stated that by relocating and expanding East Texas Asphalt on the Loop it will help develop the area on the North side of town.

There was no opposition to the request.

Mayor Bronaugh closed Public Hearing.

5. **ORDINANCE - APPROVED - SECOND READING - JOSEPH J. KWIATKOWSKI - INTERNATIONAL TRUCK & EQUIPMENT OF TEXAS, INC. - TAX ABATEMENT - LOOP 287 BETWEEN DAVISVILLE ROAD AND THE ANGELINA & NECHES RIVER RAILROAD**

Mayor Bronaugh stated that the next item for consideration was Second Reading

of an Ordinance for Tax Abatement as requested by Joseph J. Kwiatkowski on behalf of International Truck and Equipment of Texas, Inc. on approximately 18.657 acres located south of Loop 287, between Davisville Road and the Angelina & Neches River Railroad.

Motion was made by Councilman Bob Bowman and seconded by Councilman Don Boyd that Ordinance for Tax Abatement be approved on Second and Final Reading as presented. A unanimous affirmative vote was recorded.

**6. ORDINANCE - APPROVED - SECOND READING - ZONE CHANGE - ARLIE & IRENE ELLIOTT - 102 W. KERR - RESIDENTIAL LARGE, SPECIAL USE (PROFESSIONAL OFFICE) TO LOCAL BUSINESS**

Mayor Bronaugh stated that the next item for consideration was Second Reading of a Zone Change as requested by Arlie and Irene Elliott for property located at 102 W. Kerr Avenue from Residential Large, Special Use (Professional Office) to Local Business or any other more restrictive zoning classifications that will allow the making and selling of porcelain dolls.

Motion was made by Councilman Don Boyd and seconded by Councilman Larry Kegler that Ordinance be approved on Second and Final Reading as presented. A unanimous affirmative vote was recorded.

**7. AMENDMENT - APPROVED - SECOND READING - ZONING ORDINANCE/ARTICLE XIX - BOARD OF ADJUSTMENT & APPEALS**

Mayor Bronaugh stated that the next item for consideration was Second Reading of an Amendment to Article XIX of the Zoning Ordinance (Board of Adjustment and Appeals).

Motion was made by Councilman Larry Kegler and seconded by Councilman Jack Gorden, Jr. that Amendment to Ordinance be approved on Second and Final Reading as presented. A unanimous affirmative vote was recorded.

**8. ORDINANCE - APPROVED - FIRST READING - TAX ABATEMENT - GENE CARRIER/EAST TEXAS ASPHALT - SPENCE AND LOOP 287**

Mayor Bronaugh stated that the next item for consideration was First Reading of an Ordinance for Tax Abatement as requested by Gene Carrier, on behalf of East Texas Asphalt, for the purpose of granting a Tax Abatement within the Enterprise Zone property located at the corner of Spence and Loop 287.

City Manager Maclin stated that basically the application included in the Councilmember's packets lists various thresholds that a hot mix plant would generate in terms of total ad valorem tax increase, sales tax, payroll, and total amount of rendered taxable personal property. City Manager Maclin stated that there was clarification between staff and Mr. Carrier in relationship to a net sales tax increase and that was discussed and cleared up. City Manager Maclin stated that basically this application does meet the criteria, and it would be appropriate now for Council to consider voting on First Reading. A sample contract will be included in the packet for Second and Final Reading.

Motion was made by Councilman Percy Simond and seconded by Councilman Jack Gorden, Jr. that Ordinance be approved on First Reading as presented. A unanimous affirmative vote was recorded.

**9. ORDINANCE - APPROVED - ZONE CHANGE - DR. MERRICK ROCHE - LOOP 287 AND HANKS STREET - RESIDENTIAL LARGE TO RESTRICTIVE PROFESSIONAL OFFICE**

Mayor Bronaugh stated that the next item for consideration was request of Dr.

Merrick Roche for a change of zoning on approximately 1.072 acres of land located at the southwest corner of John Redditt Drive (Loop 287) and Hanks Street from Residential Large to Restrictive Professional Office.

City Manager Maclin stated that included in the packet was information from the Planning Department and minutes from the Planning & Zoning Commission meeting where this item was unanimously recommended for consideration by City Council.

Dr. Merrick Roche stated that he was requesting approval of the Zone Change to be able to relocate his dental office on the property.

Cy Stapleton, who resides at 1601 Hanks Street, appeared in opposition of the request. Mr. Stapleton stated that, in his opinion, if less than 100% of the people living within the area to be rezoned are not in favor of the request then the City should give consideration to the residents. Mr. Stapleton stated that the City Council is in effect going back on a contract the citizens had at the time he purchased his property. Mayor Bronaugh stated that he was not aware of a contract. Mr. Stapleton stated that the property around him was zoned in a certain manner when he purchased his property, and as far as he was concerned the City said that the property would be used for (residential) zones. Mr. Stapleton stated that the City is trying to change the rules and is not giving the residents an opportunity to do anything about it.

Councilman Boyd stated that loop property is usually where businesses locate.

In response to question by Mayor Bronaugh, City Manager Maclin stated that the RPO zoning does provide provision of requirements for site plan approval and protects the trees around the property.

City Planner Stephen Abraham stated that the restrictions of the RPO allows three primary uses: Office, Medical and Dental with no overnight patients, and Financial Institutions without motor banks. Mr. Abraham stated that there is a list of secondary uses that are more aptly described as service uses, such as, barber shops, beauty shops, print shop, apparel shops, etc. Mr. Abraham stated that there are also a couple of uses that would require additional Public Hearings to come before the Planning & Zoning Commission and the City Council. Mr. Abraham stated that these uses would require Special Uses and they are the only uses that would be allowed beyond the uses that have been previously stated (eating establishments, private clubs, indoor commercial, recreational and entertainment, motor banks and day nurseries). Mr. Abraham stated that site plan approval is required for any change to the property from taking down trees to building the barrier wall that is required - all development will go to the Planning & Zoning Commission for site plan approval. Mr. Abraham stated that in order to apply for the RPO zoning, the applicant must have a minimum of one acre of lot size, must have 200' frontage along one road, a floor area ratio which is a measurement of land to building square footage (for every square foot of land you have you can only have one square foot of building, which will allow the applicant to build upwards), building site coverage (no more than 50% of the site can be utilized by the building), the building setback is increased from all right-of-way lines to 30' and side and rear lot lines to 15', there is a pavement setback with landscaping, maximum building height is no more than 70', 10% of the property must be landscaped (the first zoning district where landscaping is required), a minimum of 6' site bearing fence within 3' of the residential zoning boundary line, the refuse collection container must be screened on three sides, signs are limited to one per lot for a lot on a single street, and approved drainage.

Councilman Simond stated that he was concerned about the summary of mail notices, and in his opinion, staff should put forth a better effort to find out how the people feel.

Mr. Stapleton stated that he was concerned that Dr. Roche had not visited with any of the neighbors. Mayor Bronaugh stated that the City Planner might wish to encourage applicants to visit with the neighbors when they are applying for a Zone Change.

Mayor Bronaugh stated that the City Council and the City staff has worked hard to rewrite the Zoning Ordinance to protect the property owners.

Motion was made by Councilman Don Boyd and seconded by Councilman Larry Kegler that Ordinance be approved on First Reading as presented. A unanimous affirmative vote was recorded.

**10. WAIVER OF FEES - APPROVED - PITSER GARRISON CIVIC CENTER - CAREER FAIR - EXTENSION PROGRAM BUILDING EXECUTIVE BOARD**

Mayor Bronaugh stated that the next item for consideration was a request from JoAnn Arnold of the Extension Program Building Executive Board for utilization of the Pitser Garrison Civic Center facilities.

JoAnn Arnold, Chairman of the Angelina County Extension Program Building Committee and Chairman of the 4-H Youth Committee for Angelina County, stated that at their last meeting the subject was brought up of approaching the City Council and asking that the fee for the Civic Center be waived for the Career Fair. Ms. Arnold stated that the Expo Center has agreed to waive their fee for four days of activities for the Career Fair. Ms. Arnold stated that every 8th grader and every 11th grader from all school districts in Angelina County will be participating in the Career Fair.

In response to question by Mayor Bronaugh, Ms. Arnold stated that the Career Fair has been co-sponsored and underwritten financially by the Rotary Club and the Chamber of Commerce. Ms. Arnold stated that the Rotary Club has made a donation of \$1,000 which will be used for professional motivational speakers.

Mayor Bronaugh stated that the City had received a number of requests in the past from organizations who used the Civic Center, and it has been the policy not to allow such a free use of the Civic Center, with the exception of the Commodities Distribution of Angelina County. Mayor Bronaugh stated that he would rather help Ms. Arnold raise the money rather than open the doors for many others who will make this same request. Mayor Bronaugh stated that personally he felt that the City Council would be going against the rules established for the Civic Center by waiving the fee for this event.

In response to question by Councilman Bowman, Asst. City Manager Mayfield stated that the fee for one day at the Civic Center is \$425.

Councilman Boyd stated that, in his opinion, he would like for the Council to look at each situation on its own merit, and in this instance this is an effort to try and help some young people. Councilman Boyd stated that this is a non-profit organization that will not be charging any money or making any money from this event. Councilman Boyd stated that the event will furnish free information to young people to help them become better citizens and leaders for the future.

Mayor Bronaugh stated that, in his opinion, it would be setting a precedent by waiving the fee, however, Council has the right to do so if the majority are in agreement.

Councilman Simond stated that he agrees with Councilman Boyd on this issue and if the Expo Center and the College will donate their facilities, then the City should do so too.

Mayor Bronaugh stated that this is not a matter of whether or not to help these

young people, it is a matter of what the Council needs to do every time someone comes before the Council making a request like this. Councilman Boyd stated that he did not have a problem taking each request as it was presented to Council.

In response to question by Councilman Weems, Floyd Yancy, County Extension Agent, stated that this is a non-profit organization, and is part of the Texas A & M Extension Program and the U. S. Department of Agriculture, and does not have a 501-C status.

City Manager Maclin stated that the issue is not this particular program, the issue is consistency and equability in terms of what the City charges at the Civic Center. City Manager Maclin stated the City has had numerous agencies request through the Civic Center Manager to waive the fees and these include the Small Business Council, the Teacher of the Year Program, various drug awareness program, the United Way, the American Heart Association, the AARP, Hotel/Motel Association, the March of Dimes, the Texas Restaurant Association, numerous churches, DETCOG, MHMR, Lufkin Youth Baseball and St. Patrick School. City Manager Maclin stated that all of these organizations could make a pretty good case that they would fit under the classification that Councilman Boyd has suggested and he wanted Council to be aware of the potential implications if they come up with a classification like that. Councilman Boyd stated that some of these organizations are in business to make money. Councilman Simond stated that one of the organizations the City Manager listed was the AARP, and the AARP should not be equated with the Career Fair because it is one of the richest organizations in the country.

Councilman Kegler stated that after listening to the discussion, it appears that Ms. Arnold has a legitimate request and he would agree with Councilmen Boyd and Simond that the request to waive the fees should be granted. Mayor Bronaugh stated that by waiving the fee in this instance, the Council will be getting into the business of making exceptions to the rules which the Council has set up. Mayor Bronaugh stated that if Council wants to change the rule making policy then we will do it. Councilman Kegler stated that things change and we will have to change these rules eventually anyway.

Councilman Boyd stated that, in his opinion, the City Council should be making the decision whether or not the fee should be waived since this is part of the City Council's business.

Councilman Gorden expressed appreciation for the civic participation by Ms. Arnold and Mr. Yancy, however, he was against waiving this fee for the ongoing use of the Civic Center facility.

Councilman Kegler stated that the rules at the Civic Center might be too strict, and in his opinion, the Civic Center should be for all citizens of Lufkin. Councilman Kegler stated that there are some groups that are worthwhile and the fee should be waived.

Motion was made by Councilman Percy Simond and seconded by Councilman Don Boyd that request to waive fees at the Pitser Garrison Civic Center as requested by JoAnn Arnold of the Extension Program Building Executive Board for the Career Fair be approved as presented. The following vote was recorded:

Aye: Councilmen Kegler, Weems, Simond, Boyd, Bowman

Nay: Councilman Gorden and Mayor Bronaugh

Motion carried by a vote of 5 to 2.

11. **RESOLUTION - APPROVED - DARE PROGRAM**

Mayor Bronaugh stated that the next item for consideration was a Resolution for participation in the DARE Program.

City Manager Maclin stated that included in the Councilmember's packet is an agreement notice for continued participation in the Grant Program for the 1993-'94 fiscal year.

Motion was made by Councilman Don Boyd and seconded by Councilman Larry Kegler that Resolution for participation in the DARE Program be approved as presented. A unanimous affirmative vote was recorded.

12. **APPOINTMENT - APPROVED - CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS - DON BOYD**

Mayor Bronaugh stated that the next item for consideration was an appointment to the CAD Board.

Motion was made by Councilman Percy Simond and seconded by Councilman Larry Kegler that Don Boyd be reappointed to the CAD Board of Directors. A unanimous affirmative vote was recorded.

13. **REGULATION CERTIFICATION - APPROVED - CABLE TV - FCC**

Mayor Bronaugh stated that the next item for consideration was request to apply for regulation certification with the FCC for regulation of cable TV in Lufkin.

City Manager Maclin stated that at the first meeting in September, and previous meetings ever since the Congress overrode the President's veto and enacted the Cable Regulation Act, Council has requested that they be informed on the progress of the Bill. The regulations and procedures have just recently been released by the FCC. Mr. Mayfield stated that he had attended a seminar sponsored by TML several weeks ago and is prepared to share this information tonight.

Mr. Mayfield stated that Congress and the FCC have frozen the rates, basic as well as all other rates in the cable industry until November 15. Mr. Mayfield stated that they have given municipalities up until that date to file for regulatory authority. Mr. Mayfield stated that regulatory authorities will only be able to regulate the basic cable rates. Within the legislation are other things which include service standards that the regulatory body will be responsible for. Mr. Mayfield stated that Council has three options to file for certification which will become effective within 30 days. Following that 30 days Council would need to within 120 days of that make Ordinances either adopting the FCC rules and regulations or making Ordinances which are more stringent than the FCC regulations. The other option would be not to file for certification at this time, which would basically mean that Council at this point has decided that it does not want to regulate cable TV rates. At some point in the future if Council did decide that it did want to come back and regulate cable TV rates it could file FCC Form 328 at any point. At the point Council decides it wants to file later on at some future date it could effect whatever rollbacks or whatever rebates to customers that the FCC would agree through its benchmarking of basic rates that are regulated by the City Council. The third option would be to file to FCC saying that Council does not wish to regulate cable TV and wishes the FCC to regulate cable TV. The FCC has said that municipalities that file such a request must be able to prove that they are not capable financially of regulating cable TV. In that process the FCC has said that a regulatory authority must show that if it is receiving a franchise fee that that fee is going toward some other designated expenditure other than the regulation of cable TV. If that is not the case, the FCC will most possibly deny the request and then put the decision whether to regulate cable TV or not regulate cable TV back into the Council Chamber for that body to decide whether it will file or not.

Mr. Mayfield stated explained the packet information, which included Form 328 and the FCC benchmarks.

Mr. Mayfield stated that the FCC has said that if the cable provider is charging below the benchmark then he has to stay at that particular rate until it gets adjusted for inflation. If the cable company is charging above the basic or above the benchmark, it must come down to the benchmark.

Mr. Mayfield stated that if at any point during the process that Council issues an order or asks the cable operator to do something, or files with the FCC can be challenged by the cable operator. No one at this point knows what the cost of litigation will be or what the cost of taking on this responsibility may mean to smaller cities.

In response to question by Mayor Bronaugh, Mr. Mayfield stated that the basic rate is defined by any channel that has requested for carry, free carry or to be paid to be carried as well as public access channels, educational channels and government channels. Mr. Mayfield stated that channels are 2 through 13 are consider basic rate channels.

In response to question by Councilman Bowman, Mr. Mayfield stated that citizens locally could file a complaint with the regulatory authority and that would be at City Hall.

In response to question by Councilman Gorden, Mr. Mayfield stated that our contract with Cablecom calls for 3% of revenue. Budgeted revenue from the franchise tax in last year's budget was \$150,000.

Councilman Bowman stated that in his opinion the people of Lufkin would feel more comfortable if there was a complaint system a little more formalized that what we now have. Councilman Bowman stated that it would help the situation if the City Council sends a signal to the public saying "We are going to do something about regulating cable TV". Councilman Bowman stated that in addition, this would be giving people that system of coming to City Hall and making their complaints.

In response to question by Councilman Gorden, Mr. Mayfield stated that staff would be looking at hiring another person full time and a part time person for the City to regulate the cable TV rates.

Motion was made by Councilman Bob Bowman and seconded by Councilman Jack Gorden, Jr. that the City of Lufkin apply for regulation certification with the FCC for regulation of cable TV in Lufkin. The following vote was recorded:

Aye: Councilmen Bowman, Gorden, Simond, Weems, Kegler and Mayor Bronaugh  
Nay: Councilman Boyd

Motion carried by a vote of 6 to 1.

#### **14. MUNICIPAL COURT REPORT - JUDGE SLOAN**

Mayor Bronaugh stated that the next item for consideration was a report by the Municipal Court Judge.

Judge Sloan presented an oral report to the City Council explaining how the department works and the fee schedule for different offenses.

**15a. BID- APPROVED - ANIMAL SUSTENANCE - ZOO - HARLAN SPRAGUE DAWLEY**

Mayor Bronaugh stated that the next item for consideration was bids for animal sustenance for the Zoo.

City Manager Maclin stated that staff recommendation is to award the bid of Harlan Sprague Dawley in the amount of \$16,303.04.

Motion was made by Councilman Don Boyd and seconded by Councilman Larry Kegler that bid of Harlan Sprague Dawley in the amount of \$16,303.04 be accepted as submitted. A unanimous affirmative vote was recorded.

**15b. BID - APPROVED - WHEEL LOADER/BACKHOE - EAST TEXAS MACHINERY - WATER UTILITIES**

Mayor Bronaugh stated that the next item for consideration was bid for a wheel loader/backhoe to be used in the Water Utilities Department.

City Manager Maclin stated that staff recommendation is to award the bid of East Texas Machinery in the amount of \$75,546.

Motion was made by Councilman Larry Kegler and seconded by Councilman Tucker Weems that bid of East Texas Machinery in the amount of \$75,546 be accepted as submitted. A unanimous affirmative vote was recorded.

**15c. BID - APPROVED - PAVER & PATCHER - CONLEY-LOTT -NICHOLS - STREET DEPARTMENT**

Mayor Bronaugh stated that the next item for consideration was bids for a paver and patcher to be used in the Street Department.

City Manager Maclin stated that staff recommendation is to award the bid of Conley-Lott- Nichols in the amount of \$126,186, which included a \$25,000 trade in of an old paving machine. City Manager Maclin stated that the interest rate for the 24 month lease purchase was 4.69%.

Motion was made by Councilman Don Boyd and seconded by Councilman Bob Bowman that bid of Conley-Lott-Nichols in the amount of \$126,186 be approved as submitted. A unanimous affirmative vote was recorded.

**16. EXECUTIVE SESSION**

Mayor Bronaugh recessed Regular Session at 7:15 p.m. to enter into Executive Session. Regular Session reconvened at 7:41 p.m. and Mayor Bronaugh stated that the Councilmembers had discussed appointments to Boards, real estate matters, legal matters and personnel matters.

**17. APPOINTMENTS - APPROVED - PLANNING & ZONING COMMISSION - ROBERT MCGEE - ZONING BOARD OF ADJUSTMENT & APPEALS - OSCAR KENNEDY**


Motion was made by Councilman Don Boyd and seconded by Councilman Larry Kegler that Robert McGee be reappointed to the Planning & Zoning Commission for a three year term. A unanimous affirmative vote was recorded.

Motion was made by Councilman Jack Gorden, Jr. and seconded by Councilman Bob Bowman that Oscar Kennedy be appointed to the Zoning Board of Adjustment & Appeals. A unanimous affirmative vote was recorded.



18. There being no further business for consideration, meeting adjourned at 7:43 p.m.

ATTEST:  
  
Atha Stokes - City Secretary

  
Louis A. Bronaugh - Mayor