## MINUTES OF REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF LUFKIN, TEXAS, HELD ON THE 7th OF JANUARY 2003

On the 7th day of January 2003 the City Council of the City of Lufkin, Texas, convened in a Regular Meeting in the Council Chambers of City Hall with the following members thereof, to wit:

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| Lynn Torres | Mayor pro tem |
| R. L. Kuykendall | Councilmember, Ward No. 1 |
| Rose Faine Boyd | Councilmember, Ward No. 2 |
| Jack Gorden, Jr. | Councilmember, Ward No. 5 |
| Dennis Robertson | Councilmember, Ward No. 6 |
| C. G. Maclin | City Manager |
| James Hager | Asst. City Manager |
| Atha Martin | City Secretary |
| Bob Flournoy | City Attorney |
| Keith Wright | City Engineer |
| Kenneth Williams | Director of Public Works |
| Stephen Abraham | Director of Planning |

being present, and

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| Louis Bronaugh | Mayor |
| Bob Bowman | Councilmember, Ward No. 4 |

being absent when the following business was transacted.

1. Meeting was opened with prayer by City Manager C. G. Maclin.

2. Mayor pro tem Torres welcomed visitors present.

### 3. APPROVAL OF MINUTES

Minutes of the Regular Meeting of December 17, 2002 were approved on a motion by Councilmember Rose Faine Boyd and seconded by Councilmember R. L. Kuykendall. A unanimous affirmative vote was recorded.

### 4. AMENDMENT – APPROVED – SECOND READING - JUNKED VEHICLE ORDINANCE

Mayor pro tem Torres stated that the next item for consideration was Second Reading of an Amendment to the Junked Vehicle Ordinance.

Motion was made by Councilmember Jack Gorden, Jr. and seconded by Councilmember R. L. Kuykendall that Amendment to the Junked Vehicle Ordinance be approved on Second and Final Reading as presented. A unanimous affirmative vote was recorded.

### 5. ORDINANCE – DENIED – FIRST READING – MEDIUM SINGLE FAMILY DWELLING – NEIGHBORHOOD RETAIL – 2425 OLD MILL ROAD – TURNER EUGENE CRAWFORD

Mayor pro tem Torres stated that the next item for consideration was a request by Turner Eugene Crawford to change the zoning from "Medium Single Family Dwelling" to a "Neighborhood Retail" zoning district on approximately 0.12 acres of land described as tract 563 of the V. Micheli Survey (Abstract No. 29) and more commonly known as 2425 Old Mill Road.

City Manager Maclin stated that the Council tabled this item at last meeting for further review. Mr. Maclin stated that Mr. Bowman had specifically asked staff to review if there were any other options, and particularly if this would qualify under home occupations. Mr. Maclin stated that Mr. Crawford does not live in the area so a Home Occupation would not be eligible because that is one of the requirements to satisfy the items related to a Home Occupation zoning. Mr. Maclin stated that other than that staff did not have any other methods that could accomplish the allowance of the barbershop at this location. Mr. Maclin stated that his perception of the neighborhood is that maybe they were not so much concerned about Mr. Crawford's barbershop, but felt that short term that was a positive as opposed to this becoming a crack house or some other dilapidated structure. Mr. Maclin stated that the neighborhoods concern was more of if in the future Mr. Crawford sold the building and the zone had been changed to "Neighborhood Retail" then there would obviously be other uses other than a barbershop that could be allowed there.

Mr. Maclin stated that today Council is back to consider this request on First Reading. Mr. Maclin stated that at the previous Council meeting there were two Councilmembers who indicated their opposition predicated on their input from the neighborhood. Mr. Maclin stated that also noted at the last meeting was that due to the 20% rule (opposition of 20% of contiguous property owners) it would require six affirmative votes in order to be approved. Mr. Maclin stated that the fact that there are only five Councilmembers present at tonight's meeting would in most circumstances be a logical reason for Council to table the request until such time as there is a full compliment of Council. Mr. Maclin stated that predicated on the previous meeting when there was an indication by two or more Councilmembers of opposition to the zone change, even if there were a full compliment of seven members, they would be unable mathematically to get six affirmative votes. Mr. Maclin stated that Council has an option again to either table this request until there is a full compliment of Council or likewise in consideration of the applicant, if it is an issue that would not change the two opposition votes between now and the next meeting, then it might be kind to the applicant to go ahead and know that this is not a site that could receive a zone change and therefore for him to look at other sites. Mr. Maclin stated that it does act in Mr. Crawford's interest today for the Council to go ahead and act even though normally Council would wait until there is a full compliment of Council. Mr. Maclin stated that if Council knew that the outcome was probably going to be unable to achieve six affirmative votes to overturn the 20% opposition, then it might be in the applicant's best interest also to go ahead and know that answer today so perhaps he could begin his search for other locations.

City Attorney Flournoy stated that the request could be denied with four affirmative votes.

In response to question by Councilmember Gorden, Mr. Flournoy stated that a simple majority could not grant anything that would be contrary to what P & Z recommended. Mr. Maclin stated that you could not over rule the 20% rule due to the written opposition from contiguous property owners. Mr. Abraham stated that anything short of six affirmative votes is a denial.

Councilmember Robertson stated that he assumed that when the new Comprehensive Plan was approved that that reset the zoning for that particular piece of land over what it was categorized at that time. Mr. Abraham stated it sets the stage for future zoning actions. Mr. Abraham stated that approval of the Comprehensive Plan does not change zoning; that takes separate action. Mr. Abraham stated that is what staff is working towards with the new Zoning Ordinance and new Zoning District map. Mr. Abraham stated that a Comprehensive Plan is dynamic – you look at a big picture and try to decide development patterns; you are not looking at each individual lot, going out and seeing what the surrounding conditions are necessarily. Mr. Abraham stated that you just make a decision where to draw a boundary between residential and non-residential. Mr. Abraham stated that when every zoning case comes in he goes back and looks to see if the Planning Department has overlooked something or has just made a mistake like misidentifying an area. Mr. Abraham stated that in this case, any time you get on the boundary between residential and non-residential there is always a decision that has to be made. Mr. Abraham stated that, in his opinion, this is a good land use pattern that the Comprehensive Plan has, but he also thinks there's an alternative. Mr. Abraham stated that it needs to be decided what to do with the zone change case and that being decided, the Planning Department can tell Council how to proceed with making it consistent with the Comprehensive Plan. Mr. Abraham stated that the Council knows what the Comprehensive Plan says what it ought to be, but if

Council disagrees in this case, that is fine. Mr. Abraham stated that if this zone change were denied the Planning Department would take the Comprehensive Plan back to the Planning & Zoning Commission to look at an alternative to bring the zoning action back into consistency with the Plan.

In response to question by Councilmember Robertson, Mr. Abraham stated that the Planning & Zoning Commission did not make a formal recommendation on the Future Land Use because they recommended that the City follow it, so there was no need for them to take up the issue of the Comprehensive Plan.

Councilmember Robertson stated that he liked the Exhibit 7-A showing the alternative to the change in the Comprehensive Plan, showing the separation of the property rather than what Council approved.

Councilmember Robertson stated that when Planning & Zoning looks at this and changes the boundary lines they might want to look across Old Mill Road to the north or northeast at the corner between the railroad track and Loop 287 as change also. Mr. Abraham stated that he would have a report on the plan activity for 2002 and he would be making some recommendations for changes, but he would prefer not to link them with this property.

Motion was made by Councilmember R. L. Kuykendall and seconded by Councilmember Rose Faine Boyd that the request by Turner Eugene Crawford to change the zoning from "Medium Single Family Dwelling" to a "Neighborhood Retail" zoning district on approximately 0.12 acres of land described as Tract 563 of the V. Micheli Survey (Abstract No. 29) and more commonly known as 2425 Old Mill Road be denied. A unanimous affirmative vote was recorded.

6. **ORDINANCE – APPROVED – FIRST READING – INDUSTRIAL SEWER RATES**

Mayor pro tem Torres stated that the next item for consideration was First Reading of an Ordinance for the Industrial Sewer Rates.

City Manager Maclin stated that back in the budget process in August and September, staff and Council had reviewed the industrial sewer rates along with the other categories and a couple of the industrial category customers came to staff and asked that because this is a fairly sizable increase would the City delay the implementation until they had had a change to review the materials and specifically the methodology used by the City's consultant, Reed, Stowe and Yankee for the cost of service analysis. Mr. Maclin stated that the City did delay and the customer retained an engineering firm that reviewed the City's consultant's work, and in conclusion they found nothing to dispute the consultants work. Mr. Maclin stated that staff is recommending that Council approve on First Reading the industrial sewer rates to go along with the other commercial and residential customers. Mr. Maclin stated that implementation of these rates would take place on February 1st.

Councilmember Gorden stated that he appreciated the City Manager's work on trying to insure an understanding of this increase by the users.

Councilmember Robertson asked if staff had run any figures on the difference between the $1.60 rate and the $1.10 and what that means to the City on an annual basis. Mr. Maclin stated that what staff has done from what was originally recommended to what the City is proposing obviously has been scaled back and the process has slowed down to minimize the adverse impact on the industrial customers. Mr. Maclin stated that the long-term impact is that at the end of the five-year period based on anticipated expenses then every customer will be paying their pro rata fair share based on the cost of service.

Mr. Hager stated that staff was able to reduce the rate from what was initially recommended to this current rate by reducing the transfer to the renewal and replacement fund that staff typically does. Mr. Hager stated that staff has talked to Council on this previously, once at the Retreat, and then subsequently it has been mentioned. Mr. Hager stated that typically staff would have transferred about $1.3 million into the renewal/replacement reserve commonly referred to as the appreciation reserve in order to purchase replacement equipment but also to mitigate construction of newer expanding plants. Mr. Hager stated that this renewal/replacement fund would be used to help offset rate increases necessary whenever the City does go to Lake Sam Rayburn. Mr. Hager stated that in looking at that, staff can stair-step that increase at a little bit less rate, in other words, staff can back off the transfer, which in effect makes up the difference in what the proposed rate would have produced versus this revised rate. Mr. Hager stated that the City is actually absorbing that difference. Mr. Hager stated that each year the City will begin to make more of a transfer and the fifth year it is hoped that the City will be back to making the full transfer that the financial policies require back into the renewal/replacement fund. Mr. Hager stated that at that point all of the industrials would be paying their fair share. Mr. Hager stated that one thing that staff did talk about with the customer was that these rates are based upon estimates that staff has today. Mr. Hager stated that every year or two the City does need to review these rates, review the estimates, and re-work the numbers in order to be able to justify that these rates would be appropriate. Mr. Hager stated that there are a number of cost factors that could change this and they are growth, more or less expenditure, etc.

In response to question by Councilmember Robertson, Mr. Hager stated that the customer would like another shot at arguing their concern next year. Mr. Hager stated that the rate that they are concerned about is the volume rate and it increases at a substantial amount even from this year to the next year where they are concerned. Mr. Hager stated that their volume is three million a day and almost that much returning it into the system, and that is a major part of their operating costs. Mr. Hager stated that each industrial customer is concerned, and they are being brought into line with their respective costs that they have not been paying their fair share.

Motion was made by Councilmember Dennis Robertson and seconded by Councilmember R. L. Kuykendall that Ordinance for the Industrial Sewer Rates be approved on First Reading as presented. A unanimous affirmative vote was recorded.

7. **BID – APPROVED – KIWANIS PARK PEDESTRIAN BRIDGE – CONTINENTAL BRIDGE**

Mayor pro tem Torres stated that the next item for consideration was approval of bids for the Kiwanis pedestrian bridge.

City Manager Maclin stated that this is the actual physical structure and is a pre-fab bridge from Continental Bridge very similar to the one at Chambers Park. Mr. Maclin stated that staff is recommending the low bid of Continental Bridge in the amount of $21,650.

In response to question by Councilmember Robertson, Mr. Wright stated that this is replacing the covered wooden bridge that is there now, and this is the bridge that is closer to the old Tulane.

Motion was made by Councilmember Dennis Robertson and seconded by Councilmember Rose Faine Boyd that the bid of Continental Bridge in the amount of $21,650 for the pedestrian bridge at Kiwanis Park be approved as submitted. A unanimous affirmative vote was recorded.

8. **BID – APPROVED – INSTALLATION OF KIWANIS PARK PEDESTRIAN BRIDGE – COX CONCRETE**

Mayor pro tem Torres stated that the next item for consideration was approval of installation of the Kiwanis Park pedestrian bridge.

Mayor pro tem Torres stated that staff is recommending the low bid of Cox Concrete in the amount of $19,988. Mr. Maclin stated that these are the same contractors that were the successful low bidders on the spray/play at Chambers Park.

Motion was made by Councilmember R. L. Kuykendall and seconded by Councilmember Dennis Robertson that the bid of Cox Concrete in the amount of

$19,988 for the installation of the Kiwanis Park pedestrian bridge be approved as submitted. A unanimous affirmative vote was recorded.

## 9. EXECUTIVE SESSION

Mayor pro tem Torres recessed Regular Session at 5:30 p. m. and Councilmembers entered into Executive Session. Regular Session reconvened at 6:35 p.m. and Mayor pro tem Torres stated that the Council had discussed appointments to Boards and Commissions and attorney/client matters.

City Attorney Flournoy stated that on behalf of the Building Official and his Department he would recommend the demolition of a house at 1211 W. Grove that was burned some time ago. Mr. Flournoy stated that the City couldn't get the owner to fix up the house or to tear it down. Mr. Flournoy stated that he would file the lien to cover the City's cost for demolition.

Motion was made by Councilmember Dennis Robertson and seconded by Councilmember R. L. Kuykendall that demolition of a house at 1211 W. Grove be approved as requested by the City Attorney. A unanimous affirmative vote was recorded.

## 10. APPOINTMENT – TABLED – PLANNING & ZONING COMMISSION

Motion was made by Councilmember Jack Gorden, Jr. and seconded by Councilmember Dennis Robertson to table the appointment to the Planning & Zoning Commission. A unanimous affirmative vote was recorded.

## 11. CALENDAR NOTATIONS FROM MAYOR, COUNCILMEMBERS AND CITY MANAGER

City Manager Maclin stated that this Friday there is a legislative send-off luncheon at Crown Colony in place of the First Friday luncheon.

City Manager Maclin stated that the Chamber of Commerce banquet would be held at the Civic Center on the 21st immediately following the City Council meeting.

City Manager Maclin stated that there would be a DETCOG reception in Austin on the 13th and 14th of January from 5:00 p.m. until 7:30 p.m.

City Manager Maclin stated that January 20th is Martin Luther King, Jr. day and is a City holiday.

City Manager Maclin stated that there would be a meeting of the Finance Committee on January 21st at 3:00 p.m.

12. There being no further business for consideration, meeting adjourned at 6:40 p. m.

Lynn Powell Torres

Lynn Powell Torres – Mayor pro tem

ATTEST: Atha Martin

Atha Martin – City Secretary