

**MINUTES OF REGULAR MEETING OF THE CITY COUNCIL OF
THE CITY OF LUFKIN, TEXAS, HELD ON THE
18TH DAY OF JULY 1995 AT 5:00 P. M.**

On the 18th day of July, 1995 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:

Louis Bronaugh
Don Boyd
Betty Jones
Bob Bowman
Jack Gorden, Jr.
Tucker Weems
C. G. Maclin
Ron Wesch
Darryl Mayfield
Bob Flournoy
Stephen Abraham
Atha Stokes

Mayor
Mayor pro tem
Councilmember, Ward No. 3
Councilmember, Ward No. 4
Councilmember, Ward No. 5
Councilmember, Ward No. 6
City Manager
Asst. City Manager/Public Works
Asst. City Manager/Finance
City Attorney
City Planner
City Secretary

being present, and

Percy Simond

Councilmember, Ward No. 1

being absent when the following business was transacted.

1. Meeting was opened with prayer by Rev. Frank D. Starr, Minister, First Lutheran Church.
2. Mayor Bronaugh welcomed visitors present that included members of the Lufkin Service League: Robin Collmorgen, Sandy English, Lindsey Jenkins, Kelly Moore, Kelli Weyland, Kimberlie Kassaw, Vannita Moore, Lori Haney, Ashley Verner, and Sheila Skelton.

Mayor Bronaugh also recognized Dr. Ron Billings of the Texas Forest Service and John Courtenay, retired U. S. Forester, who are members of the City of Lufkin's Tree Board. Mayor Bronaugh stated that Dr. Billings and Mr. Courtenay had recently surveyed the trees in Kiwanis Park and the park across from City Hall, and commended these gentlemen on the excellent job they are doing for the City.

Mayor Bronaugh stated that in the Tree Board meeting earlier this afternoon Dr. Billings had presented a Tree City USA flag to the City of Lufkin.

Mayor Bronaugh stated that Councilmembers Betty Jones and Bob Bowman also serve on the Tree Board.

3. APPROVAL OF MINUTES

Motion was made by Councilmember Don Boyd and seconded by Councilmember Tucker Weems that the minutes of the Regular Meeting of July 5, 1995 be approved as presented. A unanimous affirmative vote was recorded.

4. PUBLIC HEARING - APPLICATION - 1995 TEXAS CAPITAL FUND PROGRAM - INFRASTRUCTURE IMPROVEMENTS - WEBBER STREET

Mayor Bronaugh opened Public Hearing to consider application to the 1995 Texas Capital Fund Program for infrastructure improvements to the Webber Street area.

Mayor Bronaugh stated that the City of Lufkin is requesting funds from the Texas Capital Fund Program to help develop Webber Street, which is an industrial street.

City Manager Maclin stated that included in the Council packet is a copy of the 1995 Texas Capital Fund Program Guidelines that also highlight the changes in the 1995 program from the 1994 Program. City Manager Maclin stated that on page 4, Eligible Activities (A) , he would like to point out that: "The acquisition, construction, reconstruction, or installation of public facilities such as water facilities, sewer facilities, street improvements, drainage/flood control improvements, solid waste disposal facilities, community or senior citizens centers and other publicly-owned utilities" are eligible items under this Program.

Mayor Bronaugh opened the Public Hearing to the public. No one came forward for or against this request.

Mayor Bronaugh closed Public Hearing.

5. ORDINANCE - APPROVED - FIRST READING - ZONE CHANGE - RESIDENTIAL LARGE TO COMMERCIAL - LUFKIN AVENUE - WALTER BORGFELD

Mayor Bronaugh stated that the next item for consideration was a request of Walter Borgfeld on behalf of R. H. Duncan to change the zoning on approximately 28.83 acres of land on Lufkin Avenue and known as Tracts 33 and 34 out of the Lewis Holloway Survey (Abstract No. 310) from a Residential Large zoning district to a Commercial zoning district.

City Manager Maclin stated that included in the Council packet is a review from the Planning & Zoning Commission, along with appropriate maps and zone change request notification information. City Manager Maclin stated that the Planning & Zoning Commission, by a 4 to 1 vote, recommends the request to change from a Residential Large zoning district to a Commercial zoning district be approved.

In response to a question by Councilmember Boyd, City Manager Maclin stated that no definitive plans for the property were stated at the Planning & Zoning Commission meeting. City Manager Maclin stated that even though the Comprehensive Plan recommended that this property stay Residential Large, the P&Z Commission was prompted to make the change based upon the fact that on the east side of the property is Pinewoods Printing, across from the street is Alexander Electric, and other Commercial establishments that front on Lufkin Avenue adjacent to this property.

City Manger Maclin stated that the original intent, as he understood it, was that the person making the request would use the property for Commercial purposes for some type of State facility, possibly an office building. City Manager Maclin stated that this person had not received the bid on the State facility, and future intentions would be for an office type facility. City Manager Maclin stated that the person who owns the property can put anything on the property within the Commercial guidelines if the request is approved. Councilmember Boyd stated that this was a concern to the people living in this area.

Mayor Bronaugh stated that 23 notices of the impending zone change were mailed to the residents in the area and four responded affirmatively, two responded negatively and 17 did not respond.

Councilmember Jones stated that this property is in her ward and that she had noticed over the years, although there are residents along the street, the current trend seems to be toward businesses. Councilmember Jones stated that these facilities include several churches, smaller businesses, and some rent houses along Lufkin Avenue.

Vance Olson stated that he was the owner of the property, and the consensus of opinion of the P&Z Commission was that this area is going Commercial.

Motion was made by Councilmember Betty Jones and seconded by Councilmember Jack Gorden, Jr. that the Ordinance be approved on First Reading as presented. The following vote was recorded:

Aye: Councilmembers Jones, Gorden, Bowman, Weems and Mayor Bronaugh
Nay: Councilmember Boyd

Motion carried by a vote of 5 to 1.

6. AMENDMENT TO ORDINANCE - APPROVED - FIRST READING - PRIVATE CLUB PERMIT - SOUTH FIRST STREET - JERRY AND CAROL MOORE

Mayor Bronaugh stated that the next item for consideration was a request of Jerry and Carol Moore to approve an entrance from First Street to the private club located at 112 South First Street by amending Ordinance No. 2876, which granted a Special Use Permit for a Private Club with a prohibition against an entrance from First Street.

City Manager Maclin stated that the Planning & Zoning Commission, by a 4 to 1 vote, recommended approval of the Amendment to Ordinance No. 2876, which will allow entrance from First Street to the private club located at 112 South First Street. City Manager Maclin stated that included in the Council packet is an overview and explanation from the Planning Department with the notation that the same section of the Texas Alcoholic Beverage Code that gives cities the ability to enact the 300' distance requirement, in this case, a church, also specifically states that the governing body of the City may grant a variance to this requirement, and gives six reasons why they have the authority to grant a variance. City Manager Maclin stated that it is this portion of the State Code that the P&Z Commission utilized in order to make their recommendation to the City Council to grant this variance of the 300' distance requirement.

Carol Moore stated that she would like to point out some of the reasons why she believes that her building project fits the variance allowables. Ms. Moore stated that she and her husband were not present to raise the issue of whether or not their building is across the street from a church. Ms. Moore stated that, it is her opinion, that the City's position is that the organization in the Pines Theatre is a church, and they respect that position. Ms. Moore stated that neither were they present to argue whether this is an alcohol use or not, since there is already a Special Use Permit assigned to the building. Ms. Moore stated that they are present to talk about whether they can further develop this building along a positive guideline in terms of the variance that is allowed them by the Texas Alcohol Beverage Code. Ms. Moore stated that according to the variance, the first allowable is that the enforceable of the regulation in a particular instance is not in the best interest of the public. Ms. Moore stated that, in her opinion, in this case, to deny the amendment to the Special Use Permit blocks development of the downtown in that no viable full service restaurant is going to want to come in through a back door. Ms. Moore stated that, the 2,000 people who work in the downtown area, most of which would approach the building from the east side of First Street, are not going to walk around to a back alley where there are dumpsters on the sidewalks. Ms. Moore stated that, it is their opinion, that approval of this Amendment is in the best interest of the public because of the tourism development that a new full service restaurant with an Italian specialty might offer. Ms. Moore stated that there are no other Italian restaurants in the Lufkin or Nacogdoches area at this time, and, in her opinion, the market is certainly ripe for this kind of restaurant.

Ms. Moore stated that the second element of the variable is that if the Ordinance constitutes a waste or inefficient use of land or other resources, and the Comprehensive Plan states that "Lufkin Central Business District must provide the goods and services that people want or the area will continue to decay". Ms. Moore stated that it is obvious from the petition in the Council packet, and the lack of

opposition to this project, that the people in Lufkin do want another viable restaurant, particularly in the downtown area. Ms. Moore stated that the downtown strengths that are listed by the Comprehensive Plan are: a large employment base in governmental and office use, and the potential to become a center for tourism due to specialty shops and historic buildings. Ms. Moore stated that both of these elements draw customers and clients which would come downtown and use the services and businesses that are already in the downtown area. Ms. Moore stated that each of these economic bases would benefit from a full-blown restaurant. Ms. Moore stated that it is also recommended in the Comprehensive Plan that the downtown community should seek out entrepreneurs who want to start new businesses and who will take advantage of the historic buildings. Ms. Moore stated that, in her opinion, the entrepreneur they have recruited is along that vein.

Ms. Moore stated that in terms of land use for the Abraham's Building, it is located in the heart of the core retail, which is from Frank to Shepherd on First Street and Second Street, including a block on Lufkin Avenue, from the Library to Second Street, as outlined in the Comprehensive Plan. Ms. Moore stated that recruitment to maximize the strength and the usage of this core retail area is recommended to be restricted to personal goods and services, with services limited to food service and entertainment uses. Ms. Moore stated that at this time, they have the first really viable food service prospect that they have recruited to come into their building. Ms. Moore stated that, in her opinion, the front door entrance of the building should be made available and maximize the situation for this business prospect.

Ms. Moore stated that the third element of the variable is that if it creates an undue hardship on an applicant for a license or permit. Ms. Moore stated that they had tried hard to utilize the Abram's building for retail when they first renovated the building. Ms. Moore stated that this building has three full stories and will not support a retail activity. Ms. Moore stated that to run the heating and air conditioning in a three story building made it impossible to support a retail activity. Ms. Moore stated that, in her opinion, the next highest and best use for the building would be a restaurant. Ms. Moore stated that she and her husband have improved the building and have spent thousands of dollars for the purchase of restaurant equipment, grease traps, refrigerator/freezer storage, special ventilation, in hopes of recruiting a full blown restaurant. Ms. Moore stated that, it is their opinion, that denying the First Street entrance would create a hardship to the restaurateur and the property owner.

Ms. Moore stated that the fourth element of the variance is that if it does not serve its intended purpose. Ms. Moore stated that the intended purpose of this Ordinance is to protect churches and schools which inhabit property in an appropriate setting for such an organization from the encroachment of businesses which sell alcohol. Ms. Moore stated that, in this case, a church is located in an abandoned theatre in the middle of the core retail area in the Central Business District. Ms. Moore stated that in almost all cases the buildings in a Central Business District had zero lot lines with no buffer land around them. Due to this extremely close proximity of buildings in the CBD, this Ordinance, in her opinion, never intended to address a downtown area or anticipated this sort of close proximity situation where one organization can block development for two or three blocks with many, many property owners involved.

Ms. Moore stated that the fifth element is if it is not effective or necessary. Ms. Moore stated that she had talked with the Police Chief and he indicated that in terms of restaurants which have cause for police service, the three leading restaurants in Lufkin with calls for service are not restaurants with clubs. Ms. Moore stated that full blown restaurants with clubs have a lower rate of calls for service than many restaurants without clubs.

Ms. Moore stated that the sixth element is if for any other reason the governing board after consideration of the health, safety or welfare of the public determines it

is in the best interest of the community. Ms. Moore stated that according to local City ordinances, a church can locate anywhere in the community without a zone change, and without allowing the existing property owners to have a say so about what is going on next to their property. Ms. Moore stated that this in itself creates somewhat of an inequitable situation for property owners, particularly if a church simply just opens the doors and there are not restrictions to verify how the church is operating. Ms. Moore stated that if this Ordinance is going to remain in Lufkin, the Central Business District with its close proximity of buildings should be considered a special case.

Jerry Moore stated that Carol had addressed most of the concerns in the variance, and he would like to express his concerns for the City of Lufkin and the downtown area. Mr. Moore stated that he was born and raised in the City of Lufkin, and he and his wife took great pride in this community. Mr. Moore stated that the City of Lufkin is considered one of the leading cities in this region. Mr. Moore stated that he had seen downtown Lufkin in its flourishing days when he was young, when the Abram's building was a viable department store, and there were three theatres downtown, Petty's Restaurant, and Perry's. Mr. Moore stated that there had been a lot of work by a lot of people to try to upgrade and recruit businesses and make the downtown area a place to be proud of. Mr. Moore stated that the business he and Ms. Moore had recruited would not be a business that would be a detriment to the downtown area.

Mr. Moore stated that Ms. Moore had talked about the Comprehensive Plan and how it addresses the City's Central Business District. Mr. Moore stated that in the Comprehensive Plan, restaurants are rated as one of the highest and best uses in the Central Business District property. Mr. Moore stated that restaurants in other areas are drawn to quaint and historic and unusual buildings, and all of downtown qualifies. Mr. Moore stated that Main Street cities throughout the state would substantiate that restaurants draw, not only local residents, but also draw tourism into downtown areas. Mr. Moore stated that, in his opinion, the 2,000 people who work downtown would support a quality restaurant. Mr. Moore stated that this particular restaurant will be open six days a week, and closed on Sunday. Mr. Moore stated that this restaurant would assist in bringing people into downtown to shop. Mr. Moore stated that this would allow more exposure, higher demand for properties, better utilization of City streets, and would result in higher tax values, with more revenue, and would improve the Central Business District.

Mr. Moore stated that he would like to reiterate that there are two things he is not asking for and they are a Special Use Permit, because the property already has a Special Use Permit. Mr. Moore stated secondly, that he is asking that the front door be utilized so that a quality restaurant can make a go of the business. Mr. Moore stated that he is not asking that the Ordinance be changed, because he is in perfect agreement with the Ordinance as it is. Mr. Moore stated that the Ordinance does provide for a variance (as discussed by Ms. Moore) and outlines the special considerations that are required for a variance. Mr. Moore stated that, in his opinion, this particular situation meets all six of the variances. Mr. Moore asked that the Council support their request in the consideration of a variance.

Lee Schwartz of Lee's Jewelers stated that he had owned a jewelry store in downtown Lufkin for 34 years and was in favor of this request. Mr. Schwartz stated that this will be a first class restaurant and will employ 25 to 30 people. Mr. Schwartz stated that the gentleman who will operate the business is experienced in the restaurant business. Mr. Schwartz stated that the restaurant will not be open on Sunday and will not interfere with the church services.

Jack Gartner (Jack's Corner), Harlan Neal (B J's Antiques) and Ronie Stefano (Dance, Etc.), downtown business owners, stated that they were all in favor of keeping the downtown buildings occupied. Ms. Stefano stated that she had worked in getting names on the petition in support of the restaurant, and had not seen one person who said they were in opposition of the request.

Ms. Moore requested that supporters of the restaurant stand (there were approximately 25/30 people in attendance).

Josephine Hughes, stated that she was the pastor of the Covenant of Love Outreach Ministry, and was against the request because of alcohol. Ms. Hughes stated that she did not understand why a family restaurant could not operate without serving alcohol. Ms. Hughes stated that there are services at her church on Wednesday and Friday nights. Ms. Hughes stated that, in her opinion, a new business has priority over the older established businesses. Ms. Hughes stated that she was present tonight as a woman of God, to stand up for her rights and her duty to stand up for what she believes. Ms. Hughes stated that there were two clubs in the Abram's Building, that had been crowded with people entering the back way with no problem, and both of these clubs had failed. Ms. Hughes stated that, in her opinion, the City should not show favoritism or respect of persons. Ms. Hughes asked why the Council would not allow Casa Tomas to locate in an empty building because it was in close proximity of a church, but would allow a club to go in across the street from her church. Ms. Hughes stated that as Christian people, a stand should be taken one way or another. Ms. Hughes stated that she was rehabilitating people who are alcoholics, and she is opposed to alcohol being in her front door. Ms. Hughes stated that having a club across the street from the church where alcoholics are being rehabilitated would be a temptation to the people she is working with.

Ms. Hughes requested that people from her church stand (there were approximately 25/30 people present).

Ms. Hughes stated that she had not received any information on the status of the restaurant, and wondered if it would start off as a restaurant and end up as a club. Ms. Hughes stated that she was also concerned about parking, because it would certainly be a problem. Ms. Hughes stated that she also was concerned that all people downtown would be treated equally.

Councilmember Boyd stated that there had been several references to a "back alley", and to him the location was Calder's Square. Councilmember Boyd stated that if the trash cans were a problem, they could be moved. Councilmember Boyd stated that his concern is about everyone being treated fairly. Councilmember Boyd stated that there had been a lengthy discussion at a Council meeting about Casa Tomas opening a restaurant on First Street across from the First Christian Church. Councilmember Boyd stated that this proposed club was a long way from the 300' requirement, and this request is for a club diagonally across the street from a church. Councilmember Boyd asked Councilmembers if they would like a club across from their church. Councilmember Boyd stated that most of the parking spaces are around by the Library. Councilmember Boyd stated that if people want to go to a restaurant they will go regardless of where the door is located.

Councilmember Gorden stated that when the Special Use Permit was requested for the Abram's building it appeared that the request was for a restaurant, but it turned out to be a club. Councilmember Gorden stated that from what he has seen and heard, the people who will bring in the Italian restaurant do really operate a restaurant, and that alcohol is incidental to that. Councilmember Gorden stated that he appreciated Ms. Hughes' statement. Councilmember Gorden stated that he would concur with Mr. Boyd regarding the request for Casa Tomas. Councilmember Gorden stated that he regretted voting against the request when it came before Council. Councilmember Gorden stated that because the request by Casa Tomas was not approved, the building stayed vacant for a number of years and deteriorated. Councilmember Gorden stated that, in his opinion, the request to use the front entrance on First Street should be allowed based on the City Attorney's opinion. Councilmember Gorden stated that he would like to see the request specific to this restaurant, and if the restaurant is not successful, then the building would revert back to the entrance being on Calder's Square.

In response to question by Councilmember Weems, Ms. Hughes stated that if this is indeed an Italian restaurant, and it had been presented as same, she would have no objection. Ms. Hughes stated that she was opposed to alcohol being served, and wondered if the alcohol could be controlled. Julie Hughes stated that Josephine Hughes was asking for some kind of guarantee that the restaurant will not turn into a club with dancing and rioting, etc. Ms. Julie Hughes stated that when the other club was in the Abram's building the Police were called every week and she would not like to see this kind of activity on First Street.

Councilmember Bowman asked Jerry Moore to give the Council some assurance that the drinks that were served would be in conjunction with a meal and there would not be a club with dancing, etc. Mr. Moore stated that for the success of downtown, putting in a nightclub or Country and Western club would not be an asset to downtown. Mr. Moore stated that it is not their intention to put this kind of club in the downtown area. Mr. Moore stated that he had been approached by another possible tenant who wanted to put a club in, but he and Ms. Moore rejected their proposal. Mr. Moore stated that unfortunately in the City Ordinance there is not a differentiation between a restaurant and a country/western dance club. Mr. Moore stated that a restaurant that will serve alcohol, even a glass of wine, has to have a Private Club Permit, and in this case the connotation "Private Club" is just the name that was given by Ordinance and the intent here is a nice upscale restaurant.

Mayor Bronaugh asked City Attorney Flournoy if there is some way that this could be addressed. Mr. Flournoy stated that it would have to be related to the volume of sales of food. Mr. Flournoy stated that when a variance is granted, a lot of things can be taken into consideration, a lot of restrictions might be imposed that you might not be able to impose otherwise because the restrictions are placed on a request basically by an agreement of parties. Mr. Flournoy stated that if the applicants were willing to have some sort of a criteria for establishing whether or not they were legitimately selling food, for instance 50% of their sales would be food related, as opposed to alcohol. Mr. Flournoy stated that the City (through the Private Club Ordinance) required that a certain percent of sales be related to food items in private clubs, but the State changed their position on this and cities lost their control.

Motion was made by Councilmember Jack Gorden, Jr. and seconded by Councilmember Bob Bowman that the variance of allowing the front entrance to the restaurant at 112 South First be for this specific request and should the restaurant cease to be, then the entrance would revert back to Calder's Square.

The following vote was recorded:

Aye: Councilmembers Gorden, Bowman, Jones, Weems and Mayor Bronaugh

Nay: Councilmember Boyd

Motion carried by a 5 to 1 vote.

7. REQUEST FOR ANNEXATION - APPROVED - SPENCE STREET - NORTH OF LOOP 287 - PLANNING DEPARTMENT

Mayor Bronaugh stated that the next item for consideration was request of the Planning Department to initiate annexation proceedings on approximately 90.029 acres of land located on the west side of Spence Street and just north of Loop 287.

City Manager Maclin stated that this request had been discussed approximately 18 months ago when the RPS Company came to the City wanting to locate their facility in Lufkin and have water and sewer service. At that time it was agreed that the City would provide that service but due to some other conflicts and intent, Council agreed to delay action on this request until this summer. City Manager Maclin

stated that this annexation had been discussed again at the Council Retreat. City Manager Maclin stated that staff is seeking from Council tonight the authorization to initiate these proceedings and to adopt the annexation schedule included in the packet.

Motion was made by Councilmember Don Boyd and seconded by Councilmember Jack Gorden, Jr. that request of the Planning Department to proceed with the annexation of approximately 90.029 acres of land located on the west side of Spence Street and just north of Loop 287 be approved, and that the annexation schedule be adopted as presented. A unanimous affirmative vote was recorded.

8. REQUEST FOR ANNEXATION - APPROVED - FM 324 - SOUTHERN PACIFIC RAILROAD - DANIEL MC CALL DRIVE - U S 59 - PLANNING DEPARTMENT

Mayor Bronaugh stated that the next item for consideration was request of the Planning Department to initiate annexation proceedings on approximately 703 acres of land generally situated east of FM 324 and the Southern Pacific Railroad right-of-way, south of Loop 287, north of Daniel McCall and east of U. S. 59.

City Manager Maclin stated that this is another area that has been discussed in previous Council Retreats, and the motivating force bringing this back for discussion is the development of the Industrial Park on FM 819, known as Southpark, which is also the home of the Regional Recycling Center for the City of Lufkin. City Manager Maclin stated that hopefully a new industry will be locating there within the next six months. City Manager Maclin stated that in order to provide utility services, as well as to provide for appropriate and orderly zoning of this area, initiation of annexation needs to be carried forward. City Manager Maclin stated that staff is seeking Council's authorization to initiate the annexation proceedings and establish an annexation schedule.

Motion was made by Councilmember Bob Bowman and seconded by Councilmember Tucker Weems that request of the Planning Department to proceed with the annexation of approximately 703 acres of land generally situated east of FM 324 and the Southern Pacific Railroad right-of-way, south of Loop 287, north of Daniel McCall and east of U. S. 59 be approved, and that the annexation schedule be adopted as presented. A unanimous affirmative vote was recorded.

City Manager Maclin stated that notices will be in the local newspapers this Friday and the first Public Hearing will be held August 1, and the second Public Hearing will be held August 15.

9. CONTRACT - APPROVED - 1993 HOME PROGRAM GUIDELINES

Mayor Bronaugh stated that the next item for consideration was a contract for the 1993 HOME Program Guidelines.

City Manager Maclin stated that included in the packet is a letter from Gary Traylor, president of Gary Traylor & Associates, Inc., and within that letter it outlines the applicant section and the commitment of HOME funds to approved applicants. City Manager Maclin stated that there is also a draft recommendation of the City of Lufkin, Texas 1993 HOME Program Guidelines. The Guidelines include: The Purpose of the Program; Designated Authority to Administer the Program; Type of Assistance; Selection of Applicants/Priority Rating System; Applicant Selection System; Tie-Breakers in the case of ties; an Applicant Selection System; Applicant Eligibility Requirements; Property Eligibility Requirements; Loan Approval and Contractor Selection; Change Orders; Rehabilitation Standards and Specifications; Eligible Costs; Ineligible Costs; Contractor Qualifications; Work Inspections and Payments for Work; Contractor's Warranty of Work; Files and Reports; Changes, Waivers, and/or Conflicts of Interest; and, Appeals. City Manager Maclin stated that this is part of the process that is necessary and required for the City to continue to move forward in the 1993 HOME Program.

Motion was made by Councilmember Jack Gorden, Jr. and seconded by Councilmember Jones that the Contract for the 1993 HOME Program Guidelines be approved as presented. A unanimous affirmative vote was recorded.

City Manager Maclin requested that Kenneth Williams, Director of Code Enforcement, come forward and make an announcement about the first reconstructed home under this program. Mr. Williams stated that on Thursday, at 10:30 a.m., there will be an Open House at 2107 Sayers Street, where the Mayor and Councilmembers will dedicate the first reconstructed home. Mr. Williams stated that this home has been rebuilt for an elderly lady and her son.

Mr. Williams stated that Mr. Traylor wanted him to mention that on the City's 1993 HOME Program it might be necessary to amend the target area. Mr. Williams stated that on the original application there was a small area designated as the target area, and at this time there are approximately 60 people on the waiting list. Mr. Williams stated that on that list of 60 people only two of them would be within the target area.

10. RESOLUTION - APPROVED - GRANT APPLICATION - TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS - TEXAS CAPITAL FUND

Mayor Bronaugh stated that the next item for consideration was a Resolution approving an application for funding through the Texas Department of Housing and Community Affairs Texas Capital Fund.

City Manager Maclin stated that included in the packet is a Resolution, and a budget justification sheet for this project, which will primarily be for improvements to Webber Street. City Manager Maclin stated that plans are to make this a concrete curb and gutter street and to increase the water line capacity in that area. City Manager Maclin stated that this will be tied into the job creation through Pilgrim's Pride and the expansion they are proposing. City Manager Maclin stated that the City will be making an application to the Texas Capital Fund for \$500,000. City Manager Maclin stated that this is the item that the Public Hearing was held on earlier in the evening and he would now call on Gary Traylor to give Council an overview of the application.

Mr. Traylor stated that during the summer last year an attempt had been made in preparation of this same application, and before it could be completed and submitted to the Texas Department of Housing and Community Affairs Program, funding was suspended. Mr. Traylor stated that this is the first opportunity to bring this request back to Council and to resubmit it under the new 1995 guidelines.

In response to question by Mayor Bronaugh, Mr. Traylor stated that yes, the Department had run out of money for this program and declined any further applications. Mr. Traylor stated that the "window" was closed for approximately nine months.

In response to question by Councilmember Bowman, Mr. Traylor stated that the new funding cycle would begin July 31st. Mr. Traylor stated that all applications that are submitted by 5:00 p.m. July 31st will be considered for a competitive allocation of \$5 million. The City would be requesting \$500,000 of that \$5 million for the Webber Street project. Mr. Traylor stated that in all likelihood the State will approve no more than 10 projects out of this first competitive round. Mr. Traylor stated that if the City is successful, it would receive an award by the end of October, and if the City is unsuccessful, the next opportunity to submit for another \$5 million allocation for competition purposes would be in November.

Mr. Traylor stated that the total cost of the project from an infrastructure standpoint is \$1,142,000, and does not count the substantial investment made by the Pilgrim's Pride Corporation in the expansion of their plant facilities. Mr. Traylor stated that

Plant Manager Bob Palm has communicated to him that the company will be happy to supply the necessary commitment to create a minimum of 50 new employment positions within their further processing area of the plant. Mr. Traylor stated that Pilgrim's Pride is actually committed to the creation of a much greater number of jobs than 50, but because this grant will carry with it some contractor obligations that have to be entered into between Pilgrim's Pride and the City of Lufkin, he was notified from the State that he could, from a contractual standpoint, make that number the smallest number necessary to acquire the maximum scoring advantage under the selection criteria, and thereby avoid any later liability issues either on the part of the City or on the part of Pilgrim's Pride.

Mr. Traylor stated that the Resolution before the Council would actually approve the development and submission of this application in the amount of \$500,000 to be divided between two separate activities - (1) \$465,000 for improvements to Webber Street and (2) \$35,000 for an allowance to pay the fees incurred in connection with administration to this grant that would be paid to his firm. Mr. Traylor stated that under Section V of the Resolution an additional commitment is referred to that will be made by the City of Lufkin in the amount of \$607,165, representing the cost of the improvements which exceed the maximum grant amount that can be sought.

Mr. Traylor stated that the principle objective of this project is to provide a secondary transportation route to be used by the live haul trucks carrying poultry from the staging area that is approximately one mile away from the processing plant currently, to the processing plant itself. Mr. Traylor stated that at this time the trucks are having to enter and exist the Loop frequently throughout the day, taking the birds to the staging area from the fields and then from the staging area to the plant. Mr. Traylor stated that this would get the secondary traffic off the Loop and Frank Avenue. Mr. Traylor stated that a dangerous left hand turn is involved against opposing traffic at the Loop, and this construction would take care of this potentially dangerous situation.

Mayor Bronaugh stated that the other industries along Webber will use this street as well to empty out onto the Loop. Mr. Traylor stated that representatives of the Coca Cola Bottling Company were present at the first Public Hearing to voice their support for this project.

Pat Oates, of Goodwin-Lasiter, stated that this heavy duty street would be beneficial in getting the secondary traffic off the Loop and Frank Avenue.

Councilmember Gorden stated that another way of looking at this is that with the expansion of Webber Street there is a possibility of opening up the area for another industrial park since there is quite a bit of land in this area that could be accessed. Mr. Traylor stated that certainly that is an incidental benefit from this project and at the same time the City is somewhat fortunate due to the fact that Pilgrim's Pride Corporation is the primary beneficiary of these improvements due to the fact that they are the ones that operate the principal number of the large trailer rigs and heavy trucks that will operate on the street and will allow the City to justify the minimum improvements as a heavy industrial grade street. Mr. Traylor stated that the Texas Capital Fund will only participate in the costs of the minimum improvements necessary to serve the identified beneficiary, which is Pilgrim's Pride. Mr. Traylor stated that if a smaller company was being served whose trucks were not quite as large or heavy it would be difficult justifying the heavy duty nature of the street that is being proposed.

Councilmember Gorden stated that Kenneth Williams and his committee have done a great job with the rehabilitation/reconstruction of homes under the HOME Program, however they have a difficult time getting people to bid on these projects. Mr. Traylor stated that in some places he and/or his staff have gone to local restaurants and invited contractors to come in for lunch and talk about the HOME Program. Mr. Traylor stated that he tries to show them that this program may not provide incentive for them to want to devote their full time efforts to housing

rehabilitation but it is an excellent source of work that can keep their crews busy during low times of the year. Mr. Traylor stated that the pace of the 1992 Program and the expected pace of the 1993 Program here in Lufkin is dictated by the availability of good quality contractors. Mr. Traylor stated that he would like to commend the City of Lufkin on its refusal to accommodate shoddy work. Mr. Traylor stated that in some communities, because they have been focused on the pace rather than the quality, they have accepted some shoddy work. Mr. Traylor stated that he would like to make himself and his staff available to come and meet with anyone who is interested in working in this Program.

In response to question by Councilmember Gorden, Mr. Williams stated that recently he has been more successful in getting contractors to bid on these projects.

City Manager Maclin stated that under Section V of the Resolution, the cash match that Mr. Traylor mentioned, staff sourced that as coming from the General Fund, Water & Sewer Fund, and local contributions, meaning that if some of the business and industry along Webber Street participate, those funds have been allocated, and staff will continue to make efforts along those lines. City Manager Maclin stated that he had visited with the Asst. City Manager/Public Works, and they feel that of that \$607,000, the City could do approximately \$50,000 to \$100,000 of the work in house, in-kind, by purchasing the pipe with grant materials and using City crews to lay the water line, and some of the City equipment for site preparation. City Manager Maclin stated that staff will try to do their best to garner about \$100,000 worth of in-kind, and then see what could be raised in the way of local participation, and then the balance would be spread out between the next two fiscal years.

Mr. Traylor stated that, in an effort to minimize any confusion that might come up, he would like to say that the City of Lufkin may very well be one of the highest ranked projects in this competition. Mr. Traylor stated that from some information he's received it is possible that this project will score 80 points out of a maximum of 100 points in the scoring system. Mr. Traylor stated that the City's high score is a product not only of the character of the project that Pilgrim's Pride is doing themselves, but also the community need statistics for Lufkin and Angelina County. Mr. Traylor stated that the Department might come back to Mr. Maclin and may ask him to provide some additional satisfactory documentation that this \$600,000 is in fact available for commitment to this project, and this is one thing that spreading it over two years does not necessarily lend itself to. Mr. Traylor stated that the City may have to come up with some means of providing some backstop that says ultimately, if we have to, this is where the money is to do the project, but in effect the City will maintain the flexibility to source this project as they see fit according to management's recommendation. Mr. Traylor stated that one possible way the City may have to handle this is through some marketability letter furnished by the City's financial advisor on doing bonds, etc. Mr. Traylor stated that this does not mean this is what the City will do, but it does mean that it would certainly provide independent corroboration that the City can afford to do that.

Motion was made by Councilmember Bob Bowman and seconded by Councilmember Tucker Weems that Resolution approving an application for funding through the Texas Department of Housing and Community Affairs Texas Capital Fund be approved as presented. A unanimous affirmative vote was recorded.

11. APPLICATION - APPROVED - CONTRACT PICK UP AND DELIVERY SERVICE FOR CHILDREN - KID'S EXPRESS - BARBARA ROBERTSON

Mayor Bronaugh stated that the next item for consideration was an application for contract service to pick up children and deliver them to a predetermined location.

City Manager Maclin stated that included in the Council packet is a letter from Barbara Robertson requesting Council's consideration in this matter. City Manager

Maclin stated that what prompted this request is that the City does have an Ordinance regulating taxicabs and limousines in the City, and does not necessarily have an Ordinance that would specifically identify the type of service Mrs. Robertson is proposing to bring to the community. City Manager Maclin stated that Mrs. Robertson is present to seek Council's direction in trying to provide what she feels like is a needed, legitimate service, and at the same time do it in a way that Council and the City Attorney will feel comfortable with from a legal standpoint.

Barbara Robertson stated that she is the owner and driver for Kid's Express, which is a transportation service strictly for children. Mrs. Robertson stated that she was present to request a license to allow the transportation of children ages 3 to 16 within the City of Lufkin.

Mrs. Robertson stated that her service is a private door-to-door transportation service for children. Mrs. Robertson stated busy, committed families of the '90's will be her customers. This will be a service to ease the parents workload and will allow the children to pursue their interests, whether it is the library, baseball, or any other after school activities. Mrs. Robertson stated that Kid's Express will be a support system to succeed at work and home.

Mrs. Robertson stated that she is aware that Kid's Express should be licensed by the City of Lufkin in order to meet certain guidelines set forth in existing City Ordinances. Mrs. Robertson stated that, in her opinion, the current Taxicab and Limousine Ordinance does not apply to her particular business. Mrs. Robertson stated that Kid's Express does not do business along the same lines as a taxicab or limousine. Instead, Kid's Express has a contract with parents and certain businesses by membership form. A consent form is also signed by parents. Mrs. Robertson stated that 95% of the children transported will use these services everyday. Mrs. Robertson stated that she has a list of parents and children who have made reservations five days a week for the entire school year. Kid's Express does not operate a taxicab meter, but rather charges a flat fee. Parents will pay on a yearly, monthly or weekly basis according to the terms of their membership form and the number of days the service is used. Mrs. Robertson stated that she will also provide service to those parents who only want to use the service a few times a week or month, or on an at-need basis, and their rates will be a flat-rate fee depending upon how often the service is used.

Mrs. Robertson stated that she would like to request that the City consider adding a sub-section to the existing Ordinance that is related to her particular business, something along the lines of a juvenile delivery service, or a commercial transportation service. Mrs. Robertson stated that she had provided copies of a Commercial Transportation Service Ordinance from the City of Boise, Idaho, where she got the idea for this business. Mrs. Robertson stated that the City of Boise had written this particular Ordinance for this specific type of business. Mrs. Robertson stated that she was in agreement that Kid's Express should meet certain guidelines, insurance, hours of operation, inspection of the vehicles, and background checks for the drivers to include drug and alcohol testing to insure the safety of the children. Mrs. Robertson stated that, in her opinion, the remaining sections of the Taxicab and Limousine Ordinance do not apply to her particular business. Mrs. Robertson stated that she was asking the City Council to look into a new Ordinance or a separate section that would apply to her particular business. Mrs. Robertson stated that she had also included copies of the membership form, consent form, and day care forms for Councilmembers to review.

In response to a question by Councilmember Jones, Mrs. Robertson stated that at the present time she has one van that seats seven children, but plans to purchase another van that seats 12 by the time school starts. Mrs. Robertson stated that if the transportation service is successful she will purchase more vehicles as needed.

In response to question by Mayor Bronaugh, Mrs. Robertson stated that one of the requirements in the City's Taxicab Ordinance is a 3% gross receipts tax due by the

10th of each month, and she did not understand why this is required.

Mr. Flournoy stated that Kid's Express would fall under the limousine guidelines rather than the taxicab guidelines. Mrs. Robertson stated that she has a contract with Dr. Charles Kent for transporting his patients on a yearly basis, and also a contract with some of the daycare centers and they will pay her. Mrs. Robertson stated that rarely will she be called for a one-time pickup and delivery service. Mrs. Robertson stated that the insurance requirements for Kid's Express are higher than the rates required for taxicabs.

In response to a question by Councilmember Boyd, City Manager Maclin stated that the businesses that pick up and deliver senior citizens are providing a service paid for by the business.

City Manager Maclin stated that Council could request that the City Attorney review the Commercial Transportation Ordinance provided by Mrs. Robertson, and come back to Council with a recommendation of an addendum or an additional section under the City's Limousine Ordinance that would cover juvenile services.

Mayor Bronaugh stated that he had a problem with not charging Kid's Express for gross receipt taxes when the City is charging taxicabs and others this tax. Mrs. Robertson stated that she just wanted the City Council to know that she will be operating on a totally different system than a taxicab or limousine. Mr. Flournoy stated that, in his opinion, Kid's Express does fit under the existing Limousine Ordinance, and that Council could grant Mrs. Robertson the permit as it stands. Mr. Flournoy stated that he would have to agree with the Mayor that Mrs. Robertson should pay the gross receipts tax.

In response to a question by Councilmember Gorden, Mr. Flournoy stated that Mrs. Robertson will be operating a vehicle for hire and will fall under the existing Ordinance. Mr. Flournoy stated that Mrs. Robertson did not have a choice, she must operate under a permit.

Motion was made by Councilmember Don Boyd and seconded by Councilmember Tucker Weems that application for the contract service of Barbara Robertson (dba Kid's Express) be approved, and a permit issued, and that the City Attorney draft an Ordinance, or amend the Taxicab Ordinance, that will more clearly define the service for picking up children and delivering them to a predetermined location. A unanimous affirmative vote was recorded.

12. BIDS - APPROVED - TRUST PROPERTY - BARTO STREET - FREEMAN STREET

Mayor Bronaugh stated that the next item for consideration was bids on Trust Property at 1504 Barto Street and 2809 Freeman Street.

City Manager Maclin stated that included in the Council packet is a letter from Calame, Linebarger & Pena law firm that provides delinquent tax collection service for the County and City. City Manager Maclin stated that this Trust Property was obtained by the taxing entities through foreclosure for failure to pay taxes. City Manager Maclin stated that they have had a bid on these two tracts that does not bring it back into actual recovery of the back taxes, and it was necessary to have permission from the City to grant anything less than that. City Manager Maclin stated that the request the County is seeking from the City today is for the property at 1504 Barto Street for the actual recovery of \$491.69, and for the property at 2809 Freeman Street for the actual recovery of \$131.30.

In response to a question by Councilmember Bowman, City Manager Maclin stated that Vince Treadwell and Terry Morgan are purchasing the property on Barto Street, and D. H. Neal is purchasing the property on Freeman Street.

Motion was made by Councilmember Bob Bowman and seconded by

Councilmember Don Boyd that bid for Trust Properties located at 1504 Barto Street (\$491.69) and 2809 Freeman Street (\$131.30) be approved as presented. A unanimous affirmative vote was recorded.

13a. **BID - APPROVED - UNIFORMS - CINTAS**

Mayor Bronaugh stated that the next item for consideration was bids for uniforms for various City departments.

City Manager Maclin stated that staff recommendation is to award the low bid of Cintas in the amount of \$14,000.

Motion was made by Councilmember Don Boyd and seconded by Councilmember Tucker Weems that bid of Cintas in the amount of \$14,000 for uniforms for various City departments be approved as submitted. A unanimous affirmative vote was recorded.

13b. **BID - APPROVED - DUMP TRUCK - STREET DEPARTMENT - CLEVELAND MACK**

Mayor Bronaugh stated that the next item for consideration was bids for a dump truck to be used in the Street Department.

City Manager Maclin stated that staff wanted to seek Council's consideration in awarding a bid to Cleveland Mack Sales in the amount of \$68,454.91 for the purchase of a 14 yard diesel dump truck. City Manager Maclin stated that the low bid is actually White GMC out of Dallas in the amount of \$65,656.00. City Manager Maclin stated that staff had sought input from the City Attorney, and would now seek input from the Council as to whether it is justifiable due to the difference in delivery time being three months longer for getting the truck out of Dallas versus the Cleveland Mack Sales out of Lufkin.

City Attorney Flournoy stated that the City is to look for the lowest and best bid and what the City needs is a vehicle on a shorter time schedule. Mr. Flournoy stated that this is a relatively small percentage of the total bid, and there is no hard and fast rule what that amount could be. Mr. Flournoy stated that the higher bid can be justified on a lot of different basis and it has been done by the City of Lufkin in the past. Mr. Flournoy stated that he did not have a problem with the City defending the difference in the bids, because three months was a long time to wait for a piece of equipment the City needs right now.

In response to a question by Councilmember Boyd, Mr. Wesch stated that this is the dump truck that had been in the budget for this fiscal year, and two meetings ago the truck size was changed from a 5 yard to a 14 yard truck. Mr. Wesch stated that he could not state that it was an emergency that he needed a 14 yard truck tomorrow.

In response to a question by Councilmember Boyd, City Manager Maclin stated that the Mack truck and the GMC truck both meet the City's specifications. Councilmember Boyd stated that, in his opinion, Mr. Flournoy would have a problem trying to defend this amount of money for a three month period of time.

In response to a question by Mayor Bronaugh, Mr. Wesch stated that White GMC will have to make a deal with a dealer in Lufkin or someone in the area to provide warranty work for the truck. City Manager Maclin stated that the specifications included local service for the truck.

David Cochran, Purchasing Director, stated that the current local dealership, White-GMC-Volvo, is Cleveland Mack. Mr. Cochran stated that the reason Cleveland Mack did not bid a GMC vehicle is because of the long delivery time and they are in the process of selling that dealership. Mayor Bronaugh asked if this dealership is sold to a dealership in Houston, where will the City get service and warranty work?

Mr. Cochran stated that when the decision was made on the bid, maintenance and warranty were a concern. City Manager Maclin stated that before the bid is awarded to White GMC in Dallas, staff would make sure that there is an agreement with White GMC in writing that local service would be provided. In response to a question by Councilmember Jones, City Manager Maclin stated that if White GMC is unable to provide local service, then the City would have to turn the bid down.

Mayor Bronaugh stated that now that he knew that the local dealership is being sold and service may not be provided, he would be more apt to go with the higher bid.

Motion was made by Councilmember Bob Bowman and seconded by Councilmember Don Boyd to award the low bid of White GMC of Dallas in the amount of \$65,656. The following vote was recorded:

Aye: Councilmembers Boyd, Bowman, and Weems

Nay: Councilmembers Gorden, Jones and Mayor Bronaugh

Motion failed due to a tie vote.

Motion was made by Councilmember Jack Gorden, Jr. and seconded by Councilmember Betty Jones that bid of Cleveland Mack in the amount of \$68,454.91 be approved as submitted. The following vote was recorded:

Aye: Councilmembers Jones, Gorden, Bowman, Weems and Mayor Bronaugh

Nay: Councilmember Boyd

Motion carried by a vote of 5 to 1.

14. CITY COUNCIL CODE OF ETHICS - TABLED

Mayor Bronaugh stated that the next item for consideration was the City Council Code of Ethics.

Motion was made by Councilmember Tucker Weems and seconded by Councilmember Bob Bowman that this item be tabled until a full Council was present. A unanimous affirmative vote was recorded.

15. COMMENTS

City Manager Maclin reminded Council of the Open House at 10:30 a.m., Thursday morning, at 2107 Sayers Street.

City Manager Maclin also reminded Council of the Budget Workshop meeting at 9:30 a.m. Friday morning.

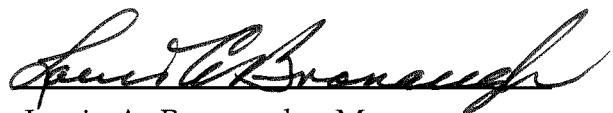
Mayor Bronaugh stated that John Savercool of Kay Bailey Hutchison's office would be at City Hall in the morning for a 7:00 a.m. meeting with local businessmen.

16. There being no further business for consideration, meeting adjourned at 7:05 p.m.

ATTEST:



Atha Stokes - City Secretary



Louis A. Bronaugh - Mayor