

**MINUTES OF REGULAR MEETING OF THE CITY COUNCIL OF
THE CITY OF LUFKIN, TEXAS, HELD ON THE
16TH DAY OF JULY, 1996 AT 5:00 P. M.**

On the 16th day of July, 1996 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 A. Bronaugh
Don Boyd
Percy Simond
Bob Bowman
Jack Gorden, Jr.
Tucker Weems
C. G. Maclin
Darryl Mayfield
Stephen Abraham
Bob Flournoy
Nellie Matthews

Mayor
Mayor pro tem
Councilmember, Ward No. 1
Councilmember, Ward No. 4
Councilmember, Ward No. 5
Councilmember, Ward No. 6
City Manager
Asst. City Manager/Finance
Director of Planning
City Attorney
Administrative Secretary

being present, and

Betty Jones
Atha Stokes

Councilmember, Ward No. 3
City Secretary

being absent when the following business was transacted.

(Minutes were prepared by City Secretary Atha Stokes.)

1. Meeting was opened with prayer by Rev. Rick Williams, Pastor, Carpenter's Way Church.

2. Mayor Bronaugh welcomed visitors present.

3. **APPROVAL OF MINUTES - TABLED**

Minutes of the regular meeting of July 2, 1996 were tabled until the next Council meeting.

4. **ORDINANCE - APPROVED - SECOND READING - SPEED LIMIT - FM 58**

Mayor Bronaugh stated that the first item for consideration was Second Reading of an Ordinance amending Ordinance No. 373 providing for traffic administration and enforcement of traffic providing for maximum speed limits on portions of Farm-to-Market Highway 58.

Motion was made by Councilmember Percy Simond and seconded by Councilmember Jack Gorden, Jr. that Ordinance amending Ordinance No. 373 providing for traffic administration and enforcement of traffic providing for maximum speed limits on portions of Farm-to-Market Highway 58 be approved on Second and Final Reading as presented. A unanimous affirmative vote was recorded.

5. **ORDINANCE - APPROVED - SECOND READING - ZONE CHANGE - "D" DUPLEX TO "C" COMMERCIAL - ANGELINA AVENUE BETWEEN HOWE AND BREMOND STREETS - LUFKIN CONROE TELEPHONE EXCHANGE**

Mayor Bronaugh stated that the next item for consideration was Second Reading of an Ordinance to change the zoning from "D" Duplex to "C" Commercial on approximately a 0.764 acre tract of land located on the east side of Angelina Avenue

between Howe and Bremond Street as requested by John Brown on behalf of the Lufkin Conroe Telephone Exchange.

Motion was made by Councilmember Bob Bowman and seconded by Councilmember Don Boyd that Ordinance to change the zoning from "D" Duplex to "C" Commercial on approximately a 0.764 acre tract of land located on the east side of Angelina Avenue between Howe and Bremond Street as requested by John Brown on behalf of Lufkin Conroe Telephone Exchange be approved on Second and Final Reading as presented. A unanimous affirmative vote was recorded.

6. ORDINANCE - APPROVED - SECOND READING - ASSIGNMENT PAY DESIGNATION - FIRE DEPARTMENT PERSONNEL

Mayor Bronaugh stated that the next item for consideration was Second Reading of an Ordinance updating assignment pay designation for Fire Department personnel in accordance with the Texas Fire and Police Civil Service Law Section 143.042.

Motion was made by Councilmember Don Boyd and seconded by Councilmember Tucker Weems that Ordinance updating assignment pay designation for Fire Department personnel in accordance with the Texas Fire and Police Civil Service Law Section 143.042 be approved on Second and Final Reading as presented. A unanimous affirmative vote was recorded.

7. ORDINANCE - APPROVED - FIRST READING - SPECIAL USE PERMIT - SHOPPING CENTER - WCORP, INC. - TULANE DRIVE AND LOOP 287 - JAY WILLIAMS

Mayor Bronaugh stated that the next item for consideration was a request of Jay Williams, on behalf of WCORP, Inc., to amend the Special Use Permit for a shopping center as granted by Ordinance No. 3016 on approximately 10.412 acres located at the northeast corner of Tulane Drive and Loop 287.

City Manager Maclin stated that included in the Council packet is a memorandum from the Director of Planning regarding this particular request. City Manager Maclin stated that basically this is a request for an Amendment to a site plan of a previously approved zone change, and this proposed site changes the individual building square footage to 22,479 and 5,956 square feet respectively and increases the building area by 4,835 square feet overall. City Manager Maclin stated that this equates to less than a 4.3% increase in building square footage from the original site plan.

City Manager Maclin stated that the Planning & Zoning Commission by unanimous vote last Monday recommended approval of this change in a Special Use Permit for the shopping center by approving the submitted site plan as shown in the packet as Exhibit A.

John Fleming, attorney, stated that he is appearing before Council tonight on behalf of WCORP, Inc., a development company, in which Mr. Jay Williams is the principal. Mr. Fleming stated that WCORP, Inc. is the owner of a portion of the property which is commonly referred to as the "Target property". Mr. Fleming stated that Mr. Williams has entered into arrangements to provide for Toy "R" Us to come into Lufkin on this particular piece of property, and in order to accomplish that it is necessary to have an amendment to the site plan that this Council approved when the property was sold for a shopping center in 1994. Mr. Fleming stated that he was before the Council not to request a zone change per se, because the use of the property for a retail use had been approved prior to this evening when the property was rezoned prior to Target's acquisition of the property and construction. Mr. Fleming stated that what they are doing by this Amendment is simply a reconfiguration of the buildings from the site plan that was originally approved. Mr. Fleming stated that the site plan as originally approved showed a strip of shops of approximately 15,000 square feet and a separate building pad of

approximately 5,000 square feet. Mr. Fleming stated that what is now being done is to combine those two buildings into one and to increase the total square footage by about 4,500-4,800 square feet. Mr. Fleming stated that this development will be under the same restrictions as those which this Council imposed upon the total shopping center in 1994. Mr. Fleming stated that at that time there were seven conditions outlined in that zoning change that included lighting and landscaping. Mr. Fleming stated that he would like to discuss how this Special Use Permit impacts those conditions. Mr. Fleming stated that he believes that the Planning Department will tell Council that the developer is in full compliance with the Zoning Ordinance, and that a Certificate of Occupancy was issued evidencing full compliance. Mr. Fleming passed around photographs of the area since Target's construction. Mr. Fleming stated that the fence as shown in the photographs is on the Target side of the landscape buffer. Mr. Fleming stated that Target and the developer have done everything that they were required to do with respect to the landscape buffer. Mr. Fleming stated that in addition the developer was supposed to control the light spill over from the parking lot into the residential area and this Council set a requirement based on 1.5 foot candles. Mr. Fleming stated that a study made by the Texas Utilities at the request of the Planning Department shows that Target and the developer are within those specifications. Mr. Fleming stated additionally, and subsequent to that period from the initial construction, to provide even more protection for the neighbors, Target went back and added a directional shield placed on the light standards. (A photograph of the directional shield was passed around to Councilmembers.) Mr. Fleming stated that these pictures were made last fall and were made in the landscape buffer behind Mr. Foster's house.

Mr. Fleming stated that having complied with all of the previous conditions imposed by this Council for development, plus the fact that the anticipated change does not change the use, but simply varies square footage and configuration of the buildings, it is his belief that it would be appropriate for this Council to approve the request for site plan change. Mr. Fleming stated that present at tonight's meeting were Jay Williams, Mr. Jim Cudlipp, architect with Toys "R" Us, and Philip Goodwin, engineer for the project.

Mr. Cudlipp stated that he is the architectural project manager for this Toys "R" Us project, and hopes to have the store open by the end of this year.

Mr. Fleming stated that one of the questions that has been previously raised has to do with possible drainage on the site, and Mr. Goodwin will answer that question. Mr. Goodwin stated that when the Target site was developed there was a requirement that no construction activity of any kind would take place in the landscape buffer. Mr. Goodwin stated that also there was a requirement that a fence be constructed along the development line that separated the Target development from the landscape buffer, and this was done during construction. Mr. Goodwin stated that subsequently the developer excavated some material in the parking lot and constructed the site below the grade of the landscape buffer. There was a question brought up at the Planning & Zoning Commission hearing that the developer had stopped up water, and upon investigation he found that there may be water standing in the landscape buffer but there is no water backed up from the development to any of the neighboring properties. Mr. Goodwin stated that as it is common in East Texas in undeveloped areas there are some places called "saddles" or "bay gulls" and they hold 2 or 3 inches of water after a rain and soak into the ground or evaporate, and that is the only evidence of any kind of a water situation. Mr. Goodwin stated that that probably could be remedied, but it was his instruction from the City not to do any improvements inside of that landscape buffer. Mr. Goodwin stated that this is a situation that could easily be rectified, and is not a major problem.

Claude Welch stated that he was representing Mr. and Mrs. Darwin Foster and Mr. and Mrs. Gary Alexander, long time residents of Card Drive. Mr. Welch stated that when the original zone change application came before P&Z, and before this City Council, that there was a tremendous amount of objections and opposition to the

zone change. Mr. Welch stated that it was very noteworthy in all the media for a long time, the issues were debated considerably. Mr. Welch stated that there were many, many people who represented hundreds of years of living on Card Drive before the Council asking them to take their concerns and their opposition into consideration. Mr. Welch stated that the Council did take those needs and opposition into consideration, not to the point that they would like for Council to have done, but they did take it into consideration. Mr. Welch stated that it was his belief that every Councilmember labored with the fact that these people were here with some very serious concerns about what was going to happen to their neighborhood if the zone change application was granted. Mr. Welch stated that the Council imposed certain conditions, and made inquiries of the developer of what was going to happen as it related to the concerns of the people from Card Drive. Mr. Welch stated that the people from Card Drive told Council of their opposition to the zone change at the time that they expected increased traffic to their neighborhood, that they expected problems with drainage, that they expected problems with lighting, that they expected problems with delivery trucks, that they expected a myriad of problems too numerous to go into at this time. Mr. Welch stated that the developer at that time, with Mr. Fleming as their counsel, told Council that the site plan that they were asking for Council to approve in the future was for a small strip shopping center, maybe even restaurants. Mr. Welch stated that the neighbors had not just voiced their concerns about the Target store, but also about what was going to happen to the rest of the property to be developed. Mr. Welch stated that Council was told by the developer not to worry about what was going to happen to the rest of the property, it would be a small strip center or a restaurant, and would not add to the concerns of the neighbors. Mr. Welch stated that it is assumed that the developer made those statements to Council in good faith. Mr. Welch stated that now the developer is back with a program that will add another 100 parking spaces, and that was one of the problems being discussed by the neighbors when Target was built. Mr. Welch stated that studies of traffic made by the Police Department will show that there has been a tremendous increase in traffic. Mr. Welch stated that there is one incidence that he has been advised of when there were 17 tickets written in one day with an average speed of 52 mph on Card Drive. Mr. Welch stated that what the neighbors told Council when this zone change was considered has come to pass. Mr. Welch stated that now the developer wants to add 100 more parking spots, which will add to the problem. Mr. Welch stated that the developer said that if the zone change were granted there would be no late night deliveries, and that has not been the case. Mr. Welch stated that there have been 18-wheelers making deliveries 50, 60, 70 feet from the neighbors home at 2 a.m. and 3 a.m. popping their air brakes and letting their motors idle and shaking the ground for 150 feet, which became so bad that the neighbors have had to file a lawsuit. Mr. Welch stated that as late as last week there were deliveries made at 4 a.m. Mr. Welch stated that if this site plan is approved it will create even more problems. Mr. Welch stated that, in his opinion, a very important thing for this Council to do is to try and conger up their memories as to how this project was represented to them at the time the zone change was requested.

Mr. Welch requested that he be able to see the large photograph presented earlier by Mr. Fleming. Mr. Welch stated that what is obvious in the photograph is that the natural landscape buffer is still in tact at the site, except for some trees which are dying because they are standing in water. Mr. Welch stated that what the photograph does not show is what the condition is with the plants, most of which have died and have not been replaced. Mr. Welch stated that you could sit in Darwin Foster's living room at 10:00 p.m. at night with all the lights off and read the newspaper because of the glare that is coming from the huge lights that are in the parking lot. Mr. Welch stated that after a lawsuit was filed, and after serious questions were asked, the developer came out and put some shields around the lights, but the shields were not done properly. Mr. Welch stated that the shields have split and the light is glaring through the shields. Mr. Welch stated that the neighbors were told that there would be no increase in traffic on Card Drive, and that is just not a fact. Mr. Welch stated that the developer promised to install drainage and not back water up on the property, and he has video tapes of water

standing after a rain for several days killing vegetation, the mosquito larvae everywhere because they have not provided for adequate drainage. Mr. Welch stated that he had heard from Mr. Goodwin that there was some prohibition against them handling the drainage problem. Mr. Welch stated that he had read all the minutes from previous meetings and could not find where this was so. Mr. Welch stated that if there is such a prohibition, he would ask Council to release them from it and let the developer go out and take care of the drainage problems. Mr. Welch stated that the neighbors were promised that the dust from the project would be watered down and would not become a problem to them, and they did it once or twice. Mr. Welch stated that for a period of 40-50 days neighbors were unable to use their swimming pools, their cars were covered in dust, and outside plants died from the debris, soot and dust coming off this construction project. Mr. Welch stated that, in his opinion, this developer misrepresented themselves to Council.

Mr. Welch stated that the people he represents want a Toys "R" Us in Lufkin, but feel that it could be constructed at another site. Mr. Welch stated that he is asking Council to not approve this site plan and hold the developer responsible for the previous zone change plans.

Darwin Foster, 400 Card Drive, stated that he came before Council 2 1/2 years ago and fought hard against the rezoning of this property, but lost that battle and assumed that what had been promised to Council by the developer would be fulfilled. Mr. Foster stated that things have been worse than the residents anticipated. Mr. Foster stated that residents were covered with dust and ashes and could not use their swimming pools for 3 to 4 weeks. Mr. Foster stated that during the P&Z meeting he invited all the members to come and sit in his living room to see how bright the lights are; Mr. Foster stated that he would extend that same invitation to the Councilmembers. Mr. Foster stated that after a year and half of discussions and arguments, Target starting turning the lights off behind his house at 10:30 p.m. at night, which helps a lot, but they still have to put up with them until 10:30 p.m. Mr. Foster stated that the buffer strip keeps being referred to as "landscape buffer" and landscape requires some maintenance and there has been no maintenance on the buffer. Mr. Foster stated that the understory vegetation is 10-12 feet tall, the lights are 25-30 feet tall, and there is a 2" gap in the shield that makes the glare from the lights worse. Mr. Foster stated that once of the requirements that Council imposed on the property owners at the time was to plant evergreen plants in the buffer strip every 6 linear feet, and according to the Director of Planning, on paper that was done. Mr. Foster stated that he had done an inventory of the plants behind his home and 60% of them were dead. They had died last summer. Mr. Foster stated that there are two areas behind his home that total approximately 1600 square feet, which were never planted, which equates to 40 plants that should have been planted there, and show on paper that they were planted. Mr. Foster stated that with regard to what the photographs show, the buffer is not as dense as it shows from the air. Mr. Foster stated that the buffer does not do a very good job of hiding the store or the lights. Mr. Foster stated that there was a lot of discussion in the Planning & Zoning Commission meeting that the neighbors should be proud that they have a buffer strip behind their homes because the people behind Walmart were not as fortunate, and the people around the new Lowe's are not as fortunate. Mr. Foster stated that he would say to those people "Shame on you for not seeing that those things were done". Mr. Foster stated that someone told him the other day that the City does a lot of zoning and very little planning, and he would agree. Mr. Foster stated that he was present tonight in representation of a lot of the people who live on Card Drive. Mr. Foster stated that if Council sees fit to permit the zone change, he does have a couple of requests. Mr. Foster stated that since the original request was approved, one of the local nurserymen has found a variety of bamboo that grows 25 or 30 feet tall and survives the type of winters we have here. Mr. Foster stated that, in his opinion, this type planting would do a better job in giving the neighbors privacy. Mr. Foster stated that there was also some discussion in P&Z about the neighbors pushing for native vegetation in the buffer strip and he does not remember that discussion. Mr. Foster

stated that he and the people on Card Drive are opposed to any further changes on the property, and the only site plan they have seen is a "fifth generation" copy of the announcement of the request which was sent to them. Mr. Foster stated that there has not been any discussion of the 10,000 feet of lease space. Mr. Foster stated that he would also like to request that the pole lights along the north fence be removed or lowered to a level where the vegetation shields the adjoining property from those lights. Mr. Foster stated that he does not see any purpose they serve but had been told that they were for employees parking. (Mr. Foster stated that very few people park on the north side of the building.) Mr. Foster stated that the shields that have been installed magnify the glare. Mr. Foster stated that a high percentage of the plants in the buffer are deciduous plants, which means they lose their leaves in the winter and it may look very thick during the spring, but during the winter months it is very sparse. Mr. Foster stated that he has lived in his home since 1979 and there is a low area in that buffer that immediately following a rain water would stand for a day or so, since the Target store was constructed, there was no work done in the buffer (other than the renegade dozer that got away). Mr. Foster stated that they had not had any drainage problems prior to the Target store being constructed, but during the construction there was a very low berm adjoining the fence line that dams up the water that naturally flowed off of their property into that area. Mr. Foster stated that as Mr. Welch said they have videos showing that in a heavy downpour water is standing on their side and none is running off of the Target parking lot. Mr. Foster stated that Council could draw their own conclusions about drainage.

Mr. Fleming stated that he would like to address some of the items brought up by Mr. Welch and Mr. Foster. With respect to the night deliveries, Target has sent specific instructions to the company providing it with deliveries not to make deliveries in the evening hours. Mr. Fleming stated that it is his understanding that the trucks are to arrive at 5:00 a.m. in the morning, give or take 30 minutes. Mr. Fleming stated that there have been problems in the past with trucks on the lot, but some of the problems alluded to were truckers driving through Lufkin, seeing the parking lot and pulling up in it and spending the night, or trucks arriving outside of the regular hours who may have decided to wait on the front side of the dock until the delivery dock opened. Mr. Fleming stated that, first of all keep in mind that it is not Target before Council tonight, that is separate. Mr. Fleming stated that there is ongoing litigation between the Fosters and Target and he had not come tonight to try the lawsuit, but the fact that the lawsuit exists indicates that there is a significant difference of opinion as to what the true conditions are. Mr. Fleming stated that he would try to respond, not within the contents of what may have been brought up in the lawsuit, but what he wanted to address was the number of parking spaces, there are not 100 but only 21 additional spaces (these are 21 parking spaces approved over and above the original site plan). Mr. Fleming stated that these 21 parking spaces have not been built yet, with respect with what was formerly going to be the 7000 foot building and the 15000 foot building. Mr. Fleming stated that there were 122 additional parking spaces provided in the original site plan, this one increases it to 143, a net addition of 21. Mr. Fleming stated that he would like Council to know that the developer offered to clean Mr. Foster's swimming pool every day for as long as the dust continued, the dust being a normal incident of any construction activity.

Mr. Fleming stated that it is obvious from what he has said, and from what Mr. Welch and Mr. Foster have said, that there are severe differences of opinion about what is going on at the site. Mr. Fleming stated that he would suggest that one of the places Council can turn to for guidance is from the Planning Department who has investigated this particular application and has investigated the compliance of the developer and Target with the existing Ordinance. Mr. Fleming stated that, in his opinion, they will tell Council that Target and the developer are in full compliance. Mr. Fleming stated that with respect to traffic, again the traffic studies of which he is aware show that the traffic generated from Target is exactly what was told this Council it would be, and that any additional traffic is being generated from other sources other than the shopping center development. Mr. Fleming stated

that Mr. Maclin or Mr. Abraham might wish to respond to this. Mr. Fleming stated that there is native vegetation in the buffer zone, and if that is not what the neighbors want, that is certainly something that could be addressed. Mr. Fleming stated that what he believes that the Council did when this zone change was passed was to give the developer objective standards by which the performance can be measured. Mr. Fleming stated that if their performance is measured according to those objectives standards he is sure Council will find that the developer will be found to have complied. Mr. Fleming stated that he would also remind this Council that the concessions asked of this developer with respect to this development are in excess of those which have been imposed on others similarly situated. Mr. Fleming stated that Mr. Foster has mentioned the Walmart site; the people living in the neighborhood behind Walmart do not have the same protections as the people living behind this development on Card Drive. Mr. Fleming stated that they labored long and hard over objective standards, those standards are still good standards, and they are complying with those standards and would urge Council to grant the request.

Philip Goodwin, of Goodwin-Lasiter, stated that there were some pre-existing drainage conditions within that landscape buffer. Mr. Goodwin stated that the reason they are referring to this as a landscape buffer, even though Mr. Foster is correct in that there is no maintenance being done because it was a request of the developer that no maintenance would take place in that area. Mr. Goodwin stated that it is referred to as a landscape buffer because that is the terminology that was put on the original site plan as approved. Mr. Goodwin stated that it can also be called a vegetative buffer, but the fact is that no work was done within that buffer. Mr. Goodwin stated that the parking lot was built below the grade of the fence (and there are photos showing that). Mr. Goodwin stated that as far as drainage, if Mr. Foster has some problems on his property this can be addressed, but he would assure Council that there is no water being backed from the Target site onto any property that is outside of the property line.

In response to question by Mayor Bronaugh, Mr. Goodwin stated that the discussion concerned what type of landscaping material the developer would have in the buffer zone and what degree of maintenance there would be, where the fence would be located - Mr. Goodwin stated that he and Mr. Maclin and Mr. Abraham met upstairs with the property owners and all these issues were hammered out at that time in a group and one of the items that was agreed to was any new landscaping that was to be planted was to be of an evergreen nature. Mr. Goodwin stated that consequently there were a lot of yaupons. Mr. Abraham has a list of the plants that were planted. In response to question by Mayor Bronaugh, Mr. Goodwin stated that the option of maintenance was put before the property owners that were in attendance at that meeting and they determined that they would rather not have any maintenance done there, but rather it grow up in a natural vegetative state.

Mr. Fleming stated that it may be a little unclear when maintenance is being discussed, but one of the conditions did call for the landscape buffer to be maintained, whether it meant that it would be maintained in its native vegetative state or something different is perhaps is less than clear. Mr. Fleming stated that it is certainly his understanding that the neighbors preferred that it be maintained in its native vegetative state and what he is hearing now is maybe something different than that. Mr. Fleming stated that he would invite members of the Council to recall their own conversations and discussions. Mr. Fleming stated that the Zoning Ordinance that is in place talks about maintenance, about maintaining the landscape buffer, and it may be a little less clear what that means. Mr. Fleming stated that they have taken it to mean that a landscape buffer will be maintained, i.e. there will be one and it will be landscaped. Mr. Fleming stated that it is further their understanding that the neighbors preferred, at least where there was native vegetation, that the vegetation will be maintained. Mr. Fleming stated that the developer believes that he is in compliance, and stands ready to do whatever needs to be done if there is a difference of opinion on this.

Mr. Welch stated that the fact of it is that the minutes reflect that the landscape buffer will be maintained and that has a connotation of some action on somebody's part, rather than saying that it is maintaining itself. Mr. Welch stated that, in his opinion, what was contemplated was that you went to the trouble to say what size plants, how close together they would be planted, and that would carry with it a natural connotation that if the plants died they would be replaced. Mr. Welch stated that Mr. Foster had an excellent idea that would solve a lot of the problems out there if Council sees fit to grant this site plan change, and it is to impose upon the developer the obligation of getting together with the local nurseryman who says he has the bamboo vegetation, which will survive in this area. Mr. Welch stated that the second condition is for the developer to go out and determine what is causing the water to stand on Darwin Foster's property and others for weeks at a time after a big rain and solve that problem. Mr. Welch stated another condition would be no 18 wheelers behind the store. Mr. Welch stated that if these three conditions are met it would go a long way in easing the tension.

Mayor Bronaugh stated that he was concerned about a statement that was made earlier about there not being a notice in the paper about this meeting. City Manager Maclin assured the Mayor that the meeting had been advertised in compliance with the legal requirements. Councilmember Boyd stated that the meeting was discussed in Sunday's paper.

Mr. Fleming stated that he did not believe the City would be well advised to impose any specific kind of plant requirement on this whole buffer zone, because there may be some folks who do not like bamboo, and once it gets hold of a backyard it may be very difficult to stop. Mr. Fleming stated that he would simply state that the Ordinance that is in place is adequate and that there is flexibility within that for the developer to work with any individual homeowner for meeting his particular desires. Mr. Fleming stated that once a lawsuit starts, talk often cuts off except through lawyers, and he would suggest rather than impose a requirement of a particular kind of bamboo, that they stick with what they have, because it was well thought out and is adequate for the purposes and there are adequate mechanisms within the zoning framework to see that the developer complies.

Mr. Foster stated that in reference to the vegetation, the neighbors did meet before the final meeting and discussed privet, wax myrtle and yaupon, and other evergreen plants. Mr. Foster stated that the problem is that those plants do not grow tall enough to shield a 25 foot light. Mr. Foster stated that the neighbors did not have any idea at that time that they would be looking at 25 foot fire engine red lighting in their backyard. Mr. Foster stated that the native vegetation would probably work for normal lighting. Mr. Foster stated that his suggestion would be that the developer be required to move the lights, or shorten the lights, but the bamboo is just another alternative. Mr. Foster stated that he did not think that the 1.5 candle was well thought out. Mr. Foster stated that Gary Alexander was not present at tonight's meeting, but he is an electrician and he used the analogy at P&Z that if you turn all the lights off in this room and he shined a flashlight in your eyes it would blind you. Mr. Foster stated that he did not want to belabor this point but Mr. Fleming made an issue out of the fact that he was offered to have their pool cleaned everyday during construction, and in order for that to have done any good, the pool would have had to be cleaned every 30 minutes, because of the way the ashes and dust were flying. Mr. Foster stated that what the neighbors saw may have been normal construction, but the problem is it was normal construction in an abnormal situation where there was residential property adjoining that construction area and at that time of the year the wind is out of the south so you know where the dirt, dust and debris is going to go. Mr. Foster stated that he complained two or three times to the City, and the City Planner came out and said that I did have a problem and that was the last he heard. Mr. Foster stated that he was under the impression that the City had an Ordinance against burning and if the neighbors complained the City required them to stop burning and in this case it did not happen. Mr. Foster stated that, in his opinion, there was some preferential treatment in this case, and maybe in this kind of construction there needs to be

some (preferential treatment). Mr. Foster stated that the neighbors agreed that before anything was planted back there the adjoining landowners would be consulted and informed about what the planting schedule was going to be and the plant species, etc. Mr. Foster stated that he never talked to anyone and that Mr. Abraham called him at his office one day and he returned the call and he never called back. Mr. Foster stated that Mr. Abraham never called his home to discuss this, and that he did not like to talk about personal business at work.

In response to question by Councilmember Simond, Mr. Fleming stated that he would point out that the lights that Mr. Foster is talking about are not the lights that affect the Toys "R" Us store but the lights that are behind his house. Mr. Fleming stated that Mr. Foster is not talking about the lights that are down by the Toys "R" Us side and having said that he would now allow Mr. Cudlipp and Mr. Williams to respond as to why the lights ought to stay the way they are.

Mayor Bronaugh addressed Councilmember Simond and stated that if these lights are not going to be affected by what Council is considering today, it would appear that Council is going back over things that the City ought to do but might not be a part of this (specific) request. Mr. Fleming stated that that was correct. Mr. Fleming pointed to a site plan and showed the relationship between the lights Mr. Foster was talking about and the lights for the proposed Toys "R" Us store.

In response to question by Councilmember Simond, Mr. Fleming stated that there is no ownership relation between Toys "R" Us and Target. (Mr. Fleming moved away from the microphone and the next statement was inaudible on the tape.) Mr. Fleming stated that there will be a joint maintenance agreement between Mr. Williams company, and Target and Toys "R" Us, which provides for common maintenance of the parking lot. Mr. Fleming stated that, if his understanding of the property layout is correct, the only thing that WCORP actually owns is the bare dirt, and they have easement rights over the parking lot together with Target.

Councilmember Simond asked if the lights are causing such a hassle why can't Target lower the lights and have a shorter pole than a 25' pole. Mr. Williams stated that the area behind Target is a parking area and the chief concern is security. Mr. Williams stated that because of the times we live in, you can't afford to have any area of your parking lot unlit. Mr. Williams stated that if the existing lights are lowered, then more lights would have to be added to cover the same area. Mr. Williams stated that the lights were actually lowered during the previous zoning action, and these are lower than normal. Mr. Williams stated that when the lights were first installed shields were put on the back of the lights, and since the neighbors have voiced concerns that the shields weren't working, they have actually gone in and changed all the fixtures out to one-way throw reflectors where they only throw light in one direction as opposed to four directions. Mr. Williams stated that they had TU Electric out on numerous occasions to test the lighting and they are not even picking up foot candles in Mr. Foster's back yard. Mr. Williams stated that the last report shows that 20 feet from their light, which is still on their property, they are not registering foot candles any more. Mr. Williams stated that it is 60 feet to Mr. Foster's property and another 40 or 50 feet to the back of his house. Mr. Williams stated that there is a 68-80 foot buffer before their parking lot lighting even starts.

Councilmember Gorden stated that he would like some response from management as to the responsibility of the City in this. City Manager Maclin stated that the City will respond to any complaint or request by any citizen or neighbor just as we do on a weedy lot or a junked vehicle or any Code Enforcement issue. City Manager Maclin stated that this is an Ordinance, it was approved as an Ordinance and can be enforced just like an Ordinance (and the City Attorney can provide further insight on that). City Manager Maclin stated that there are two or three things that he would like to recollect from his memory and his opinion that took place upstairs in Room 202 with residents from the Card Street area, Mr. Foster, and Mr. Alexander. City Manager Maclin stated that the City did discuss the desire

of the residents to try and leave the buffer to the greatest extent possible in its existing natural state. City Manager Maclin stated that staff did discuss at that meeting that there was a greater likelihood for native vegetation which grows in East Texas and is able to survive a drought. City Manager Maclin stated that the Bradford pears that were planted would need more water, particularly the first two years if they are going to make it through a drought. City Manager Maclin stated that the reason Bradford pears were selected is because they grow quick and have a big canopy, making a cone shape tree, and shedding their leaves in the winter time. City Manager Maclin stated that some of the Bradford pear trees are still alive. City Manager Maclin stated that he and Mr. Abraham made a trip last Thursday morning from one end of the buffer to the other and there is a tremendous amount of underbrush. In fact, on Mr. Knutson's property there are vines, briars, water oaks, sassafras, dogwood and a tremendous amount of undergrowth in the buffer. City Manager Maclin stated that there are some large pine trees and probably if Mr. Foster had 300 of the 120' long leaf pine trees that would prevent the glare. City Manager Maclin stated that during the meeting upstairs a way to measure the effectiveness of the lights and the light shields was discussed, and the way they came to a conclusion of a consensus of opinion, including Mr. Alexander. City Manager Maclin stated that the definition of "end results" was to measure by candle foot, how much illumination is there. City Manager Maclin stated that one of the seven stipulations that the developer had was to limit the spillage regardless of what the fixture was and how many shields they had to no more than 1.5 candle feet 20' behind the fence line. City Manager Maclin stated that Tim Allen of TU Electric conducted an investigation and found that they dropped below the 1.5 limit at 10' behind the fence. City Manager Maclin stated that Mr. Allen was asked since the P&Z meeting to test it again to see if there had been any change in the fixtures, to see if something had happened since he checked them last February a year ago prior to the opening of Target to make sure they were in compliance with the Ordinance before the issuance of the Certificates of Occupancy. City Manager Maclin stated that when you look at what his latest results are which the City just received today, it drops below the 1.5 candle feet 5' north of the fence to 1.16 foot candles, 1.5 being the maximum standard agreed upon in the meeting including Mr. Alexander. City Manager Maclin stated that at 10' it drops to .73, at 15' it drops to .19, 19/100's of a candle foot, and at 20' where it was supposed to meet the 1.5 his meter registered .01, 1/100's of a candle foot. City Manager Maclin stated that what staff attempted to do was to come up with a measurement that would define whether or not an effort was being made to minimize the spillage on the Target property into the buffer and that is what was agreed upon and what is being met as retested again by Tim Allen in the last couple of days. City Manager Maclin stated that everything that was trying to be done from a scientific measurement standpoint on the lighting issue was done and is still in compliance. City Manager Maclin stated that the shields are in place, but with or without shields, the measurement was the tool that the City was going to use to determine if it was being successful or not in terms of accomplishing its desired impact. City Manager Maclin stated that having walked that area last week, you can visibly see that the parking lot of Target is lower than the property where the buffer is. City Manager Maclin stated that he would assume that the intent of the buffer was to keep it in its natural state to the greatest extent possible, but if there is water standing there, it is coming from the property north of there and not from Target.

City Manager Maclin stated that the bottom line is that Target is adhering to and has met to the best of staff's knowledge and understanding all seven stipulations placed by Council in 1994. City Manager Maclin stated that regarding the talk about planting one plant for every six linear feet the intent was to measure the distance from one end of the buffer to the other divided by six and that is how many plants that would be needed. City Manager Maclin stated that the instruction to the landscaper was to put the plants where the gaps are to the greatest extent. City Manager Maclin stated that Mr. Abraham has a list of the plants that were used and the number that met the requirements of the Ordinance, but the place where a lot of them were put was on the Youngblood property, which is the second lot going from west to east away from Tulane, and the reason so many of them were put there is

because that was the only spot in the buffer where it had been cleared all the way to the property line. City Manager Maclin stated that there is a double row of plants and shrubs that were put in that area because it was cleared all the way to the property line. City Manager Maclin stated that this is where TU had cleared for an easement, and the landscaper was instructed to put more plants in this area.

In response to question by Councilmember Weems, City Manager Maclin stated that the TU easement goes actually into the edge of the buffer on the Youngblood property on the east end of the Youngblood property.

Mr. Foster stated that he did not mean to infer that the water was running uphill, what he said was, is that the property is not draining from his property to Loop 287 as it originally did; the berm prevents that drainage. Mr. Foster stated that as far as the density of the vegetation out there he doesn't care if there are a 1,000 sawbriars out there it isn't serving the purpose. Mr. Foster stated that when the Council agreed to the 1.5 candles he knew that their intention was to prevent light from causing problems to the adjoining property and that has not happened. Mr. Foster stated that shields were required but they were not properly installed. Mr. Foster stated that the developers had not been required to fulfill their obligations. Mr. Foster addressed his comment to Mr. Maclin that it was the first time he had heard that a plant was not required every six feet. Mr. Foster stated that if someone on the other end got all the plants then they must have run out before they got to his property. Mr. Foster stated that there were 20 plants planted behind his house and 12 are dead - 60% of the plants have died because they were not maintained. Mr. Foster stated that they are dead native vegetation right now; they are skeletons. City Manager Maclin stated that there are 44 grown trees behind Mr. Foster's property that are not behind the Youngblood property. Mr. Foster stated that 70' pine trees do not offer much protection.

Mr. Fleming stated that with respect to Mr. Gorden's question, the rogue bulldozer which has been referred to actually occurred almost behind Mr. Mathis' house and not along the area Mr. Maclin has been addressing. Mr. Fleming stated that that area has not been touched as far as clearing is concerned by this developer; it was either cleared by Mr. Youngblood or TU Electric, but someone other than the developer.

Motion was made by Councilmember Don Boyd and seconded by Councilmember Percy Simond that Ordinance for a Special Use Permit for a shopping center as granted by Ordinance No. 3016 on approximately 10.412 acres located at the northeast corner of Tulane and Loop 287 be approved on First Reading as presented, with the recommendation that the residents on Card Drive get together with Target and work out their problems because it does not pertain to this particular situation. A unanimous affirmative vote was recorded.

Mayor Bronaugh stated that this is a concern that the Council has, and Mr. Welch addressed it, because it is not easy for Council to make a decision like this, but in cases such as this it is important to look at both sides of it in the development of the community, and he feels that they acted correctly in this case.

(Portions of the tape for this item were not audible.)

8. RESOLUTION - APPROVED - SECTION 504 GRIEVANCE PROCEDURES - TEXAS COMMUNITY DEVELOPMENT PROGRAM GRANTS

Mayor Bronaugh stated that the next item for consideration was a Resolution adopting Section 504 Grievance Procedures relating to TCDP Grants.

City Manager Maclin stated that this is another Resolution that is appropriate to the City's urgent needs grant that was received for the replacement of the well field lines, and the close follow up for any problems relating to the grant are addressed through this Resolution. City Manager Maclin stated that staff recommendation is

that Council approve this Resolution so that it can become a part of the TCDB Program.

In response to question by Councilmember Simond, City Manager Maclin stated that the reason for this Resolution is to be in compliance with State law for receipt of Texas Department of Community Affairs funding and to allow a definitive grievance procedure if there is a problem that develops where the City installs the 11 mile water lines in Redland, then the public will have a written approach of how to address a grievance to the City.

Motion was made by Councilmember Bob Bowman and seconded by Councilmember Don Boyd that Resolution adopting Section 504 Grievance Procedures relating to TCDP Grants be approved as presented. A unanimous affirmative vote was recorded.

9. BID - APPROVED - WATER LINE - EMERGENCY BACK UP - NEW WELL SERVICE LINE - J & D CONSTRUCTION

Mayor Bronaugh stated that the next item for consideration was bids for the construction of a new water line to serve as an emergency back-up line and a new well service line at a later date.

City Manager Maclin stated that staff came to Council about 5 or 6 weeks ago with the concern at that time relating to two of the City wells being out of service and discussed with Council one alternative to minimize inconvenience to our customers for water service in the future. City Manager Mclin stated that it was decided that staff approach Champion about the utilization of one of their wells (well #14) as a backup emergency well so that if the City got in a situation where that more than one of it's wells were out due to circumstances beyond our control we would have another well to utilize during that period until we were able to get it back on line. City Manager Maclin stated that staff also told Council at that time that they would do what was necessary to design this water line and service to the Champion well #14 to also serve as a water line for the construction and digging of a new well, which will be part of Council's consideration for the 1996-'97 fiscal year budget.

City Manager Maclin stated that Goodwin-Lasiter put this project in an extremely quick mode and developed plans and specifications in a very short time, conducting meetings with Champions in a very short time, and had meetings with TNRCC representatives out of Beaumont to be able to get to this point of advertising for bids and then bringing to Council today a bid tabulation sheet for installation of this 16" water line. City Manager Maclin stated that bids were opened yesterday and the tabulation of the bids were on the Council table for consideration. City Manager Maclin stated that staff is recommending to award the contract for the construction of this 16" water line to J & D Construction in the amount of \$222,096. City Manager Maclin stated that staff would also likewise request Council's authorization to utilize contingency funds for Water Utility Fund balance to pay for this project since it was not a budgeted project. City Manager Maclin stated that staff feels that this project can be installed within the next six weeks so that should the drought continue into September and October this would serve as a backup for utilization to minimize any inconvenience to the City's water customers.

In response to question by Councilmember Gorden, City Manager Maclin stated that staff would use the water contingency funds first and after that was completed (we only started out with \$100,000 the beginning of the year), and then we have \$3.7 million in the fund balance of the utility fund. City Manager Maclin stated that the balance after the utilization of what remains in the contingency fund would then go to the utility fund undesignated fund balance.

Motion was made by Councilmember Don Boyd and seconded by Councilmember Jack Gorden, Jr. that bid of J & D Construction in the amount of \$222,096 for the

construction of a new water line to serve as an emergency back-up line and a new well service line at a later date be approved as submitted, and that the funds for this project be taken from the Water Utility Contingency Fund and any remaining balance from the City's undesignated reserve. A unanimous affirmative vote was recorded.

10. **BID - APPROVED - CLARIFIER WEIR REPLACEMENT/BUTT PLATES - WASTE WATER TREATMENT PLANT - CHEROKEE INDUSTRIAL FABRICATORS, INC.**

Mayor Bronaugh stated that the next item for consideration was bids for a replacement clarifier weir and butt plates at the Waste Water Treatment Plant.

City Manager Maclin stated that included in the Council packet is a letter from the Waste Water Treatment Plant superintendent, a bid tabulation sheet of the four bidders, and staff recommendation is to award the contract for construction of these weir butt plates to Cherokee Industrial Fabricators, Inc. in the amount of \$24,416.

Motion was made by Councilmember Bob Bowman and seconded by Councilmember Don Boyd that bid of Cherokee Industrial Fabricators, Inc. in the amount of \$24,416 for a replacement clarifier weir and butt plates for the Waste Water Treatment Plant be approved as submitted. A unanimous affirmative vote was recorded.

11. **EXECUTIVE SESSION**

Mayor Bronaugh recessed Regular Session at 6:36 p.m. to enter into Executive Session. Regular Session was reconvened at 7:00 p.m. and Mayor Bronaugh stated that attorney-client matters and appointments to the Planning & Zoning Commission had been discussed.

12. **APPOINTMENT - APPROVED - PLANNING & ZONING COMMISSION - COOPER CASTLEBERRY**

Motion was made by Councilmember Jack Gorden, Jr. and seconded by Councilmember Bob Bowman that Cooper Castleberry be appointed to the Planning & Zoning Commission for a three year term. A unanimous affirmative vote was recorded.

In response to question by Mayor Bronaugh, City Manager Maclin stated that James Slack's term had expired and he did not wish to be re-appointed, so that the appointment of Mr. Castleberry would be for a full term.

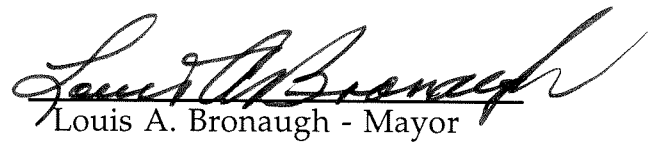
13. **COMMENTS**

City Manager Maclin stated that for the minutes and the record, the Investment Committee did hold their quarterly meeting today and on the table before Council is their report.

Mayor Bronaugh stated that the DETCOG meeting would be held this Thursday in Hemphill.

Councilmember Bowman stated that on July 26th there will be Deep East Texas Development Association meeting at noon at Crown Colony, and the program will be on health care in East Texas.

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


Louis A. Bronaugh - Mayor

ATTEST:


Atha Stokes - City Secretary