

**MINUTES OF THE
REGULAR CITY COUNCIL MEETING
MONDAY, MAY 23, 2005 — 6:00 P.M.
CITY HALL, 209 S. WASHINGTON, KAUFMAN, TEXAS**

CITY COUNCILMEMBERS

MAYOR	PAULA BACON
MAYOR PRO-TEM	PAULA HAGLER WAMPLER
COUNCILMEMBER	GIL ALTOM JR.
COUNCILMEMBER	LONNIE BOUNDS
COUNCILMEMBER	FLOYD CHOYCE
COUNCILMEMBER	STANLEY HOLMES
COUNCILMEMBER	JANICE MURRELL

INVOCATION: Chief of Police James M. Smith

PLEDGE OF ALLEGIANCE

CALL MEETING TO ORDER: Mayor Bacon called the Meeting to order at 6:09 p.m. Councilmembers present were Paula Bacon, Gil Altom Jr., Lonnie Bounds, Floyd Choyce, Stanley Holmes, and Janice Murrell. The Mayor declared a quorum present. Mayor Pro-Tem Wampler was absent. Also present were Interim City Manager Curtis Snow, ACM/City Secretary Jo Ann Talbot, Director of Public Works Richard Underwood, Director of Development of Services Terry Capehart, Chief of Police James M. Smith and Director of Finance Cathy Cummins.

1. **CITIZENS COMMENTS (5 MINUTES)** Citizens may address the City Council on any subject but must first complete a Request to Speak Form. Comments are limited to five (5) minutes, but no more than five (5) minutes per individual, and are not transferable. Citizen's comments not to exceed a total of 15 minutes.

John Elzner, 107 East 7th Street, Kaufman asked the City Council to consider relocating the City Council meetings to a different location. He reported that the City's Council Chambers were not larger enough for some of the meetings. He suggested using the Kaufman County Library for City Council meetings.

2. Consider a request from Robert Cates regarding an amended Site Plan approval for a office/retail center, being all of a certain 0.301 acre tract of land, located at 1701 S. Washington Street, and being described as Lots 11 R 2, Block 3 of the Hobby Highway Addition, as described in a deed to Robert C. and Ollie Cates, recorded in Volume 2480, Page 432 and

Volume 2627, Page 329 of the Deed Records of Kaufman County, City of Kaufman, Kaufman County, Texas. (Case S-09-05) (P & Z approval 5-0)

Director of Development Services Terry Capehart informed the Council that the original Site Plan was approved by the City Council on February 22, 2005 for a single building, 36 feet wide and 98 feet long or approximately 3,528 square feet in size for general office uses. The building permit was issued on March 11, 2005 to begin construction. When the concrete slab was poured, it was located approximately 5ft-2 inches from the rear property line and approximately 7ft-3 inches from the side property line. The slab measured 41ft x 100ft or an increase of 572 square feet to 4,100 square feet total.

A stop work order was issued on March 24, 2005 and Mr. Cates subsequently applied for a variance to the rear yard setback and side yard setback as well as for one parking space because the increase in square footage required one additional parking space. Prior to the variance hearing, Mr. Cates purchased an additional 5 feet of property from the adjacent property owner along the rear of the original property. However, the variance request was denied for lack of a motion by the Zoning Board of Adjustment on April 26, 2005. Mr. Cates then shortened the length of the building in an attempt to meet the setback requirements. Mr. Cates was still not in compliance with the approved site plan and was again issued a stop work order on April 29, 2005 and was instructed to submit an amended site plan for review and approval.

The property is on the southeast corner of Washington Street and Tenth Street and is the first new project to be built under the requirements of the Washington Street Corridor. The adjacent property to the east and rear of the subject property is occupied by an older residential structure and will be screened by a six feet tall masonry wall. The adjacent property to the south is occupied by a poorly maintained apartment complex that also fronts Washington Street and is separated from the subject property by a substandard alley partially paved with a deteriorating base of gravel and will be screened by a six feet tall masonry wall as well.

The amended site plan differs from the original site plan as follows:

1. The original lot size was 100 ft. by 125 ft. or 12,500 square feet. The additional land purchased by Mr. Cates increased the lot size to 105 ft. by 125 ft. or 13,125 square feet. A minor plat was recorded as Lot 11R2, Block 3 of the Hobby Highway Addition on May 9, 2005 to remove the lot line to make the property a single lot of record.
2. The rear yard setback was approved at 11.0 feet and the current setback is 10.18 feet according to the foundation survey submitted to staff, or a reduction of 0.82 foot (9.84 inches).

3. The side yard setback was approved at 12.0 feet and the current setback is 11.73 feet after the building was shortened to approximately 95 feet or a reduction of 0.27 feet (3.24 inches).
4. The building size is now 3,895 square feet or an increase of 367 square feet over the approved site plan.
5. The required parking for the new building is 13 spaces (1 per 300 square feet) and the amended site plan provides 13 spaces. The driveway has been relocated approximately 20 feet further to the north.

The six feet tall masonry screen wall located along the east property line is located approximately 8 feet from the current building location, which is two feet further east than the original location. Staff recommends the masonry screen wall located along the east property line be moved back to the original site plan (10.18') location. The required setbacks for this project is 11 feet for the rear yard and 12 feet for the side yard per the site plan approved February 22, 2005, however, Section 32A.1.B.2.c states that special exceptions to the setbacks are allowed in the Washington Street Corridor through the site planning process. The applicant is requesting a rear yard setback of 10.18 feet with a six feet masonry screen wall and an 11.73 feet side yard adjacent to the alley, also with a six feet masonry screen wall.

A great deal of discussion was held regarding the site plan and the error of using the original site plan instead of the amended approved site plan for the construction of the building foundation. In addition, Staff was instructed to consider amending the codes to include procedures to verify the setback requirements before foundations are poured or have the owner obtain a site form survey before a foundation is poured. The Mayor asked Staff to add this subject matter to the tickler file.

Councilmember Bounds moved and seconded by Councilmember Choyce to approve of the request from Robert Cates regarding an amended Site Plan for a office/retail center, being all of a certain 0.301 acre tract of land, located at 1701 S. Washington Street, and being described as Lots 11 R 2, Block 3 of the Hobby Highway Addition, as described in a deed to Robert C. and Ollie Cates, recorded in Volume 2480, Page 432 and Volume 2627, Page 329 of the Deed Records of Kaufman County, City of Kaufman, Kaufman County, Texas as amended with requesting a rear yard setback of 10.18 feet with a six feet masonry screen wall and an 11.73 feet side yard adjacent to the alley, with a six feet masonry screen wall. Mayor Bacon called for a vote with Councilmember Bounds, Councilmember Choyce, Councilmember Altom,

Councilmember Holmes, and Mayor Bacon voting AYE. Councilmember Murrell voted NAY. The motion carried for approval. Mayor Pro-Tem Wampler was absent.

3. Consider approval and authorize the City Manager to execute a Mutual Release Agreement and authorize final payment to Redland Insurance Company; and consider acceptance of the Climbing Tree Sanitary Sewer, Force Main and Lift Station Improvements Project.

Director of Public Works Richard Underwood informed the Council that the Climbing Tree Sanitary Sewer Project was awarded to Ace Contracting on February 11, 2002 and was anticipated to take six (6) months to complete. Since that time, the original contractor sold the company, the other contractor would not and/or could not finish the work. The City then filed with the contractors Surety, Redland Insurance Company. Redland took over the project at that time and attempted to get the project completed by the contractor. After a long process, Staff received a letter from Redland's Attorney stating that they were unable to get original contractor to complete the work and requested the City to reduce the remaining funds held against the project to account for the remaining work. Staff had PBS&J Engineers review the remaining items and submit a construction cost to complete all items. It was then submitted to Redland who accepted the amount of reduction of the contract.

The sanitary sewer system has been in full operation for well over a year with no breakdowns or problems. There are three (3) minor cosmetic items remaining for City Staff to finish. City Staff is recommending approval for the City Manager to execute a mutual release agreement and authorize final payment of \$11,095.50. The original contract was for \$234,345 and to date the contractor has been paid a total of \$219,005.99. The City withheld a total of \$2,743.51 (with Redland's approval) for the installation of 2 taps by the City and damages to the site due to project delays. This left a remaining amount of \$12,595.50 on the project. This leaves a retainage payment of \$11,095.50 to Redland Insurance closing this contract for the total amount of \$230,101.49.

Director of Public Works Richard Underwood reported that only items needed to be completed on the project is site cleanup, drainage cleanup and to update the as built construction plans.

Mayor Bacon asked for the final cost regarding Climbing Tree Project, which included attorney fees. Mayor Bacon asked about liquidated damages in the contract. Interim City Manager Curtis Snow reported that the City was working through the Bonding Company and that City may not be able to go back and collect on the liquidated damages in the contract.

After further discussion, Councilmember Murrell moved and seconded by Councilmember Altom to table the Mutual Release Agreement for Redland Insurance Company to consider reducing the total cost of the project to include attorney fee expenses. The repairs made by the City have already been deducted from the project. The Mayor called for a vote with all voting AYE, the motion carried. Mayor Pro-Tem Wampler was absent and Councilmember Holmes was absent from the room when the vote was taken.

CONSENT AGENDA ITEM #4 THROUGH #9

“All matters listed under the Consent Agenda, are considered to be routine by the City Council and will be enacted by one motion. There will not be separate discussion of these items. If discussion is desired, that item will be removed from the consent agenda and will be considered separately. For a citizen to request removal of an item, a speaker card must be filled out and submitted to the City Secretary.”

4. Consider the approval of the Minutes of the April 18, 2005 Regular City Council Meeting.
5. Consider second reading and adoption of Ordinance O-06-05 to continue Ordinance O-19-99 curfew hours for minors in the City of Kaufman for a further three (3) years.
6. Consider second reading and adoption of Ordinance O-07-05 amending the Code of Ordinances Chapter 50; Article III; Section 50-64 by adding a new paragraph (b) – Annual Grass and Weed Maintenance Notice; Providing for a Penalty Clause, Providing for a Severability Clause, Repealing All Conflicting Ordinances, and Providing for an Effective Date.
7. Consider second reading and adoption of Ordinance O-08-05 amending the Official Kaufman Thoroughfare Plan, of the Kaufman Comprehensive Plan, Ordinance O-13-99, by amending Ordinance O-14-02 to reduce the said Roadway right-of-way width from a 100' type “B” Minor Arterial to an 80' type “C” Major Collector.
8. Consider approval for the City Manager to execute a Lease Agreement between Country Bible Church and the City of Kaufman for a one (1) year term.
9. Consider approval for an additional five (5) year renewal from Cingular Wireless to lease space at the Water Tower on Highway 175 as authorized by agreement.

Mayor Bacon requested Consent Agenda Item #4 be removed and Councilmember Murrell requested Consent Agenda Item #9 be removed.

Councilmember Murrell moved and seconded by Councilmember Holmes to approve Consent Agenda Items #5, #6, #7, and #8. The Mayor called for a vote with all voting AYE, the motion carried. Mayor Pro-Tem Wampler was absent.

4. Mayor Bacon asked for the minutes of April 18, 2005 be amended on page 10, agenda item 10 by amending the words on the fourth sentence "and no one being present here tonight." Councilmember Altom moved and seconded by Councilmember Holmes to approve the minutes of April 18, 2005 Regular City Council meeting as amended. Mayor Bacon called for a vote with all voting AYE, the motion carried. Mayor Pro-Tem Wampler was absent.

9. Councilmember Murrell inquired what account does the Cingular funds go into and can we restrict the funds for the maintenance of the water towers. Interim City Manager Curtis Snow reported that the funds go into the Water/Wastewater Fund and the Council can restrict funds to anything they want to. Councilmember Murrell commented that the Water Towers look so bad and requested a written report when the last time the water towers were videoed and looked at the inside of the towers. In addition, Mayor Bacon asked Staff to investigate a market rate survey to make sure the City is being paid an accurate leasing rate.

Councilmember Murrell moved and seconded by Councilmember Holmes to table the renewal lease agreement with Cingular. Mayor Bacon called for a vote with Councilmember Murrell, Councilmember Altom, Mayor Bacon, Councilmember Bounds, and Councilmember Holmes voting AYE. Councilmember Choyce voted NAY. Mayor Pro-Tem Wampler was absent. The motion carried to table this item.

END OF CONSENT AGENDA

DISCUSSION/ACTION ITEMS

10. Consider first reading and approval of Ordinance O-10-05 adopting and assessing a Collection Service Fee on Court Fines and Costs Delinquent in excess of 60 days, to the Municipal Court in Kaufman, Texas.

Interim City Manager Curtis Snow informed the Council that Ordinance O-10-05 would allow the City to collect a thirty (30%) percent collection fee (allowed by state law) for outstanding city warrants. After discussion, Councilmember Murrell moved and seconded by Councilmember Bounds to approve the first reading of Ordinance O-10-05 adopting and assessing a Collection Service Fee on Court Fines and Costs Delinquent in excess of 60 days, to the Municipal Court in Kaufman, Texas. Mayor Bacon

called for a vote with all voting AYE, the motion carried. Mayor Pro-Tem Wampler was absent.

11. Consider authorizing the City Manager to execute an Agreement with American Municipal Services for Collection Services.

Mr. Mark Nieto, Vice President of Marketing, representing American Municipal Services, Carrollton, Texas addressed the Council explaining the collection services for outstanding warrants and utility bills. The Company is eleven years old and currently has approximately 150 cities and counties as clients. The company collects on warrants and citations, utility bills, returned checks, parking citations and miscellaneous collections such as weed cutting. The collection on warrants, citations, and parking tickets is at no cost to the City. (State law allows a 30% collection fee to be added.) All other collections will cost the City 17% of the outstanding amount. AMS will come on location to copy files or gather information for initial conversion of court files. AMS provides postage, envelopes, return envelopes and payment coupons at no cost to the City. The agreement has a 30 day termination notice. The 30% fee collected is pro-rated if a payment plan is set up for a client and payment is made directly to the City. AMS will assist the City in cleaning up old records. No charge to the City for cases closed because the defendant is deceased, incarcerated for a long term, or if the City decides not to pursue for any reason.

Mayor Bacon suggested that the defendant be notified in the 10 day notice letter that the additional 30% would be charged if the citation went to warrant. The Council concurred.

After further discussion, Councilmember Altom moved and seconded by Councilmember Murrell to approve and authorize the City Manager to execute an Agreement with American Municipal Services for Collection Services. Mayor Bacon called for a vote with all voting AYE, the motion carried. Mayor Pro-Tem Wampler was absent.

12. Consider approval of an Emergency Appropriation for the repair/replacement of the Mechanical Drive of the North Side Clarifier at the Wastewater Treatment Plant.

Interim City Manager Curtis Snow informed the Council that a gear drive unit went out on the North Side Clarifiers at the Wastewater Treatment Plant. PBS& J Engineering determined that the unit had limited settling and no noticeable structural damage. Therefore, they determined that the unit could be repaired. Staff received two (2) proposals for the repairs. An estimated cost of getting the unit back into operation is \$43,173. Staff recommends that Council appropriate the \$49,259 from the Certificate of

Deposit marked water and sewer to make the repairs/replacement of the north side clarifier. The gear drive the City has priced allows for a 10 year warranty. Time is of the essence to repair /replace the unit because of any medium to large rain will make the City violate the Texas Commission of Environmental Quality (TCEQ) permit. An insurance claim was made on the mechanical drive and Texas Municipal League has paid the City for \$20,528, which is approximately one half of the cost. The remainder will be paid upon completion of the repair.

Councilmember Murrell moved and seconded by Councilmember Altom to approve an emergency appropriation for the repair/replacement of the mechanical drive of the north side clarifier at the Wastewater Treatment Plant. The Mayor called for a vote with all voting AYE, the motion carried.

Mayor Pro-Tem Wampler was absent.

13. Consider approval of Appropriations from the Capital Improvement Building Fund to replace the gutters and signage at City Hall.

Interim City Manager Curtis Snow reported that City Hall has made landscaping improvements and painting of City Hall. The gutters needed to be replaced before finishing the painting of City Hall. The cost estimate is approximately \$3,800.00. A new sign for the front of City Hall also needs to be replaced. The City is looking at 12 inch polished letters to the front of the building stating "CITY HALL" with 6 inch numbers "209".

The Mayor expressed her concern that the current gutters could be refurbished and not replaced. After discussion, Councilmember Murrell moved and seconded by Councilmember Bounds to appropriate Capital Improvement Building Funds to replace the gutters and signage at City Hall not to exceed \$6,500.00. The Mayor called for a vote with Councilmember Murrell, Councilmember Bounds, Councilmember Altom, Councilmember Choyce and Mayor Bacon voting AYE. Councilmember Holmes voted NAY. The motion carried. Mayor Pro-Tem Wampler was absent.

APPOINTMENTS

14. Consider Council Appointments to the Kaufman Investment Advisory Committee.

Interim City Manager Curtis Snow informed the Council that the Kaufman Advisory Committee meets quarterly, to review the City's investments, review investment policies and procedures, investment strategies, and

investment performance. The Investment Policy will be on the agenda in June for recertification and review for the City Council.

Councilmember Bounds moved and seconded by Councilmember Holmes to appoint Councilmember Altom to serve on the Kaufman Investment Committee. All approved. Mayor Pro-Tem Wampler was absent.

15. Consider the Appointment of One (1) Member to serve on the Kaufman Economic Development Board for an unexpired term through August 2006.

Mayor Bacon nominated Councilmember Murrell to serve on the Kaufman Economic Development Board.

Councilmember Choyce nominated Councilmember Bounds. Councilmember Bounds declined the nomination.

Mayor Bacon moved and seconded by Councilmember Bounds to appoint Councilmember Murrell to the Kaufman Economic Development Board for an expired term through August 2006. The Mayor called for vote with all voting AYE, the motion carried. Mayor Pro-Tem Wampler was absent.

16. Consider the Appointment of One (1) Member to serve on the Planning and Zoning Commission for an unexpired term through November 2005.

Mayor Bacon nominated Penny Kaufmann to serve on the Planning and Zoning Commission. She reported that Ms. Kaufmann recently served on the City Council and is very professional and has worked in real estate.

Councilmember Holmes nominated Jean Greenslade.

Councilmember Bounds nominated Keith Dillion to serve on the Planning and Zoning Commission. He reported that he is knowledgeable in building and is a local developer.

The Mayor commented that Mr. Dillion had a development close to the Phillips School and did not want to put in sidewalks.

The Mayor called for a vote for Keith Dillion to serve on the Planning and Zoning Commission.

Councilmember Bounds, Councilmember Altom and Councilmember Choyce voted AYE to appoint Keith Dillion.

Councilmember Murrell, Councilmember Holmes and Mayor Bacon voted NAY to appoint Keith Dillion.

The Mayor called for a vote to appoint Penny Kaufmann to serve on the Planning and Zoning Commission.

Mayor Bacon, Councilmember Murrell and Councilmember Holmes voted AYE to appoint Penny Kaufmann.

Councilmember Bounds, Councilmember Altom and Councilmember Choyce voted NAY to appoint Penny Kaufmann.

A tie vote for Penny Kaufmann and Keith Dillion. Councilmember Murrell moved and seconded by Councilmember Holmes to table the appointment until the next month. All approved. Mayor Pro-Tem Wampler was absent.

17. Consider submitting names for consideration to serve on the Kaufman Appraisal Review Board to the Kaufman County Appraisal Board of Directors.

There being no names submitted by the Council this item was tabled. Staff was asked to see if June was not too late to submit names and to inquire how much the position paid.

EXECUTIVE SESSION

The City Council went into Executive Session at 7:34 p.m.

THE CITY COUNCIL WILL HOLD A CLOSED EXECUTIVE SESSION PURSUANT TO CHAPTER 551, GOVERNMENT CODE V.T.C.A. (OPEN MEETINGS LAW), IN ACCORDANCE WITH THE AUTHORITY CONTAINED IN SECTION 551.074 PERSONNEL.

1. PERSONNEL - Under TEX. GOV'T. CODE Sec. 551.074
 - A. Discuss City Manager's position.

ANY FINAL ACTION, DECISION, OR VOTE ON A MATTER DELIBERATED IN EXECUTIVE SESSION MEETING OR ON INFORMATION RECEIVED IN A CONFERENCE WITH EMPLOYEES WILL ONLY BE TAKEN IN AN OPEN MEETING THAT IS HELD IN COMPLIANCE WITH TEX. GOV'T CODE CH. 551. THE CITY COUNCIL RESERVES THE RIGHT TO ADJOURN INTO EXECUTIVE SESSION AS AUTHORIZED BY TEX. GOV'T CODE SEC. 551.001, ET SEQ. (TEXAS OPEN MEETINGS ACT) ON ANY ITEM ON ITS OPEN MEETING AGENDA OR TO RECONVENE IN A CONTINUATION OF EXECUTIVE SESSION ON THE EXECUTIVE SESSION MEETING ITEMS NOTED ABOVE, IN ACCORDANCE WITH THE TEXAS OPEN MEETINGS ACT, INCLUDING, WITHOUT LIMITATION, SECTIONS 551.071-551.086 OF THE OPEN MEETINGS ACT.

The City Council adjourned the Executive Session at 7:57 p.m.

END OF EXECUTIVE SESSION

18. CONSIDER ANY OFFICIAL ACTION ON THE EXECUTIVE SESSION CLOSED MEETING ITEMS:

PERSONNEL – Under TEX. GOV'T CODE Sec. 551-074.

- A. Consider any official action regarding the City Manager's position.

Councilmember Murrell moved and seconded by Councilmember Altom to re-advertise for the City Manager's position. The Mayor called for a vote with all voting AYE, the motion carried. Mayor Pro-Tem Wampler was absent.

ANNOUNCEMENTS FROM CITY MANAGER.

Interim City Manager Snow informed the Council that he would be scheduling a City Council retreat in the next few weeks. The Council would focus on goals and objectives over the next 18 months.

Gave the Council a schedule for training for newly elected officials. Councilmember Bounds and Councilmember Altom expressed an interest to attend the North Central Texas Council of Government General Assembly, which includes training.

REQUEST/COMMENTS FROM MEMBERS OF CITY COUNCIL.

Councilmember Choyce thanked the City Staff and Mayor for recent recognition of the passing of his mother.

Councilmember Bounds commented that he was happy to serve the citizens of Kaufman.

Mayor Bacon commented that the Park Board is considering wind screening at the Sports Complex and asked Staff if they have considered local sign companies.

ADJOURNMENT.

Councilmember Murrell moved and seconded by Councilmember Holmes to adjourn the meeting at 8:06 p.m. All approved. Mayor Pro-Tem Wampler was absent.

PAULA BACON, MAYOR

ATTEST:

JO ANN TALBOT, CITY SECRETARY