

**MINUTES OF A REGULAR MEETING
OF THE
EULESS CITY COUNCIL
TUESDAY, MAY 26, 2009**

CALL TO ORDER

A regular meeting of the Euless City Council was called to order by Mayor Mary Lib Saleh at 4:08 p.m. on Tuesday, May 26, 2009, in the Precouncil Conference Room of City Hall, 201 North Ector Drive. Those present included: Mayor Mary Lib Saleh, Mayor Pro Tem Tim Stinneford, Council Members Leon Hogg, Linda Martin, Donna Mickan, Glenn Porterfield and Perry Bynum.

During the precouncil meeting:

- Mayor Saleh reported that the North Texas Commission Executive Committee voted to provide the municipal members a 12 percent one-year decrease in dues because of the economy. She stated that at their last Board meeting they discussed the North Texas Literacy Coalition program, the need for a Tier 1 University in North Texas, and the transportation issues being considered by the Legislature.
- Mayor Saleh also stated that Council Member Hogg, Council Member Martin, Fleet and Facility Administrator Kyle McAdams and she went to Austin recently to look at the art project being designed for Texas Star. She noted that artist Cindy Burleson did a tremendous amount of research, and is putting a lot of detail and texture into the sculpture.
- Council Member Martin stated the HEB Chamber Leadership Class was recognized at the monthly luncheon and Fire Chief Robert Isbell and Assistant Library Administrator Tammi Truill were graduates of this year's class. The class work project was the Euless Revitalization (ER) program.
- City Secretary Susan Crim reviewed the calendar of future city activities and events.
- Director of Planning and Development Mike Collins discussed proposed changes to the sign ordinance, specifically related to primary and secondary wall signs, vehicle bay signs and canopy signs.
- City Manager Gary McKamie and Director of Planning and Development Mike Collins discussed the apartment inspection program and the proposed fee structure for apartment inspections. He stated an ordinance establishing the amended fee schedule would be placed on a future council agenda for consideration.
- Director of Planning and Development Mike Collins gave an update on the residential and commercial development activity.

- Director of Finance Vicki Rodriguez gave a financial report for the month of April.

The City Council convened into closed session at 6:10 p.m. for deliberation regarding contemplated litigation concerning Primary Purpose Homes, as authorized by Section 551.071 of the Texas Government Code and deliberation regarding economic development incentives related to the Dallas/Fort Worth International Airport, as authorized by Section 551.087 of the Texas Government Code. They reconvened into open session at 6:52 p.m.

COUNCIL CONSIDERATION OF SCHEDULED ITEMS - COUNCIL CHAMBERS

The Euless City Council continued their meeting in the Council Chambers at 7:00 p.m. for the consideration of scheduled items.

STAFF MEMBERS PRESENT

City Manager Gary McKamie, Deputy City Manager Loretta Getchell, City Attorney Bob McFarland, City Secretary Susan Crim, Deputy City Secretary Becky Null, Associate City Attorney Bradford Bullock, Director of Economic Development Bill Ridgway, Director of Public Works Ron Young, Director of Planning and Development Mike Collins, Fire Chief Robert Isbell, Police Chief Mike Brown, Director of Finance Vicki Rodriguez, Director of Parks and Community Services Ray McDonald, Assistant Police Chief Harland Westmoreland, City Engineer Robert Barker, Fire Marshal Paul Smith, Texas Star General Manager Glenda Hartsell-Shelton, Communications and Marketing Manager Betsy Deck, City Planner Stephen Cook, Library Administrator Kate Lyon, Police Lt. Steve Kockos, Police Lt. Danny Neill, Police Sgt. Joe Foran, Police Sgt. Gary Landers, Records Office Supervisor Michele Hastings, Assistant Director of Finance Jackie Theriot, Accountant II Alice Norwood, Accountant I Patti Law, Payroll Clerk Mallory Waits, Human Resources/Benefit Technician Zella Stierwalt, Records Clerk Jolie McManus, Information Services Administrator Dan McLain, Computer Services Specialist Jake Dilliplane, and Web Designer Adam Eakins.

VISITORS

Reverend Gary Scarlet, Gina Foran, Trevor Waits, Cesar Rivera, Faye Stinneford, Dylan Ratliff, Don Martin, Eddie Price, Barney Snitz, Jerrie Keller, Billy Owens, Esther Johnson, Jake Thomasson, John Schleeter, Wendy Wilson and others as noted in the visitor register.

INVOCATION

Gary Scarlett, Pastor, First Church of the Nazarene, gave the invocation.

PLEDGE OF ALLEGIANCE

Council Member Porterfield led the Pledge of Allegiance.

ITEM NO. 1 PRESENTATION OF EMPLOYEE OF THE MONTH FOR JUNE

Director of Finance Vicki Rodriguez introduced Accountant Patti Law. Mayor Saleh presented Patti with a plaque for being selected employee of the month for June.

ITEM NO. 2 PRESENTATION OF PROCLAMATION

Police Chief Mike Brown introduced Police Sgt. Joe Foran, who introduced his wife, Gina. Mayor Saleh presented Sgt. Foran with a proclamation congratulating him on his retirement with over twenty-seven years of service to the City of Euless.

ITEM NO. 3 PRESENTATION OF DISTINGUISHED BUDGET PRESENTATION AWARD

Mayor Saleh presented the Distinguished Budget Presentation Award to Director of Finance Vicki Rodriguez, which was awarded by the Government Finance Officers Association.

Vicki Rodriguez thanked her staff for their work and support which made receipt of the award possible.

CONSENT AGENDA

Mayor Pro Tem Stinneford motioned to approve Consent Agenda Items numbered 4 through 7.

Council Member Martin seconded the motion

Ayes: Mayor Saleh, Mayor Pro Tem Stinneford, Council Members Hogg, Martin, Mickan, Porterfield and Bynum

Nays: None

Mayor Saleh declared the motion carried.

ITEM NO. 4 AUTHORIZED THE MAYOR TO EXECUTE AN AMENDMENT TO THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF EULESS AND THE CITY OF COLLEYVILLE

Authorized the mayor to execute an amendment to the interlocal agreement between the City of Euless and the City of Colleyville for roadway improvements along Heritage Avenue, establishing a new anticipated construction completion date of August 31, 2010.

ITEM NO. 5 AUTHORIZED THE CITY MANAGER TO EXECUTE AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF EULESS AND THE CITY OF KELLER

Authorized the city manager to execute an interlocal agreement between the City of Euless and the City of Keller for the purchase of various goods and services.

ITEM NO. 6 RENEWED BID NO. 024-07

Renewed Bid No. 024-07 with Atlas Utility Supply Company. 2301 Carson Street, Fort Worth, Texas, 76117, for the final one-year renewal for utility repair materials required to construct and maintain water and sanitary sewer systems, in an amount not to exceed \$410,000.

ITEM NO. 7 APPROVED CITY COUNCIL MINUTES

Approved the minutes of the Regular City Council Meeting of May 12, 2009.

REGULAR AGENDA

ITEM NO. 8 AUTHORIZED THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH THE CITY OF FORT WORTH

Council Member Martin motioned to authorize the city manager to negotiate and execute an agreement with the City of Fort Worth for the purchase of reclaimed water, including the related Memorandum of Understanding, for a term of twenty years from the effective date.

Council Member Porterfield seconded the motion

Ayes: Mayor Saleh, Mayor Pro Tem Stinneford, Council Members Hogg, Martin, Mickan, Porterfield and Bynum

Nays: None

Mayor Saleh declared the motion carried.

ITEM NO. 9 AUTHORIZED THE CITY MANAGER TO EXECUTE AN ENGINEERING DESIGN CONTRACT

Council Member Mickan motioned to authorize the city manager to execute an engineering design contract with Jerry Parche' Consulting Engineers for the design of bank stabilization for portions of Little Bear Creek.

Council Member Bynum seconded the motion

Ayes: Mayor Saleh, Mayor Pro Tem Stinneford, Council Members Hogg, Martin, Mickan, Porterfield and Bynum

Nays: None

Mayor Saleh declared the motion carried.

ITEM NO. 10 AUTHORIZED THE CITY MANAGER TO NEGOTIATE AND EXECUTE ARCHITECTURAL CONTRACT FOR DESIGN OF EXPANSION OF MIDWAY RECREATION CENTER

Mayor Pro Tem Stinneford motioned to authorize the city manager to negotiate and execute a contract with Byron Folse and Associates, Euless, Texas, for architectural services for the design of the expansion of the Midway Recreation Center, which will serve as the connector between the existing Recreation Center and the proposed Senior Center.

Council Member Mickan seconded the motion

Ayes: Mayor Saleh, Mayor Pro Tem Stinneford, Council Members Hogg, Martin, Mickan, Porterfield and Bynum

Nays: None

Mayor Saleh declared the motion carried.

ITEM NO. 11 HELD PUBLIC HEARING FOR AN APPEAL BY SAM KROLL/PRIMARY PURPOSE HOMES

City Attorney Bob McFarland laid out the procedure for the hearing stating the opponent's attorney will lead the presentation with 15 minutes. The city council's attorney will have 10 minutes to respond, and the opponent's attorney will have 5 minutes for a rebuttal. The city council will then hear from the citizens who have registered to speak. He noted that one citizen had registered to speak, and several citizens indicated their opposition but did not wish to speak, and their names will be read into the minutes. He noted that the hearing will be recorded by transcript performed by a court reporter.

Mayor Saleh opened the public hearing at 7:27 p.m. to hear the appeal by Sam Kroll/Primary Purpose Homes of the city manager's April 17, 2009, decision to grant conditional approval of a reasonable accommodation for the use of a single family home located at 1311 Oak Timber Drive pursuant to Ordinance No. 1833.

Steven Polin, 3034 Tennyson St. N.W., Washington, D.C., 20015, stated he is representing Primary Purpose Homes who has made an application for reasonable accommodation pursuant to Ordinance No. 1833. He stated they requested the city waive certain requirements of the definitions of single family housing, which would require a single written lease with joint use responsibility of the premises and allowing five or more unrelated disabled residents to reside at 1311 Oak Timber Drive as a single housekeeping unit. He stated they also requested that the city waive the application of the classification of transient dwelling, if it deems that the residents of the Primary Purpose Homes fall within that definition in Section 84-85(aj) of the Code of Ordinances.

Mr. Polin stated that in a letter dated April 17, 2009, written by the city manager, he was pleased to note that the accommodation request to treat it as a single family unit was granted. However, he was disappointed to note that there were several conditions

imposed upon that grant of reasonable accommodation. Six of the nine conditions they object to include:

1. Providing the city with a certification that the residents are disabled, which they have already done.
2. The maximum turnover in occupancy to not exceed 9 individuals in a 12 month period.
3. Notifying the city that a resident has been expelled for relapsing within 14 days of the date of expulsion.
4. Providing the city with specific documentation as to whether someone has been in a rehab.
5. Providing driver's licenses for the purpose of checking to see if they are registered sex offenders, parolees, or probationers.
6. Requiring a minimum of 1,000 foot separation between sober living type facilities and having to reapply every 12 months.

City Attorney Bob McFarland asked if the objection to the documentation of rehab and certification of disability was based on a HIPPA objection?

Mr. Polin stated, yes, there is a HIPPA issue involved, as well as other federal confidentiality and privacy laws. He stated that if this information is turned over to the city, he did not know how the city could keep it confidential under the Open Records Act. It creates a whole new set of issues that he didn't think the city would want to get into in terms of protecting the confidentiality and privacy of treatment records of these individuals. He also did not think it was necessary for the city to have it as a matter of granting approval under the Fair Housing Act.

Regarding the requirement for driver's licenses, he stated that Primary Purpose Homes does not accept registered sex offenders. The Texas Department of Public Safety has a website showing where sex offenders live. He didn't know why this is a necessary condition of granting the reasonable accommodation. He stated it violates the Fair Housing Act because there is no evidence that the residents pose a direct threat to the safety and welfare of the neighborhood. The Fair Housing Act requires this type of specificity before these types of conditions can be imposed.

Mr. Polin stated they believe case law prohibits denial of treatment of a disabled group based on transiency. He stated there is more of a chance that someone in the neighborhood could be driving home drunk than something happening at Primary Purpose. He stated they have a zero tolerance policy for residents' use of drugs or alcohol; however, people do relapse. They do not have control over that, so there will be turnover. He agreed that the city is on the right track to set up a reasonable accommodation process, but cannot set it up to monitor daily activity. The city does not require the driver's licenses of other related or non-related groups.

City Attorney Bob McFarland stated the applicant's driver's license number is a routine request on all zoning applicants.

Mr. Polin stated the letter refers to the residents and not the applicant, Primary Purpose. He stated it is the first time he has ever heard of the residents being required to provide driver's licenses, and the purpose of it troubles him. He stated that if all the people in the neighborhood want to give their driver's license numbers, then they would be willing also. He further stated that if the residents in the neighborhood want to get to know the residents of Primary Purpose, they are welcome to come over.

City Attorney Bob McFarland stated Primary Purpose is allowed in multi-family zoning, just not in single family.

Mr. Polin noted that this type of issue is where the Fair Housing Act comes into play—to enjoy a residence of their choice.

Associate City Attorney Bradford Bullock, attorney on the city's behalf, stated in his reading of the application, the applicant asserts they are disabled, but has not provided the requested information. In order to qualify for reasonable accommodation, all residents must be disabled. Mr. Polin asserted that there was a certification provided that all residents are disabled, but the certification is by the applicant. No one knows what Mr. Kroll's background is to be able to make such certification. He noted that if the residents did not claim to be disabled, the home would violate the zoning ordinance and would be considered a boarding house.

Because they have claimed disabled status, a protective status under the Fair Housing Act, they are entitled to reasonable accommodations. Reasonable accommodation does not mean granting everything that is requested. In order for a request to be considered "reasonable", it must not cause an undue financial or administrative burden on the city. It also must not alter the characteristics of the regulation at issue. The way the home is set up, with the residents paying rent and the transient nature, it is turned into a boarding house. He stated the Fair Housing Act does not preempt the local government's zoning authority. Single family districts have been recognized by the United States Supreme Court as a legitimate governmental goal. The transience provisions of this ordinance place limits on the occupancy turnover in all single family districts, whether they are disabled or not. The ordinance does not single out the disabled, but treats them as they would anyone with high turnover. One of the characteristics of a single family neighborhood is a level of permanence. That has been recognized by federal courts, a number of state supreme courts, and he thinks it would be recognized in the Fifth Circuit, as well.

The question is essentially, in terms of transients and turnover in a single family district, whether or not waiving a limit on transiency or turnover would fundamentally alter the characteristics of the neighborhood. It is the city's position that it would. One does not expect a high turnover in a single family district. That type of turnover is more associated with multi-family districts. The Fair Housing Act does not do away with the regulations for a single family district.

One of the cases the city will rely on is the federal appellate case of Schwartz vs. City of Treasure Island in Florida. The Eleventh Circuit Court found that enforcing a transience provision in a single family district was found to be a permissible form of regulation and not a violation of the Fair Housing Act. He stated that he disagrees with the premise of the 2003 case that Mr. Polin cited in his letter.

Mr. Bullock stated that he had an application from the state to apply for a handicap placard. In order to do so, the applicant must provide certification of a handicap by a licensed physician as to whether the disability is permanent or temporary and what type of disability. The city is just requesting similar certification in order to determine that the residents are entitled to a reasonable accommodation. He contends that if certification can be required for a parking place, it can be required for this, because they are requesting accommodation that others are not, by asking to use a single family residence as a business.

City Attorney Bob McFarland questioned if the privacy statutes prohibit the city from requesting medical status, then how can the city know if they are disabled, if it can't be verified.

Associate Attorney Bradford Bullock stated they are entitled to a reasonable accommodation if certain conditions are met. However, the application provided a simple statement by Mr. Kroll that all the residents are disabled. Not being able to verify whether the residents are disabled essentially removes the city's regulatory authority. It's not reasonable to grant accommodation if it turns a neighborhood into an institutional setting. He believes the city has the authority to prevent parolee and probationer housing in a residential area.

In rebuttal, Mr. Steven Polin stated they are willing to work with the city, but he contends that the conditions listed in the letter are not proper or legal. He believes the ordinance is facially discriminatory and created to deal with the disabled. He noted that this is the only sober house in Euless, and they are not talking about taking over the neighborhood. He stated that most of the people live there by choice, because they have heard of Primary Purpose Homes and are trying to put their lives back together. He stated he is not saying the city does not have authority, but they do not have authority to do it discriminatorily.

Mayor Saleh asked for any proponents. There were none.

Mayor Saleh asked for any opponents. She noted that Dan and Sharon Dunn, 800 Boxwood Court, and Cheryl Brewster, 902 Glenn Drive, registered as being opposed, but not wanting to speak.

Bobby Lindamood, 807 Boxwood Court, thanked the city for working with the residents in the neighborhood. He stated they have strived to reach out to Primary Purpose. He stated the problem is not with the residents, but with the owner, because this is a business. He stated the ordinance is not just for this home, but for all sober homes that could locate in Euless. He believes the law is the law, and should be enforced. He also has a concern for the children and elderly in the neighborhood.

Thomas Delaney, 806 Boxwood Court, stated he was single for a while after buying his house and did have roommates. He noted that after 30 days, residents in Texas must register with the state for their driver's license. He stated they are asking for the same thing for the residents of the home; otherwise, it really is transient living. He stated he did not want transients in the neighborhood. He thanked the city council for all they've done so far and thanked the neighbors for coming to the meeting.

John Schleeter, 2121 Bear Creek Parkway, stated he has a friend that is a group home caretaker in Arlington. While he applauds the efforts that the residents are making to put their lives back together, he does not believe a business should go in a residential area.

There being no additional opponents, Mayor Saleh closed the public hearing at 8:23 p.m.

Council Member Martin asked Mr. Polin what he meant by saying the residents live there by choice "for the most part". She also asked him what he considers reasonable?

Mr. Polin stated that as far as he knows all the residents live there because they want to; however, some could be there because it was suggested. He stated they did not have a problem in working with the city to come up with something equitable. He did not know if there is a middle ground on the issue of confidentiality, which centers around the required certification and driver's licenses.

Council Member Stinneford asked Mr. Polin why he objected to the 1,000 ft. requirement.

Mr. Polin stated he objected to the condition on general principal.

Council Member Stinneford questioned why the city should accept the applicant's word that the residents are disabled. He stated he is not objecting to a group of disabled people living in a single family home, but objecting to the turnover of residents, which is at odds with the term "family." His additional questions included: since there is no therapy program how they would know if someone relapses; is there someone in charge; and is this an equal protection issue?

Mr. Polin stated that the Housing and Urban Development (HUD) regulations find that if you treat someone as disabled, they are considered disabled. The city has created an ordinance to deal with this group of disabled people. He stated the home is the functional equivalency of a family. A senior resident is designated as an overseer and given added responsibilities. Someone comes around and does drug testing, but, other residents can also recognize the signs of drug or alcohol use. He stated that the issue is not an equal protection argument.

Council Member Bynum asked if Primary Purpose Homes is a business? If so, why didn't the applicant come to the city before opening?

Mr. Polin stated that even though it is a business, it still helps people. He stated that the outcome tends to be the same, whether they come to the city first or not.

Council Member Bynum asked Mr. Polin if he would purchase a home in a neighborhood knowing Primary Purpose was located there.

Mr. Polin stated he could not answer that question, because it is illegal for a realtor to disclose such issues.

Council Member Mickan stated that it is Mr. Polin's client that has come forth asking for a variance for their non-compliance to the numbers and the turnover rate. She noted that the city manager has granted that request, but the city is being considered biased, unfair, discriminatory, and unyielding. She pointed out that it is the applicant that is non-compliant. The city manager is the one that granted the reasonable accommodation, and the applicant is appealing what he has been asked to do. She suggested that he may have come in expecting trouble where no trouble exists.

Mr. Polin stated he did not intend to indicate that the city is biased or unyielding, and he understands politics in these types of situations. He stated he is an advocate for his client and the assertion of his client's rights. He agreed that everyone has a right to express their opinions.

Council Member Mickan asked Mr. Polin if there was anything about the city's ordinance that he thought was fair.

Mr. Polin stated he thought it was a step in the right direction that the city realized it did not have a process for reasonable accommodation and created one. He noted that he knows where the Euless ordinance came from because he's involved with another case. He noted, however, that Euless took it a step further to include a definition of transiency dwelling.

Council Member Porterfield stated that although the applicant may find the conditions the city manager imposed in this reasonable accommodation to be onerous, he asked if there is any reason why his abiding by those conditions would preclude the operation of this house in the way he intended it, or if there was anything that he could not do under these conditions that he could do if he did not have these conditions.

Mr. Polin stated he thought it would have a chilling effect.

Council Member Martin stated that Mr. Polin had commented earlier that none of the residents were there by anything other than their choice. She asked him if he had talked to and visited with the residents at the home.

Mr. Polin stated, yes, he had.

Mayor Saleh asked Mr. Polin if he had tried to talk to the city staff.

Mr. Polin stated he had not.

Mayor Saleh asked if all the residents are Texas residents.

Mr. Polin stated that as far as he knew, they were.

Council Member Hogg motioned to sustain the city manager's April 17, 2009, decision to grant conditional approval of a reasonable accommodation for the use of a single family home located at 1311 Oak Timber Drive pursuant to Ordinance No. 1833, and adopt the city manager's findings of fact contained therein.

Council Member Martin seconded the motion

Ayes: Mayor Saleh, Mayor Pro Tem Stinneford, Council Members Hogg, Martin, Mickan, Porterfield and Bynum

Nays: None

Mayor Saleh declared the motion carried.

ITEM NO. 12 PUBLIC COMMENTS

Tom Cotton, 904 Woodhaven Court, stated he lived outside of the 300 foot notification, but had he known of the Primary Purpose home when he purchased his home, he would not have done so. He did not believe this type of use should be in a residential community.

Ed Pope, 900 Woodhaven Court, stated he understood the need for rehabilitation; however, he did not believe alcoholics and drug users ever get totally away from the desire, and he did not believe the facility should be in a residential area.

ITEM NO. 13 REPORTS

There were no reports.

ITEM NO. 14 ADJOURNMENT

Mayor Saleh adjourned the meeting at 8:55 p.m.

APPROVED:

Mary Lib Saleh
Mayor

ATTEST:

Susan Crim, TRMC
City Secretary