

**MINUTES OF THE
REGULAR CITY COUNCIL MEETING
MONDAY, APRIL 18, 2005 — 6:00 P.M.
CITY HALL, 209 S. WASHINGTON, KAUFMAN, TEXAS**

CITY COUNCILMEMBERS

MAYOR	PAULA BACON
MAYOR PRO-TEM	PAULA HAGLER WAMPLER
COUNCILMEMBER	FLOYD CHOYCE
COUNCILMEMBER	STANLEY HOLMES
COUNCILMEMBER	PENNY KAUFMANN
COUNCILMEMBER	JANICE MURRELL
COUNCILMEMBER	HECTOR TORRES

INVOCATION: Chief of Police James M. Smith

PLEDGE OF ALLEGIANCE

CALL MEETING TO ORDER: Mayor Bacon called the Meeting to order at 6:07 p.m. Councilmembers present were Mayor Paula Bacon, Mayor Pro-Tem Paula Hagler Wampler, Councilmember Stanley Holmes, Councilmember Penny Kaufmann, Councilmember Janice Murrell and Councilmember Hector Torres. The Mayor declared a quorum present. Councilmember Choyce arrived at 6:10 p.m. Mayor Pro-Tem Wampler left the meeting at 7:54 p.m. Also present were Interim City Manager Curtis Snow, City Attorney David Dodd, ACM/City Secretary Jo Ann Talbot, Chief of Police James M. Smith, Director of Public Works Richard Underwood, Director of Finance Cathy Cummins, and Director of Development Services Terry Capehart.

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.

Mr. Gary Couch, 14717 Sherlock Drive, Addison, Texas, owner of multi-family units in Kaufman, made a report in support of new water and sewer rates that were passed in February 2004. Mr. Couch's statement is hereby attached to the minutes.

CONSENT AGENDA ITEM #1 THROUGH #4

"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.”

1. Consider the approval of the Minutes of the March 21, 2005 Regular City Council Meeting.
2. Consider second reading and adoption of Ordinance O-05-05 of the City of Kaufman, Texas establishing a Building and Standards Commission to enforce the International Property Maintenance Code (as adopted) and Article XI, Section 22, of the City Code of Ordinances and amending the Code of Ordinances, Article XI, Sections 22-392 through Sections 22-395 and adding Section 22-390; providing for the Building and Standards Commission to conduct public hearings for the purpose of enforcement of state and local regulations and ordinances regulating unsafe buildings; providing a repealer clause; providing for a penalty; providing a severability clause; and providing an effective date.
3. Consider approval to purchase a Tractor/Loader Backhoe through Houston-Galveston Area Council (H-GAC) Purchasing Program for the Street Department as allocated in the budget.
4. Consider approval to purchase one (1) Half Ton Pick-up Truck in the Water Department as allocated in the budget.

Councilmember Murrell requested Agenda Item #4 be removed from the Consent Agenda.

Mayor Bacon and the Council were all in favor of approving Consent Agenda Item's 1 through 3. The Mayor called for a vote with all voting AYE, the motion carried.

4. Councilmember Murrell inquired about the radio that was quoted for the new pick-up truck and the cost of taxes, title and license. Director of Public Works Richard Underwood reported that the radio that was bid with the truck was a new upgraded model in lieu of the one requested in the bid specification and that the total purchase price of \$12,654.00 included tax, title and license.

Mayor Pro-Tem Wampler moved and seconded by Councilmember Kaufmann to approve the purchase of one (1) Half Ton Pick-up Truck in the Water Department as allocated in the budget from Ennis Ford Mercury, Ennis, Texas in the amount of \$12,654.00. The Mayor called for a vote with Councilmember Murrell, Councilmember Choyce, Councilmember Kaufmann, Councilmember Holmes, Mayor Pro-Tem

Wampler and Mayor Bacon voting AYE. Councilmember Torres voted NAY. The motion carried 6-1.

END OF CONSENT AGENDA

PLANNING AND ZONING ITEMS

5. Conduct a public hearing and act upon a request from Keith Fortner and Robert Cates regarding the abandonment of an unimproved fourteen feet (14') X three-hundred fifty feet (350") alley located in Block 3 of the Hobby Highway Addition, from Washington Street to Madison Street between Tenth and Eleventh Streets.

Mayor Bacon declared the Public Hearing open at 6:17 p.m.

Director of Development of Services Terry Capehart gave a Staff report. He reported that the request from Keith Fortner and Robert Cates was to abandon an unimproved fourteen feet by three hundred fifty feet alley located in Block 3 of the Hobby Highway Addition, from Washington Street to Blain Street between Tenth and Eleventh Streets. The ally has several large trees in the right-of-way. A portion of the alley has a gravel surface in very poor condition but is used for access to the apartments owned by Mr. Fortner. There are no public utilities in the right-of-way; however, there is a gas service line that supplies service to the apartments that appears to be partially located in the alley. The apartment to the rear also has a private sewer service line that is in the alley and is connected to the city sewer where it enters the Washington Street right-of-way. The alley also serves as a drainage way for the lots that adjoin the alley and it is a concern to Staff that drainage problems will occur in the future if the alley is returned to private ownership.

Block 3 of the Hobby Highway Addition consists of 28 lots that are in ten different ownerships and since the petition to abandon the alley was only signed by two of the ten owners having property adjoining the alley the request was advertised as a public hearing in which other parties affected by the request would have an opportunity to give input. Notice was sent to twenty-seven (27) property owners within 200 feet of the request and at the time this packet was sent out only one request was returned in favor of the request.

There is currently a request for a variance to a side yard setback on the Zoning Board of Adjustments April 26, 2005 agenda in which Mr. Cates constructed the concrete slab for an office building located at 1701. S. Washington Street too close to the adjacent properties. The request for the alley abandonment was submitted prior to the concrete slab being constructed in the wrong location, however, if the alley is abandoned this will relieve the need for a variance to the side yard setback but will not

relieve the requirement for other variances associated with the construction.

All property owners in the vicinity of the request were given notice to the petition requesting closing the alley. Due to concerns for drainage issues as well as access to private utilities located in the alley Staff recommends denying the request to abandon the alley at this time.

Mr. Elazar Carrillo, 112 East Tenth, Kaufman, inquired who was responsible for maintaining the alley. Interim City Manager Snow reported that the property owners are responsible for maintaining easements.

Mr. Keith Fortner, P. O. Box 22, Kaufman, Texas, reported he had suggested to Mr. Robert Cates to close the alley in order to help with parking issues on Mr. Cates' new building. Mr. Fortner was not aware of drainage issues that the City may have by closing the alley. He did not oppose if the Council did not approve his request.

The Mayor declared the public hearing closed at 6:32 p.m.

Mayor Pro-Tem Wampler moved and seconded by Councilmember Murrell to deny the request from Keith Fortner and Robert Cates regarding the abandonment of an unimproved fourteen feet (14') X three hundred fifty feet (350") alley located in Block 3 of the Hobby Highway Addition, from Washington Street to Madison Street between Tenth and Eleventh Streets. The Mayor called for a vote with all voting AYE, the motion carried.

6. Conduct a public hearing to consider a request from Guaranty Bank regarding Ordinance O-14-02 amending the Comprehensive Plan/Thoroughfare Plan.
 - A. Conduct Public Hearing.

Mayor Bacon declared the public hearing open at 6:34 p.m.

Director of Development of Services Terry Capehart informed the Council that Guaranty Bank has proposed to relocate their business from its current location at 1904 S. Washington Street to a 1.534 acre site (Lot 3 of the Heritage Park Addition) adjacent to the Parker Ashworth Funeral Home. The southwest corner of the lot is taken up by the proposed 100 feet right-of-way created by Ordinance O-14-02 which the Bank contends significantly interferes with their proposed use of land. Their current site is inadequate for the expansion of their business to include drive-thru service for their customers and their proposed site would include three drive-thru service lanes and an ATM

lane. The Bank has requested the City to rescind Ordinance O-14-02, thus removing the constraints to development of their new site.

Interim City Manager Curtis Snow reported that the City modified its thoroughfare plan in 2002 to provide a rerouting of Old Kemp Highway to potentially relieve future traffic congestion at US 34 and the south frontage road on US 175. Because Old Kemp Highway is designated as a major thoroughfare in the plan to accommodate future development, TX Dot had asked the City to reroute the highway in it's planning. After amending the thoroughfare plan, a property owner is selling to Guaranty Bank acreage along the proposed route for the realignment of Old Kemp Highway. This property has a waterline running across the property alongside US 34 without a dedicated easement. Staff has asked Guaranty to replat the property to dedicate the easement. In the replatting, staff has also asked Guaranty Bank to dedicate the portion of the realignment of Old Kemp Highway that traverses the proposed site. Guaranty has been willing to do this to the point it does not negatively affect its side development plan. To accommodate their plan, and at their request, we have re-evaluated the right-of-way requirements and are recommending another amendment to the plan narrowing the proposed Old Kemp Highway realignment from 100 feet wide to 80 feet. This change will not affect the City's goals and will accommodate Guaranty's needs to develop.

Interim City Manager Curtis Snow reported that according to the seller, Guaranty has gone back to the seller and reduced their offer by the square foot value of the area necessary for the Old Kemp Highway right-of-way. The seller argues this constitutes a "taken" of private property for the public's interests, therefore, the property owner is entitled to just compensation. The seller has asked the City to take the realignment of Old Kemp Highway out of the thoroughfare plan or the seller will take what ever steps are necessary to be compensated for any losses he experiences through the sale or lack of sale. Guaranty Bank has contacted the City and said they cannot make decisions today based on what may or may not happen in the future. Therefore, they are only willing to proceed on the site based on what they see as the value of the property where they may have to dedicate a portion for right-of-way. The City is fulfilling its duty and obligation to plan the future transportation network for the public's good. Guaranty Bank is asking for an adjustment to keep the land useful for its purposes but are willing to meet the customary responsibilities associated with platting. But Guaranty Bank has adjusted its offer to the seller based on the value of land that will be required for public purposes. The seller feels the realignment of Old Kemp Highway should not be at his personal expense and that the City's action to require the dedication in the replat based on the thoroughfare plan is a "taking". There are

certain issues that need to be separated out to understand the recommendation: 1) The City has a responsibility and a right to plan for future highways and such plans are not a "taking." 2) The City Planning and Zoning Commission and staff are recommending reducing the width of the realignment to accommodate the use of the proposed Guaranty site for Guaranty's purposes (not diminishing the value). 3) The issue of "taking" comes into play at the time of platting or replatting, not planning. The City Attorney advises that requiring dedication of public right of way during a platting or replatting of a property that is not subdividing could be argued as a "taking", therefore entitling the owner to just compensation. 4) The City does not have funds available at this time, or has an immediate need for the realignment, therefore, staff is not going to require Guaranty to replat at this time. 5) The City has no responsibility or role in the negotiations between the seller and buyer in the land transaction. If Council approves the recommendation of the Planning and Zoning Commission and staff to amend the thoroughfare plan, whatever conclusions drawn on the value of the property in order to consummate a sale is strictly between the seller and the buyer. 6) Abandoning the realignment plan will only make the resulting acquisition at a future time more expensive to the public.

Mr. Mike Hanes, representative for Guaranty Bank, 1300 S. Mopac Drive, Austin, Texas requested the Council to abandon the Thoroughfare Right-of-Way that was adopted by Ordinance O-14-02 in order to alleviate its impact on the property site. The right-of-way negatively impacts Guaranty Bank's development of the site of approximately 25% for a retail bank and drive through lanes. Efficiency of the site is critical for vehicle movement. Abandonment of the right-of-way would be Guaranty Bank's first choice, however reducing the right-of-way to an 80' right-of-way will give them some flexibility but still creates some challenges. The Bank will see if it can work with a reduced right-of-way.

Mr. Jim Meara, representing Texas Opportunities, 3515 Cedar Springs #101, Dallas, Texas spoke in opposition of removing the Thoroughfare right-of-way. Mr. Meara explained to the Council that Texas Opportunities purchased 255 acres of land adjacent to the Service Road of Highway 175 and C.R. 151, which we are proposing a Wal-Mart coming to Kaufman next year. He reported that he has spoke to Staff regarding the reduction of the right-of-way to 80'. He does not oppose this adjustment, but would oppose to remove the Thoroughfare right-of-way for a major street in order to access future development for the Wal-Mart Store and residential housing. He also informed the Council that Texas Opportunities dedicated right-of-way for a gas line to Kaufman County through their property. They also dedicated right-

of-way for the future Highway 34 Bypass, approximately 20 acres of land at no cost to the city. The State will require relocating the C. R. 151 (Old Kemp Highway) and Highway 34 intersection to the new thoroughfare in order to get it away from Highway 175 and to install signal lights at the new intersection to control traffic. The location currently is where it needs to be and he will support the amendment of reducing the thoroughfare to 80' right-of-way, but not to do away with it because development will come and it will be very important that the city has access for future development.

Interim City Manager Snow reported to the Council that Guaranty Bank will have the flexibility to use their property without constraints cause of the thoroughfare plan right-of-way. At some future date the City will have to acquire the right-of-way. The right-of-way will be determined at that time and the city will have to pay for the right-of-way.

City Attorney David Dodd confirmed that a developer is not prohibited from the use of the land, but at the time the City decides to develop the right-of-way the property will have to be purchased or go through the condemnation procedures to acquire the land for right-of-way. It will also be more expensive for the city.

Mr. Jim Meara commented that the Thoroughfare right-of-way was adopted three years ago for the future development of a Wal-Mart. The property has already been platted for a Wal-Mart, commercial development and residential development. The City will pay the price at a future date.

Mayor Bacon closed the public hearing at 7:01 p.m.

- B. Consider first reading and approval of Ordinance O-07-05 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.

Councilmember Kaufmann moved and seconded by Councilmember Holmes to approve Ordinance O-07-05 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 and that the Council are on record that this Thoroughfare Plan will in no way constrain or restrict the use of the full land lot being conveyed to Guaranty in anyway. Mayor Bacon called for a vote with all voting AYE, the motion carried.

7. Consider a request from the Iglesia Pentecostes, regarding Site Plan, being all of Lots 3R and 19R, Block 17 of the Cottage Heights Addition, located at 1602 Park Street, as recorded in Volume 127, Page 302 of the Deed Records of Kaufman County, Kaufman County, Texas.

Director of Development Services Terry Capehart informed the Council that the Site Plan is for a new church of approximately 8,400 square feet located one block east of State Highway 34 behind the Head Over Heels Dance Studio. The zoning is Single Family (SF-6) which churches are allowed. The proposed site plan does not provide all of the required parking spaces on site but the church has obtained an offsite parking agreement for thirteen additional spaces available. The Head Over Heels Dance Studio is not open on Sundays so there is not a conflict in the use of these parking spaces. The studio is located less than one block away from the church.

Mayor Bacon expressed her concern with the number of agreements the city has for shared parking. The Mayor asked for a report regarding what are possible scenarios to the establishment if and when parking agreement is rescinded.

After discussion, Councilmember Murrell moved and seconded by Councilmember Choyce to approve a request from the Iglesia Pentecostes, regarding Site Plan, being all of Lots 3R and 19R, Block 17 of the Cottage Heights Addition, located at 1602 Park Street, as recorded in Volume 127, Page 302 of the Deed Records of Kaufman County, Kaufman County, Texas. Mayor Bacon called for a vote with all voting AYE, the motion carried.

DISCUSSION/ACTION ITEMS

8. Conduct a public hearing to continue Ordinance O-19-99, curfew hours for minors in the City of Kaufman. (Continue for a further three (3) years).

- A. Conduct a public hearing to consider the continuance of Ordinance O-19-99, curfew hours for minors.

Mayor Bacon declared the public hearing open at 7:27 p.m.

Ms. Elvin Guerrero, 1302 S. Jackson Street, Kaufman spoke in support of the curfew ordinance and support for pre-teen programs.

Mayor Bacon declared the public hearing closed at 7:32 p.m.

- B. Consider first reading and approval of Ordinance O-06-05 to continue Ordinance O-19-1999 curfew hours for minors in the City of Kaufman for a further three (3) years.

Interim City Manager Curtis Snow informed the Council that this ordinance had been on the books for six (6) years and the Chief of Police wishes to continue the curfew ordinance.

Mayor Pro-Tem Wampler moved and seconded by Councilmember Kaufmann to approve the first reading of Ordinance O-06-05 to continue Ordinance O-19-1999 curfew hours for minors in the City of Kaufman for a further three (3) years. Mayor Bacon called for a vote with all voting AYE, the motion carried.

9. Consider acceptance of the Kaufman Economic Development Corporation Financial Report Fiscal Year 2003-2004.

Interim City Manager Curtis Snow informed the Council that he had no concerns or issues regarding the Kaufman Economic Development Corporation Financial Report. They use the same auditor's as the City. After discussion, Councilmember Choyce moved and seconded by Councilmember Torres to approve the Kaufman Economic Development Corporation Financial Report Fiscal Year 2003-2004. The Mayor called for a vote. Councilmember Murrell, Councilmember Choyce, Councilmember Torres, Mayor Bacon, Mayor Pro-Tem Wampler and Councilmember Holmes voted AYE. Councilmember Kaufmann voted NAY, the motion carried.

10. Consider approval of a request from the Kaufman Economic Development Corporation regarding an incentive for Numo Manufacturing.

Mr. Jeff Witters, 1312 Crestview Drive, Kaufman, supported Numo Manufacturing being established in Kaufman. He reported he was a new citizen of Kaufman and Numo is a great asset to the community. Numo uses local businesses to operate their company and the employees spend their money in Kaufman.

Mr. Michael Hicks, 1072 E. Highway 175, Kaufman, President of Numo Manufacturing, reported his request was to reinstate a loan given to them by Kaufman Economic Development Corporation. Numo is a 40-year-old business. Numo moved to Kaufman in January 2004. In 2003 the company lost money, but in 2004 it turned around when we moved to one location in Kaufman. The Kaufman Economic Development Corporation approved a grant and a loan for Numo. Part of the deal was to purchase the building. We had to pay off the \$110,000.00 loan with Kaufman Economic Development to clear the closing of a Small Business Loan with the intent to reinstate the loan with Kaufman Economic Development Corporation. We are asking for \$110,000.00 for a nine-month period with the interest rate almost double. The purpose of the loan is to solidify our business. The Company is very seasonal, however recently they have

acquired a sister company that will be a power season to Numo, which will make them a much stronger company. He thanked Council for his time.

Mary Gonzales, 205 East 10th Street, Kaufman, supports Numo Manufacturing. She reported they are a good business to work for; they support her church and friends in the community.

Gennice Robinson, 5654 Fair Road, Kaufman, supports Numo Manufacturing. Numo gives job opportunities, growth and development to Kaufman.

Interim City Manager Curtis Snow reported that Numo currently employed 250 employees. The City has not received the agreement between Numo and Kaufman Economic Development to review. He expressed his concern for the lack of due diligence on part of the KEDC, and no one from the EDC being present here tonight. He reported that the only information the City received from the KEDC was an email and it was in the Council agenda book. The Council can postpone taking action and revisit the issue when the documents are available. The Council may want to call a Special meeting to consider the agreement.

Mayor Pro-Tem Wampler moved and seconded by Councilmember Choyce to table this item until the documents are prepared. Mayor Bacon called for a vote with all voting AYE, the motion carried.

11. Consider first reading and approval 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.

Interim City Manager Curtis Snow informed the Council that by amending the Ordinance it would allow a one time notice each year for over grown grass and weeds and that the City would not have to re-notice persons that are not maintaining their property. After discussion, Councilmember Kaufmann moved and seconded by Councilmember Torres to approve the first reading 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. The Mayor called for a vote with all voting AYE, the motion carried.

Mayor Pro-Tem Wampler left the meeting at 7:54 p.m.

12. Consider approval to go out for "Request for Proposals" (RFP's) for General Engineering Services.

Councilmember Murrell moved and seconded by Councilmember Torres to go out for "Request for Proposals" (RFP's) for General Engineering Services. Mayor Bacon called for a vote with all voting AYE, the motion carried. Mayor Pro-Tem Wampler was absent.

13. Consider approval to go out for "Request for Proposals" (RFP's) for Building Inspection Services.

Interim City Manager Curtis Snow reported that last month the Council approved an agreement for inspection service, however the inspector decided to go up on his rates. Staff is asking to go out for proposals for Inspection Services.

Councilmember Kaufmann moved and seconded by Councilmember Torres to go out for "Request for Proposals" (RFP's) for Building Inspection Services. Mayor Bacon called for a vote with all voting AYE, the motion carried. Mayor Pro-Tem Wampler was absent.

14. Consider setting a date, time, and place to canvass the Election Returns (Sunday, May 15th through Wednesday, May 18th).

Councilmember Kaufmann moved and seconded by Councilmember Torres to set Monday, May 16, 2005 to canvass the Election Returns. The Mayor called for a vote with all voting AYE, the motion carried. Mayor Pro-Tem Wampler was absent.

ANNOUNCEMENTS FROM CITY MANAGER.

No announcements were made by the City Manager.

REQUEST/COMMENTS FROM MEMBERS OF CITY COUNCIL.

Councilmember Kaufmann reminded the Council of the Kaufman Clean Up Week May 12 through May 14.

Mayor Bacon asked the Council to be present at City Hall on Saturday, 11:00 a.m. for a picture to be taken by the Kaufman Herald for Clean Up Week to promote cleaning up Kaufman.

Councilmember Kaufmann reported that the Interact Club associated with the Kaufman Rotary Club would be putting on a new face in front of City Hall. They will furnish all the labor and materials.

ADJOURNMENT.

Councilmember Murrell moved and seconded by Councilmember Holmes to adjourn the meeting at 8:08 p.m. Mayor Bacon called for a vote with all voting AYE, the motion carried. Mayor Pro-Tem Wampler was absent.

**PAULA BACON
MAYOR**

ATTEST:

**JO ANN TALBOT
CITY SECRETARY**