

**MINUTES OF
CITY COUNCIL WORK SESSION
TUESDAY, JULY 5, 2005 — 6:00 P.M.
KAUFMAN FIRE STATION
301 S. MADISON STREET, KAUFMAN, TEXAS**

CITY COUNCILMEMBERS

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| 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

PLEDGE OF ALLEGIANCE

CALL MEETING TO ORDER: Mayor Bacon called the Meeting to order at 6:09 p.m. Councilmembers present were Mayor Bacon, Mayor Pro-Tem Wampler, Councilmember Altom, Councilmember Bounds and Councilmember Choyce. Councilmember Murrell and Councilmember Holmes were absent. The Mayor declared a quorum present. Also present were City Attorney David Dodd, Interim City Manager Curtis Snow, Director of Public Works Richard Underwood and Director of Finance Cathy Cummins. ACM/City Secretary Jo Ann Talbot was absent.

1. Discuss a petition from neighbors of a Dallas Crown Packing Company regarding nuisance of smell and odor.

Interim City Manager Curtis Snow informed the Council that the reason for the Work Session was to discuss a petition received June 20, 2005 from neighbors in the area of Dallas Packing Company. Their petition complains that their neighborhood is “degrading” their property values “and impeding development”. Specifically, the petition asserts that:

- The neighbors want relief from years of abuse and neglect suffered from the presence of the slaughterhouse;
- The slaughterhouse negatively affects the value of their property and their quality of life;
- The slaughterhouse is a non-conforming use and not allowed in their neighborhood, or for that matter in the City of Kaufman;

- The slaughterhouse has an offensive stench and allegedly has other health and sanitation issues detracting from their quality of life;
- The citizens signing the petition want the City to enforce its ordinances and remove the livestock that is a nuisance in their neighborhood; and,
- That the City of Kaufman would never allow this condition to exist in any other part of the city;
- That if the City continues to allow the slaughterhouse to continue polluting their neighborhood and refuses to act on the ordinances regulating these issues, the petitioners are going to seek relief in court; and,
- That the City should notify all relevant agencies about the impact Dallas Crown is having on the neighborhood.

Interim City Manager Curtis Snow informed the Council that City Secretary Jo Ann Talbot reviewed the petition to qualify the signatures under the Code of Ordinance Section 18.33. There were 33 property owners within 500 feet of Dallas Crown Packing. Thirty-three percent (33%) of the property owners signed the petition. The ordinance states that 50 percent of the property owners within 500 feet of the property can complain by petition to the City Council that the presence of animals or fowl in their area is a nuisance.

A film was shown from a producer that had a different purpose than the petition, although it revealed that repeated complaints from the neighbors and showing bones in resident's yards along with the vultures and the horrible smell.

The residents have called Texas Commission of Environmental Quality (TCEQ) regarding the odor and other matters regarding Dallas Crown Packing Company.

City Staff has spoke to TECQ and they say that as long as processes are followed and odor exists they have done their part. A great deal of discussion was held regarding how TECQ plays a part in the control of odor at Dallas Crown Packing. TECQ reports that Dallas Crown is operating within the law and therefore there is not much they can do.

Two case lawsuits were discussed. One lawsuit was a group of San Antonio citizens that filed suit on a meat rendering plant. The Judge threw out the case because citizens did not justify. The citizens appealed the case. The judge then sided with the citizens, but didn't do what the citizens asked.

The other lawsuit pertained to an agricultural processing operation (chickens) located in Bryan. It was deterred there was an inherent problem with the process. The Court sided with the citizens and all operations were ordered to cease.

Mayor Bacon commented that the City must order Dallas Crown Packing to remove the animals in regards to the nuisance complaint Section 18.33.

City Attorney David Dodd reported that the petition presented to the City Council requested action pursuant to Section 18-33 of the Kaufman Code of Ordinances. Mr. Dodd believes Section 18-33 of the Kaufman Code of Ordinances is unenforceable. Section 18-33 violates the Texas Constitution Article 1, Section 17, and the Fifth Amendment, United States Constitution. Under Section 18-33 a person must remove animals or fowl if fifty percent (50%) of property owners within five hundred (500) feet file a petition. This provision does not require any proof or evidence before a person is required to limit the uses of his property. The provision does not allow any due process for the property owner and the petition filed was less than the 50%. If the city seeks to enforce this Ordinance, it can be defended by a Constitution Claim and delay all enforcement proceedings.

Councilmember Altom inquired about the nonconforming use of the subject property.

Interim City Manager Curtis Snow explained that Dallas Crown was operating under a nonconforming use zoning and that an ordinance was adopted recently regarding amortization for the purpose of nonconforming uses in the zoning ordinance. Section 9.9 in the Zoning Ordinance allows for termination of a nonconforming use. The Zoning for the property where Dallas Crown is located was changed after the meat packing facility had been established. This classifies the property and the use as a nonconforming use. The procedure allows the city to order the termination of any nonconforming use. The process would require the City Council to direct the Zoning Board of Adjustment to conduct hearings. The hearings would be conducted to determine whether or not the nonconforming use should be terminated because there were conditions created by the use that caused fire or health hazards, or a danger or nuisance to the public was created by any condition or use existing in the nonconforming use. If the Zoning Board of Adjustment determines to terminate the use, they must also determine an amount of time the use may continue in order to amortize the owner's actual investment that occurred before the time the use became nonconforming. Without the proper evidence or investigation, we cannot give an opinion as to how long the use should be allowed to continue. Dallas Crown could possibly raise some constitutional issues to

attack our entire Zoning Ordinance as a defense to this type of proceeding.

City Attorney David Dodd reported that under the nonconforming use Dallas Crown Packing could operate, but cannot alter or expand the building.

Interim City Manager Curtis Snow reported that Dallas Crown could possibly be in violation of the enclosure requirement for animals under Section 18-39 of the Kaufman Code of Ordinances. This section of the code establishes the specific square footage requirements for enclosures in which horses are kept. If the City has evidence that Dallas Crown is violating this section, the enforcement proceedings could include Municipal Court, and a lawsuit in Civil Court. Violation of this ordinance does not constitute a nuisance, therefore the City cannot abate the problem.

Mayor Bacon inquired if the City could do anything under Code of Ordinance Section 50-146 regarding storage of garbage, refuse, waste, dead animals. Dallas Crown stores horse remains in a metal container causing a nuisance of odor.

Interim City Manager Curtis Snow commented that the containers are on wheels and are there until they are full and then pulled off and removed.

Mayor Bacon inquired if the City could do anything under Code of Ordinance Section 42.1 b regarding it shall be unlawful for any person to make or cause any noise of such character, intensity and continued duration as to substantially interfere with the comfortable enjoyment of private homes by persons of ordinary sensibilities.

Interim City Manager Curtis Snow commented that by asking Dallas Crown to erect a screening wall between the residential neighborhood, would imply for their business to continue.

Mayor Bacon inquired about Section 215.024 of the Local Government Code the ability to regulate slaughterhouses.

City Attorney David Dodd commented that as a Home Rule Municipality, the City has the authority to abate nuisances pursuant to Section 217.042, but does not have the authority to act under 215.042. Section 217.042 authorizes Home Rule Municipalities to adopt Ordinances to abate nuisances. As a Home Rule Municipality, the abatement process is governed by the City Ordinances.

Mayor Bacon inquired if the City adopted an ordinance to abate nuisances could we enforce the Ordinance with Dallas Crown. City Attorney Dodd informed the Council only from the date the ordinance was adopted.

City Attorney David Dodd informed the Council that the best sections to use are Section 50-63, 50-64, and 50-65 allowing the City to require removal of rubbish, trash, filth, or unwholesome matter of any kind by a property owner. The process will require the City to give notice to the property owner and allow the property owner ten (10) days to comply. After ten (10) days have expired, the city has the authority to seek judicial enforcement in court, or clean up the matter itself. If the City cleans up the matter, it may charge for the expenses of the process pursuant to Section 50-65 of the Code of Ordinances. If the amounts are not paid, a lien will be placed on the property.

Interim City Manager Curtis Snow asked the Council a series of questions in relation to the effect of Dallas Crown Packing regarding strong bad odors on a regular basis, odors attracting flies and vermin, quality of life for its neighbors, the effects of property values, odors affecting the town as a whole, can odors and flies be stopped, should the property be rezoned to allow its current use, should the City ask the Zoning Board of Adjustment to consider terminating Dallas Crown Packing's current status as a nonconforming use, does the City want to spend funds for a solution and what do you want staff to do.

City Attorney David Dodd commented that the Council was not here tonight to make any decisions, it is for Council to give staff direction on options to bring back information to the Council.

Councilmember Altom commented that he could not imagine what it would be like to have to smell the odor from Dallas Crown and it is not acceptable, but what are we going to do about it. We need to gather more evidence to build a case.

Interim City Manager Curtis Snow reported after hearing answers from the Council on the series of questions that the Council is very concerned about what the neighbors are enduring from the smell and odor of Dallas Crown. The City needs to enforce all City codes that are in violation. Contact TCEQ to report all odor nuisances' complaints. Build a strong case by collecting extra evidence by documentation and that the City Council be ready to make a decision on how to proceed. The process should be well thought out and balanced.

Discussion was held if the Council wanted the Zoning Board Of Adjustment to look into the non-conforming use of Dallas Crown Packing regarding amortization. City Attorney David Dodd suggested that if the

Council considered that action at a later meeting that it be discussed in Executive Session before any decision is made to advise the Council of all the legal process and ramification so that the Council's questions are answered before the Council voted directing the Zoning Board of Adjustment to consider the non-conforming use regarding Dallas Crown.

ANNOUNCEMENTS FROM CITY MANAGER.

No comments were made by the City Manager.

REQUEST/COMMENTS FROM MEMBERS OF CITY COUNCIL.

No comments were made by the City Council.

ADJOURNMENT.

Mayor Pro-Tem Wampler moved and seconded by Councilmember Bounds to adjourn the meeting at 7:45 p.m. The Mayor called for a vote with all voting AYE, the motion carried. Councilmember Holmes and Councilmember Murrell were absent.

**PAULA BACON
MAYOR**

ATTEST:

**JO ANN TALBOT
CITY SECRETARY**