MIDLAND CITY COUNCIL
MINUTES
OCTOBER 25, 2011

The City Council convened in a Briefing Session in the basement conference room, City Hall, Midland, Texas, at 9:17 a.m. on October 25, 2011.

Council Members present: Mayor W. Wesley Perry, Council Member Jerry Morales (At-Large), Council Member Jeff Sparks (District 1), and Council Member John James (District 3), and Mayor Pro Tem Michael Trost (District 4),

Council Members absent: Council Member Scott Dufford (At-Large) and Council Member Vicky Hailey (District 2) (Hailey arrived at 9:27 a.m.).

Staff members present: City Manager Courtney Sharp, City Attorney Keith Stretcher, Deputy City Manager Tommy Hudson, Assistant City Manager Jim Nichols, City Secretary Amy Turner, Development Services Director Rick Crownover, Utilities Director Stuart Purvis, Chief Information Officer Sharlett Chowning, Airport Director Marv Esterly, Community Services Director Tina Jauz, General Services Director Robert Patrick, Finance Director Bob McNaughton, City Engineer David Beard, Assistant Parks & Recreation Director Kimberly Cornelsen, Transportation Manager Gary Saunders, and Assistant Fire Chief Fritz Niggeler.

BRIEFING SESSION

1. Discuss Issuance of Certificate of Obligation Bonds for Communications, Fire Station, Municipal Court, Parks & Recreation, Information Systems, Streets, Water and Wastewater. (Finance).

   City Manager Sharp gave a brief overview of the City's Strategic Plan and outlined some of the expenditures that would be covered by issuing bonds that included an additional fire station, a new Municipal Court, street paving, radio interoperability, technology upgrades, and park improvements.

   Finance Director McNaughton explained that staff is proposing two issues, one supported by ad valorem taxes and the other supported by the water and sewer system. He reviewed a spreadsheet explaining how the money is proposed to be distributed. He reviewed the preliminary schedule of events and noted that staff would come before Council on November 8th for authorization to proceed with the certificate of obligation issue.

   A discussion ensued regarding the impact on fund balances. Finance Director McNaughton clarified that the pledged 25% would continue to be held.

The foregoing agenda item was discussed by the City Council with no formal action taken. The Briefing Session was adjourned at 9:38 a.m.

REGULAR SESSION

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:02 a.m., October 25, 2011.

Council Members present: Mayor W. Wesley Perry, Mayor Pro Tem Michael Trost (District 4), Council Member Jerry Morales (At-Large), Council Member Jeff Sparks (District 1), Council Member Vicky Hailey (District 2), and Council Member John James (District 3).

Council Members absent: Council Member Scott Dufford (At-Large).

Staff members present at the annex table: City Manager Courtney Sharp, City Attorney Keith Stretcher, Deputy City Manager Tommy Hudson, and Assistant City Manager Jim Nichols.

MISCELLANEOUS

1. The invocation was voiced by Reverend Daniel Hernandez of Mid-Cities Community Church.

2. The Pledge of Allegiance to the Flag was stated.

3. Presentation of special events, organizations, individuals, or periods of time.

No presentations were made.

PUBLIC COMMENT

4. Mayor Perry opened the floor for public comments to allow individuals to address the City Council on city-related issues and projects.

Randal Henson, 2012 Warehouse Road, noted that he is a local builder and that he owns property and had purchased a trailer to haul his own trash. He stated he was told he had to obtain a hauler's permit from the City, which he did. He noted that there are five other people who are hauling trash and who do not have a hauler's permit and asked that the issue be addressed.

There were no other requests by citizens to speak.

CONSENT AGENDA

Council Member Morales moved to approve Consent Agenda items 5-14 and 16; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

5. Approved the minutes of the regular City Council meeting of October 11, 2011.

6. Adopted Resolution No. 2011-245. Caption of said resolution is as follows:

RESOLUTION NO. 2011-245

A RESOLUTION NOMINATING A CANDIDATE FOR THE MIDLAND CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS; AND DIRECTING THE CITY MANAGER TO DELIVER A COPY OF THIS RESOLUTION TO THE MIDLAND CENTRAL APPRAISAL DISTRICT.

7. Adopted Resolution No. 2011-246. Caption of said resolution is as follows:

RESOLUTION NO. 2011-246

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR AN UPGRADE TO THE CONTROL ROOM AT CITIBANK BALL PARK

8. Adopted Resolution No. 2011-247. Caption of said resolution is as follows:

RESOLUTION NO. 2011-247

A RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE REMOVAL AND REPLACEMENT OF THE VIDEO DISPLAY SCREEN AT GRANDE COMMUNICATIONS STADIUM

9. Adopted Resolution No. 2011-248. Caption of said resolution is as follows:

RESOLUTION NO. 2011-248

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE REPLACEMENT OF CONTROL ROOM EQUIPMENT AT GRANDE COMMUNICATIONS STADIUM

10. Adopted Resolution No. 2011-249. Caption of said resolution is as follows:

RESOLUTION NO. 2011-249

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE REMOVAL AND REPLACEMENT OF THE SAFETY PADS ON THE FENCE RAILS AT CITIBANK BALL PARK

11. Adopted Resolution No. 2011-250. Caption of said resolution is as follows:

RESOLUTION NO. 2011-250

RESOLUTION AUTHORIZING THE CITY MANAGER AND THE CITY ATTORNEY TO NEGOTIATE AND EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH

PRIORITY POWER MANAGEMENT, L.L.C., FOR AGGREGATION, CONSULTING AND NEGOTIATION SERVICES REGARDING THE CITY'S ELECTRICITY SUPPLY

12. Adopted Resolution No. 2011-251. Caption of said resolution is as follows:

RESOLUTION NO. 2011-251
RESOLUTION AUTHORIZING THE ACCEPTANCE OF A ROUTINE AIRPORT MAINTENANCE PROGRAM GRANT FROM THE TEXAS DEPARTMENT OF TRANSPORTATION TO PROVIDE AN AUTOMATED WEATHER OBSERVING SYSTEM; AUTHORIZING THE MAYOR, CITY MANAGER AND CITY ATTORNEY TO EXECUTE ALL GRANT DOCUMENTS

13. Approved a preliminary plat of Grandridge Estates, being a 19.04-acre tract of land out of Section 25, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the northwest corner of the intersection of Crowley Boulevard and Rio Grande Avenue.) (Planning)

14. Approved a request by West Company of Midland for Country Sky Addition (Section 11), to approve items requested for deferral ($141,220), waive the public improvement guarantee associated with the deferred items, and enter into an agreement to accept compensation to construct public infrastructure. This subdivision is generally located on the southwest side of the intersection of Briarwood Ave. and Roadrunner Trail, Approximately 350' west of Avalon Dr. (Engineering)

16. Adopted Resolution No. 2011-252. Caption of said resolution is as follows:

RESOLUTION NO. 2011-252
RESOLUTION AUTHORIZING THE EXECUTION OF CHANGE ORDER NUMBER TWO WITH RED RIVER CONSTRUCTION COMPANY, INCORPORATED, ADDING $486,604.00 FOR ADDITIONAL WORK TO THE EXISTING CONTRACT FOR IMPROVEMENTS AT THE MIDLAND INTERNATIONAL AIRPORT AND FOR THE PAUL DAVIS WELL SITES IMPROVEMENTS PROJECT; AND APPROPRIATING $486,604.00; THE ORIGINAL CONTRACT WAS FOR $3,877,740.00; THIS CHANGE ORDER BRINGS THE TOTAL CONTRACT PRICE TO $4,750,756.00

The following items were pulled from consent calendar and considered individually.

15. Consider a motion on a request by West Company of Midland for Northview Addition (Section 12), to approve items requested for deferral ($47,564.00), waive the public guarantee associated with the deferred items and enter into an agreement to accept compensation to construct public infrastructure. This subdivision is generally located on the southwest side of the intersection of Mockingbird Lane and Whitman Drive. (Engineering)

Council Member Sparks spoke about the deferrals noting that the deferral for the sewer really is a waiver because once someone has built a septic system there would be no reason to tie into the sewer line. He pointed out that the other deferral is for the water line noting that the owner does not plan to tie into the water line and it is primarily for future water usage and fire protection. He proposed that rather than have the owner pay the entire cost of the water line he only be charged 50 percent of the cost, that he give the right-of-way so that the line can go in when development happens on the property to the west, that he pay his portion of paving, and asked if possible, that the City Council approval the final plat so that he does not have to wait until the next Planning & Zoning meeting.

Following discussion, Council Member Sparks moved to only charge the owner 50 percent of the cost to install the water line. Due to a lack of a second, the motion died.

Discussion revealed that if the water line is not installed, the money would go in escrow until the time development to the west happened. If the line was installed before the property to the west was developed, the City would pay for the other 50 percent of the cost.

Council Member Sparks moved to approve the request by West Company of Midland for Northview Addition (Section 12), to approve items requested for deferral, waive the public guarantee associated with the deferred items, enter into an agreement to accept compensation to construct public infrastructure, to only charge 50 percent of the cost for the water line, to have the owner dedicate the right-of-way for the water line to be completed in the future, and to authorize the City Manager to negotiate a development agreement; seconded by Council Member Trost.

Following discussion, the motion as amended carried by the following vote: AYE: Morales, Trost, Hailey, Perry, and Sparks. NAY: James. ABSTAIN: None. ABSENT: Dufford.

17. Consider a resolution authorizing the City Manager to advertise a Request for Proposals (RFP) for firms to deliver potable water from any source to the City of Midland; authorizing the City Manager to negotiate a professional services agreement for said services; and providing that said agreement shall not become effective until approved by the City Council. (Utilities)

Following discussion, Council Member Trost moved to adopt Resolution No. 2011-253; seconded by Council Member Sparks.

Mayor Perry spoke briefly about water issues and the need to ensure that every option is placed on the table for consideration.

The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford. Caption of said resolution is as follows:

RESOLUTION NO. 2011-253

RESOLUTION AUTHORIZING ISSUANCE OF A REQUEST FOR PROPOSALS FOR FIRMS TO DELIVER POTABLE WATER TO THE CITY OF MIDLAND, IN QUANTITIES SUFFICIENT TO MEET THE CITY'S WATER NEEDS, FROM ANY AVAILABLE SOURCE; AUTHORIZING THE CITY MANAGER TO NEGOTIATE AN AGREEMENT WITH THE CHOSEN FIRM FOR THE PERFORMANCE OF SAID SERVICES; AND SAID AGREEMENT SHALL NOT BE EXECUTED UNTIL APPROVED BY THE CITY COUNCIL

18. Consider a resolution authorizing the City Manager to advertise a Request for Proposals (RFP) for firms to develop and operate the T-Bar Well Field; authorizing the City Manager to negotiate a professional services agreement for said services; and providing that said agreement shall not become effective until approved by the City Council. (Utilities)

Following brief discussion, Council Member Trost moved to adopt Resolution No. 2011-254; seconded by Council Member Sparks.

Discussion ensued regarding the time frame of the RFP. City Manager Sharp noted that the RFP's were due before Thanksgiving and that Staff would come back before Council at the first part of the year.

The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford. Caption of said resolution is as follows:

RESOLUTION NO. 2011-254

RESOLUTION AUTHORIZING ISSUANCE OF A REQUEST FOR PROPOSALS FOR FIRMS TO DEVELOP AND OPERATE THE T-BAR RANCH WELL FIELD LOCATED IN LOVING COUNTY, TEXAS AND IN WINKLER COUNTY, TEXAS; AUTHORIZING THE CITY MANAGER TO NEGOTIATE A PROFESSIONAL SERVICES AGREEMENT WITH THE CHOSEN FIRM FOR THE PERFORMANCE OF SAID SERVICES; AND SAID AGREEMENT SHALL NOT BE EXECUTED UNTIL APPROVED BY THE CITY COUNCIL

19. Consider a resolution approving the acceptance of a bid made for the purchase of real property described as Lots 7 & 8, Block 34, Greenwood Addition, City of Midland, Midland County, Texas, commonly known as 309 South Stonewall. (Code Administration)

Following discussion, Council Member Sparks moved to not accept the bid for the purchase of the property commonly known as 309 South Stonewall; seconded by Council Member Trost.

Discussion ensued about the bid being too low noting that the value of the property on the tax role was listed as $1540. An argument was raised that a new owner would begin to pay taxes. Opposing arguments noted that if this property was sold for $250 it would lower the value of the other properties and their taxes would go down as well.

The motion to reject the bid was approved by the following vote: AYE: Trost, Hailey, Perry, James, and Sparks. NAY: Morales. ABSTAIN: None. ABSENT: Dufford.

20. Consider a resolution regarding a lease at the Midland International Airport with Lucky Air, L.L.C.

Council Member Morales noted that he received calls from the Airport Board regarding the wording of the resolution and asked why the Airport Manager would negotiate a lease at the airport when the resolution says that the City Manager would negotiate the lease.

City Manager Sharp clarified that the negotiations are handled by the most experienced person and he often relies on the expertise of his department managers.

Discussion ensued about how negotiations are handled noting that often the department, Legal and City Manager's office are all involved at some point. The role of the Airport Board was also discussed.

Council Member Sparks moved to adopt Resolution No. 2011-256; seconded by Council Member Morales.

Following discussion, Council Member Sparks moved to call the question; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

The original motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford. Caption of said resolution is as follows:

RESOLUTION NO. 2011-256

RESOLUTION AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO NEGOTIATE A LEASE AGREEMENT WITH LUCKY AIR, LLC, FOR THE USE OF CERTAIN LAND AT THE MIDLAND INTERNATIONAL AIRPORT; LUCKY AIR, L.L.C., WILL CONSTRUCT A HANGAR ON THE LEASED PREMISES; AND THE LEASE WILL NOT BE EFFECTIVE UNTIL APPROVED BY A RESOLUTION OF THE MIDLAND CITY COUNCIL

Mayor Perry moved forward Agenda Item number 23.

SECOND READINGS

23. Consider an ordinance on second reading prohibiting parking at anytime on a portion of the west side of Northrup Drive north of Sinclair Avenue and on the south side of Sinclair Avenue between Northrup Drive and Hughes Street except to residents who have obtained a valid parking permit. (Transportation) (First reading held October 11, 2011)

City Secretary Turner read the caption of Ordinance No. 8950.

Council Member Hailey moved to approve the second and final reading of Ordinance No. 8950 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks.

Council Member Trost moved to amend the motion and waive the $5 fee for permits; seconded by Council Member Hailey. The motion to amend failed by the following vote: AYE: Morales, Trost, and Hailey. NAY: Perry, James, and Sparks. ABSTAIN: None. ABSENT: Dufford.

The original motion carried by the following vote: AYE: Morales, Hailey, Perry, James, and Sparks. NAY: Trost. ABSTAIN: None. ABSENT: Dufford. Caption of said ordinance is as follows:

ORDINANCE NO. 8950

AN ORDINANCE PROHIBITING PARKING ON THE WEST SIDE OF NORTHRUP DRIVE FROM A POINT 242 FEET SOUTH OF THE CENTERLINE OF GULF AVENUE, INCLUDING 1907 NORTHRUP DRIVE, CONTINUING NORTH TO THE SOUTH CURB LINE OF NEELY AVENUE AND ON THE SOUTH SIDE OF SINCLAIR AVENUE BETWEEN NORTHRUP DRIVE AND HUGHES STREET EXCEPT TO RESIDENTS

WHOSE PROPERTY ABUTS SUCH STREET AND HAVE OBTAINED A VALID PARKING PERMIT; AUTHORIZING AND DIRECTING THE TRAFFIC ENGINEER TO ERECT APPROPRIATE SIGNS; DECLARING ANY VEHICLE IN VIOLATION OF THE PROVISIONS OF THIS ORDINANCE A NUISANCE AND PROVIDING FOR THE REMOVAL OF SAME; CONTAINING A CUMULATIVE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS ($200.00); AND ORDERING PUBLICATION

Mayor Perry moved forward Public Hearings.

PUBLIC HEARINGS

24. Consider a request by SBC, LP. for a zone change from FD, Future Development District to PD, Planned District for a Housing Development on a 16.63-acre tract of land.

Planning Division Manager Walker gave an overview of the item noting it was creating a new neighborhood that is an extension of the Grandridge area near Lowe's. He noted the Planning Commission recommended unanimous approval.

Mayor Perry opened the public hearing at 11:10 a.m.

Doug Henson, 1811 Heritage, distributed pictures of the two variances they were requesting. The first variance was for a 5 foot setback rather than a 20-25 foot setback. He felt this was appropriate in light of water restrictions as it reduces the amount of landscaping. He explained that the second variance was for the elimination of a backyard which would instead be replaced with a garage. He noted that the only people affected by the variances would be the homeowners who desired this type of construction and explained that this is the continuation of a product that has been well accepted.

There being no one else present wishing to speak, the public hearing was closed at 11:14 a.m.

City Secretary Turner read the caption of Ordinance No. 8951.

Council Member James moved approval of the first of two readings of Ordinance No. 8951 in accordance with the Charter of the City of Midland; seconded by Council Member Hailey.

Following discussion, the motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford. Caption of said ordinance is as follows:

ORDINANCE NO. 8951

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 16.63-ACRE TRACT OF LAND (BEING 19.04 ACRES INCLUSIVE OF DEDICATED RIGHTS-OF-WAY) OUT OF SECTION 25, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE NORTHWEST CORNER OF CROWLEY BOULEVARD AND RIO GRANDE AVENUE); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

25. Consider a request by City of Midland for a zone change from 1F-2, One-Family Dwelling District to 1F-3, One-Family Dwelling. (Planning)

Planning Division Manager Walker gave an overview of the item noting that this would provide affordable housing in the central part of Midland. He explained that the Planning & Zoning Commission received comments from the neighborhood residents objecting to the proposal with a majority of the comments objecting to the building materials. He stated one letter of objection had been received and distributed copies of the letter to the Council.

Community Development Manager Sylvester Cantu showed maps of the target areas selected.

Mayor Perry opened the public hearing at 11:26 a.m.

Rene Larez 1314 E. Golf Course Road, stated that more lights would make it feel more crowded and asked if this were being built in one of the Council Member's neighborhoods if they would want these homes to be built.

Council Member James clarified that the resident did not want to stop anything from being built but wanted one house built per lot.

Patrick Aleman, 1312 E. Golf Course Road, stated he did not feel that was the appropriate use for the land and felt building conventional houses would be a better option.

Rene Larez, stated that if this were to be approved it would be better to consolidate lots on Jackson but not on Hamby.

Patrick Aleman, asked Council to reject the request and deny the application.

There being no one else present wishing to speak, the public hearing was closed at 11:30 a.m.

City Secretary Turner read the caption of Ordinance No. 8952.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 8952 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks.

David Diaz and Alynda Best were invited forward to answer questions. Discussion revealed that the homes would be siding with partial brick and could be all brick if the homeowner chooses. Ms. Best clarified that landscaping would be up to homeowners but they encourage the homeowner to wait until the water restrictions are lifted. She also noted that there would be a complete fence in the back.

David Diaz noted that most of their homes are purchased by single parent families and having a smaller yard is important as it can be a burden to the homeowner if there is too much landscaping.

Following discussion, Council Member James moved to amend the motion to not consolidate the lots on the Hamby block; seconded by Council Member Hailey. The motion to amend failed by the following vote: AYE: Hailey and James. NAY: Morales, Trost, Perry and Sparks. ABSTAIN: None. ABSENT: Dufford.

The original motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford. Caption of said ordinance is as follows:

ORDINANCE NO. 8952

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 9-14, BLOCK 1, LOTS 1-8, BLOCK 2, LOTS 3-8, BLOCK 3, LOTS 1-8, BLOCK 4, GLENN FRANCES ADDITION; LOTS 3-10, BLOCK 4, LOTS 1-9, BLOCK 5, GLENMORE HEIGHTS; AND THE NORTHEAST 5 ACRES OF BLOCK 79, EAST MIDLAND, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED 1F-2, ONE-FAMILY DWELLING DISTRICT, TO BE USED AS A 1F-3, ONE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF EAST GOLF COURSE ROAD AND TILDEN STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

26. Public hearing regarding a request by Bluestem Energy Holdings, LLC. (Evans "J" #1) for a Permit to drill an Oil and Gas Well within the City Limits located 2322' FSL and 2310' FEL, Section 8, Block "X", H. P. Hilliard Survey, Midland County, Texas. (Generally located on the west side of the N. Midkiff Road, approximately ½ mile north of Mockingbird Lane.) (Planning)

Oil and Gas Compliance Officer Ron Jenkins gave an overview of the item noting that this is the same location as the other Bluestem Energy wells that were discussed at the last City Council meeting.

Mayor Perry opened the public hearing at 11:49 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

No further action was taken on this item.

27. Public hearing regarding a request by Callon Petroleum (Annie #3) for a Permit to drill an Oil and Gas Well within the City Limits located 849' FNL and 2087' FEL, Section 48, Block 41, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the west side S. FM 1788, approximately 1 mile south of State Hwy 191.) (Planning)

Oil and Gas Compliance Officer Jenkins gave an overview of the item noting that the applicant is requesting a variance for landscaping and a waiver for the road repair agreement because no City roads would be used. He stated that the Oil and Gas Advisory Committee had approved the item and that one citizen made a general comment expressing concern about approving wells within the city limits.

Mayor Perry opened the public hearing at 11:52 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

No further action was taken on this item.

28. Public hearing regarding a request by Callon Petroleum (Annie #8) for a Permit to drill an Oil and Gas Well within the City Limits located 671' FNL and 1197' FEL, Section 48, Block 41, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the west side S. FM 1788, approximately 1 mile south of State Hwy 191.) (Planning)

Oil and Gas Compliance Officer Jenkins gave an overview of the item noting the applicant was requesting a variance from the 500 foot rule because the closest building was 328 feet to the south. He noted that they were also requesting landscaping and road repair waivers.

Mayor Perry opened the public hearing at 11:55 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

No further action was taken on this item.

Council Member Morales suggested that when landscaping is waived a contribution could be made to the Park Endowment Fund instead.

29. Consider a request by McClatchy Bros Inc. for a Temporary Land Use Permit for a Pipe Yard on a 22.31-acre tract of land. (Planning)

Planning Division Manager Walker gave an overview of the item noting that Staff recommended approval but would not recommend a second renewal.

Mayor Perry opened the public hearing at 12:00 noon.

Randal Henson, 2012 Warehouse Road, stated that last year he was against this item and had thought about purchasing the property. He explained that there is a lot of 18-wheeler traffic up and down the road which produces a lot of dust. He said it is difficult to breathe sometimes because there is so much dust.

Richard Minnix, McClatchy Bros, clarified that it is not just his trucks that drive that road but there are a lot of other businesses that create the truck traffic. He stated this is just a temporary use for one more year until he can find a bigger plot of land.

Randal Henson requested that the city post a speed limit sign on the road to help slow traffic.

There being no one else present wishing to speak, the public hearing was closed at 12:13 p.m.

Council Member Trost moved approval of Resolution No. 2011-257; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, and Sparks. NAY: Hailey. ABSTAIN: None. ABSENT: Dufford. Caption of said resolution is as follows:

RESOLUTION NO. 2011-257
A RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR A PIPE YARD ON A 22.31-ACRE TRACT OF LAND OUT OF THE SOUTHWEST QUARTER OF SECTION 5, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF WEST INTERSTATE 20 AND WAREHOUSE ROAD); MAKING SAID PERMIT SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS CONTAINED HEREIN

30. Consider a request by Midland Community Theatre for a Temporary Land Use Permit for an Outdoor Event on a 4.68-acre tract of land. (Planning)

Planning Division Manager Walker gave an overview of the item noting that this was for a single event to be held by the Midland Community Theatre as a fundraiser on their property with outdoor music, cooking, and the sale of alcoholic beverages. He noted that overflow parking would be sent to Midland College and that one officer would be on site at all times. He stated that no letters of objection had been received.

Mayor Perry opened the public hearing at 12:16 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

Council Member Hailey moved approval of Resolution No. 2011-258; seconded by Council Member Trost.

Tim Jebsen, of Midland Community Theatre was invited forward to speak. He noted cooking would happen overnight on Friday and that all music and activities would take place on Saturday.

The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford. Caption of said resolution is as follows:

RESOLUTION NO. 2011-258
RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR AN OUTDOOR EVENT ON A 4.68-ACRE TRACT OF LAND OUT OF SECTION 15, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF WEST WADLEY AVENUE, APPROXIMATELY 1,000 FEET EAST OF NORTH GARFIELD STREET); AND MAKING SAID PERMIT SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS CONTAINED HEREIN

31. Consider allowing continued taxation of Tangible Personal Property in Transit per Senate Bill 1 and consider a resolution to constitute “official action by governing body” as required. (Finance)

Finance Director McNaughton gave an overview of the item noting that to continue taxing tangible personal property the City Council needs to take action.

Mayor Perry opened the public hearing at 12:20 p.m.

Jerry Bundick, 3312 Haynes, explained that tangible personal property in transit is property that is imported, acquired and brought into State of Texas and later transported somewhere else in state or out of state within 175 days. He noted that the loss of the funds would not be a major impact to the City of Midland. He further clarified that if the Council were to take no action the exemption would go into effect immediately and the City could no longer collect taxes for those goods.

There being no one else present wishing to speak, the public hearing was closed at 12:32 p.m.

Council Member James moved approval of Resolution No. 2011-259; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, and James. NAY: Sparks. ABSTAIN: None. ABSENT: Dufford. Caption of said resolution is as follows:

RESOLUTION NO. 2011-259
A RESOLUTION PROVIDING FOR THE CONTINUED TAXATION OF GOODS-IN-TRANSIT AS ALLOWED UNDER SENATE BILL NUMBER 1 WHICH WAS ENACTED BY THE TEXAS LEGISLATURE IN THE 82ND LEGISLATURE FIRST SPECIAL SESSION

Mayor Perry returned to the unheard Second Readings.

SECOND READING (CONTINUED)

21. Consider an ordinance on second reading on a request by Insignia Hospitality Group, Inc. for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District. (Planning) (First reading held October 11, 2011)

City Secretary Turner read the caption of Ordinance No. 8948.

Council Member Trost moved to approve the second and final reading of Ordinance No. 8948 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford. Caption of said ordinance is as follows:

ORDINANCE NO. 8948
AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 8 AND 9, BLOCK 3, WESTRIDGE PARK ADDITION, SECTION 16, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED NEAR THE NORTHEAST CORNER OF CATALINA DRIVE AND DEAUVILLE BOULEVARD); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

22. Consider an ordinance on second reading providing the maximum time limit for parking upon a portion of "N" Street of two hours and repealing Ordinance No. 6757. (Transportation) (First reading held October 11, 2011)

City Secretary Turner read the caption of Ordinance No. 8949.

Council Member Sparks moved to approve the second and final reading of Ordinance No. 8949 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford. Caption of said ordinance is as follows:

ORDINANCE NO. 8949
AN ORDINANCE PROVIDING THE MAXIMUM TIME LIMIT FOR PARKING ON A PORTION OF “N” STREET FROM THE SOUTH CURB LINE OF TENNESSEE AVENUE, SOUTH TO THE EAST/WEST ALLEY BETWEEN OHIO AVENUE AND ILLINOIS AVENUE TO TWO HOURS; AUTHORIZING AND DIRECTING THE TRAFFIC ENGINEER TO ERECT APPROPRIATE SIGNS; DECLARING ANY VEHICLE IN VIOLATION OF THE PROVISIONS OF THIS ORDINANCE A NUISANCE AND PROVIDING FOR THE REMOVAL OF SAME; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS ($200.00); AND ORDERING PUBLICATION

MISCELLANEOUS

32. Consider a resolution authorizing issuance of an operating certificate for My Shuttle Home MODE. (Police)

Council Member Hailey moved to adopt Resolution No. 2011-260; seconded by Council Member Trost.

Council Member James noted that he would be abstaining from voting on this item.

The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, and Sparks. NAY: None. ABSTAIN: James. ABSENT: Dufford. Caption of said resolution is as follows:

RESOLUTION NO. 2011-260

RESOLUTION AUTHORIZING AN OPERATING CERTIFICATE FOR ELF HOLDINGS, INC. D.B.A. MY SHUTTLE HOME MODE, TO OPERATE A SHUTTLE SERVICE BUSINESS; SETTING FORTH CONDITIONS ACCOMPANYING THE CERTIFICATE; AND ESTABLISHING THE TERMS OF THE CERTIFICATE

33. Consider a motion regarding a request from Tall City Blues Fest to increase the 2011-12 Hotel/Motel Occupancy Tax allocation in the amount of $9,608.97 to the Midland Center to cover expenses incurred by the Tall City Blues Fest. (City Manager)

Council Member Trost moved to approve a request from Tall City Blues Fest to increase the 2011-12 Hotel/Motel Occupancy Tax allocation in the amount of $9.608.97 to the Midland Center to cover expenses incurred by the Tall City Blues Fest; seconded by Council Member Hailey.

Discussion ensued about if the Council should consider hearing this item or if they should be sent to the Hotel/Motel Board.

Discussion revealed that Hotel/Motel funds have provided $15,000 to Tall City Blues Fest with an additional $10,000 from the City Council for a total thus far of $25,000 and that the request is for an additional $9,608.97.

Discussion ensued about the amount that has been contributed to other organizations. Council Member James noted that supporting this item would be consistent with the interest in moving activities to the downtown and felt it was a reasonable request.

A brief discussion was held regarding giving money to the DMMD for distribution for events such as this so that they would not have to compete with other agencies for Hotel/Motel funding.

Lisa Grissom, 3600 N. Midland Drive, noted that in her presentation to the City Council she explained that there would not be a 2012 event if the 2011 losses were not covered. She noted that the $9,000 is for fees charged for the use of the Midland Center and Centennial Plaza. She explained that if those fees could be waived then the 2012 festival could happen. She felt that the Council could support this item because it promotes tourism to the downtown and asked that the fees be waived. She explained that she came to the City Council rather than the Hotel/Motel Board because of the timing of the festival.

The motion failed by the following vote: AYE: Trost, Hailey, and James. NAY: Morales, Perry, and Sparks. ABSTAIN: None. ABSENT: Dufford.

Council member James requested that the item be placed on the next agenda for reconsideration when the full Council would be present.

34. Consideration of appointments to various Boards and Commissions.

No appointments were made.

RECESS/EXECUTIVE SESSION

36. Mayor Perry announced that the meeting would be recessed to the conference room for lunch and an update would be received regarding Citywide development issues.

37. Mayor Perry announced that pursuant to Texas Government Code Section 551.101, the Council would now hold an Executive Session, closed to the public, to discuss the following matters as permitted under the following Texas Government Code Sections:

Section 551.071, Consultation with the City Attorney

Discuss with the City Attorney and Attorneys with the law firm of Cotton, Bledsoe, Tighe, and Dawson, litigation styled In Re: Heritage Consolidated, LLC, Case No. 10-36484-hdh, Chapter 11, Jointly Administered, in the United States Bankruptcy Court, Northern District of Texas, Dallas Division.

Discuss with the City Attorney a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter.

Discuss with the City Attorney and Attorney(s) with the law firm of Cotton, Bledsoe, Tighe and Dawson contemplated litigation regarding a 45.99 acre tract of land located in Section 15, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas.

Mayor Perry recessed the meeting to Executive Session at 12:59 p.m. The entire Council met in executive session until 2:50 p.m.

All of the business at hand having been completed, the meeting adjourned at 2.50 p.m.

PASSED AND APPROVED the 8th day of November, 2011.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary