

**MIDLAND CITY COUNCIL  
MINUTES  
December 14, 2010**

The City Council convened in a Briefing Session in the basement conference room, City Hall, Midland, Texas, at 9:02 a.m. on December 14, 2010.

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

Council Members absent: Council Member Vicky Hailey (District 2). (Hailey arrived at 9:05 a.m.)

Staff members present: City Manager Courtney Sharp, City Attorney Keith Stretcher, Deputy City Manager Tommy Hudson, Assistant City Manager Marcus Johnston, Interim City Secretary Amy Turner, Development Services Director Rick Crownover, Director of Finance Bob McNaughton, Fire Chief Robert Isbell, Utilities Director Stuart Purvis, Director of Airports Marv Esterly, Planning Division Manager Cameron Walker, GIS Manager Bill Hodge, Multimedia Developer LeaAnn Dearman, Assistant Airport Director Justine Ruff, Civil Engineer Scott Swonke, City Engineer David Beard, Assistant Utility Director Jill Reed, and Public Information Officer Tasa Watts.

**BRIEFING SESSION**

Mayor Perry introduced new staff members, City Engineer David Beard and Fire Chief Robert Isbell.

1. Presentation and discussion regarding multi-media communications.

Multimedia Developer Dearman reviewed a PowerPoint presentation and shared short clips of other municipality video magazines. She noted that she is working on several multimedia projects including a quarterly 30-minute video magazine, shorter video features announcing upcoming events, producing a kid's animated educational program, and feature length documentaries. She also addressed potential changes to the city's bulletin board pages on the website as well as concepts for a complete website redesign.

The City Council commended Ms. Dearman for her work on this project.

2. Discussion regarding corridor development and receive presentation from Parkhill, Smith and Cooper and city staff, with emphasis on Highway 191 and FM 1788.

Eric West of Parkhill, Smith, and Cooper reviewed a presentation on State Highway 191 infrastructure extensions, noting the basics of water delivery and sewer routing. He further commented that often times having the infrastructure in place spurs future development, briefly reviewed the city's 20 year plan for water and sewer development, and reviewed the MDC's action at the their meeting noting that they have approved expenditure of up to \$6 million for the extension of the water infrastructure to the airport.

Council noted that they would like to speak about the agreement in executive session at the first meeting in January and to take action on the MDC agreement at the second meeting in January.

Utilities Director Purvis spoke briefly about the need for infrastructure and Planning Division Manager Walker briefly addressed potential land use as a result of the development of infrastructure.

The foregoing agenda items were discussed by the City Council with no formal action taken.

The Briefing Session was adjourned at 9:58 a.m.

## **REGULAR SESSION**

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:06 a.m., December 14, 2010.

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

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

## **MISCELLANEOUS**

1. The invocation was voiced by Reverend Michael Philliber of Providence Presbyterian Church.
2. The Pledge of Allegiance to the Flag was stated.
3. Presentation of special events, organizations, individuals, or periods of time.
  - a. Mayor Pro Tem John James presented the Government Finance Officers Association Certificate of Achievement for Excellence in Financial Reporting for the Fiscal Year Ending September 30, 2009 to Finance Director McNaughton and his staff.
  - b. Recreation Superintendent Ben Telesca along with Council Members Morales and Trost presented certificates to the following Christmas Parade Award recipients. Best Lighting: Natural Gas Service; Originality: Gigi's Hair Salon; Best Theme, First Assembly of God.
  - c. Mayor Perry presented a certificate to Darlene Mays for Miracle on Tyler Street.
  - d. Council Member Dufford presented the Management Awards to the following recipients: Johnny Womack, Sylvester Cantu, LeaAnn Dearman, J.R. Smith, and Sal Garcia.
  - e. Mayor Perry presented a Resolution of Commendation to retiring city employee Rosie Garcia.
  - f. Mayor Perry introduced two new city employees: City Engineer David Beard and Fire Chief Robert Isbell.

## **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. There were no requests by citizens to speak.

## **CONSENT AGENDA**

Mayor Pro Tem James moved to approve Consent Agenda items 5c, 8-11, 13-19, and 21; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

- 5c. Approved the minutes of the special City Council meeting of November 23, 2010.

8. Adopted Resolution No. 2010-325. Caption of said resolution is as follows:

### **RESOLUTION NO. 2010-325**

A RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND THE CITY OF MIDLAND FOR IMPROVEMENTS TO AIRWAYS DRIVE LOCATED AT MIDLAND INTERNATIONAL AIRPORT, AS AUTHORIZED BY CHAPTER 501 OF THE TEXAS LOCAL GOVERNMENT CODE; AND APPROPRIATING FUNDS THEREFOR

9. Adopted Resolution No. 2010-326. Caption of said resolution is as follows:

RESOLUTION NO. 2010-326

A RESOLUTION FINDING THAT PARKHILL, SMITH & COOPER, INCORPORATED IS THE MOST QUALIFIED SUBMITTER OF QUALIFICATIONS FOR PROFESSIONAL ENGINEERING AND ARCHITECTURAL SERVICES FOR THE PURPOSE OF CERTAIN AIRPORT CAPITAL IMPROVEMENT PROJECTS THAT MAY BE CONSTRUCTED AT MIDLAND INTERNATIONAL AIRPORT OR MIDLAND AIRPARK AIRPORT

10. Adopted Resolution No. 2010-327. Caption of said resolution is as follows:

RESOLUTION NO. 2010-327

A RESOLUTION AUTHORIZING THE EXECUTION OF A COMMERCIAL HANGAR LEASE AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS AND TRACE ENGINES, L.P.; THE LEASE WILL ALLOW TRACE ENGINES, L.P. TO LEASE HANGARS11B AT THE MIDLAND INTERNATIONAL AIRPORT

11. Adopted Resolution No. 2010-328. Caption of said resolution is as follows:

RESOLUTION NO. 2010-328

A RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH MIDLAND SPORTS, INCORPORATED, OF MIDLAND, TEXAS, FOR PROFESSIONAL MARKETING, PROMOTION AND MANAGEMENT SERVICES AT THE SCHARBAUER SPORTS COMPLEX AT A TOTAL COST OF \$68,000.00

13. Adopted Resolution No. 2010-329. Caption of said resolution is as follows:

RESOLUTION NO. 2010-329

A RESOLUTION AUTHORIZING THE EXECUTION OF A PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT WITH GRASSLAND 2 DEV. CO., LLP FOR DEVELOPMENT OF GRASSLAND ESTATES WEST, SECTION 7, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED EAST OF STATE HIGHWAY 158 AND WEST OF NUEVA VISTA GOLF CLUB); AND ALLOCATING FUNDS IN THE AMOUNT OF \$119,296.00 THEREFOR; SAID AGREEMENT BEING AUTHORIZED BY SECTION 395.081 OF THE TEXAS LOCAL GOVERNMENT CODE

14. Adopted Resolution No. 2010-330. Caption of said resolution is as follows:

RESOLUTION NO. 2010-330

A RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH PARKHILL, SMITH & COOPER, INC. FOR PROFESSIONAL SERVICES FOR THE PREPARATION OF PLANS FOR THE REPLACEMENT OF THE BRIDGE DECK AND OTHER RELATED REPAIRS ON WARD STREET AT JAL DRAW; AND APPROPRIATING FUNDS THEREFOR

15. Adopted Resolution No. 2010-331. Caption of said resolution is as follows:

RESOLUTION NO. 2010-331

A RESOLUTION APPROPRIATING \$4,800 TO THE MIDLAND DRAW RIGHT OF WAY ACQUISITION PROJECT (8941) FOR THE PURCHASE OF PORTIONS OF LOTS 4-9, BLOCK 11, TRUELAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS

16. Adopted Resolution No. 2010-332. Caption of said resolution is as follows:

RESOLUTION NO. 2010-332

A RESOLUTION AUTHORIZING INTERLOCAL AGREEMENT WITH ECTOR COUNTY, TEXAS REGARDING COOPERATION BETWEEN THE MIDLAND POLICE DEPARTMENT AND THE ECTOR COUNTY SHERIFF'S DEPARTMENT IN THE INVESTIGATION OF CRIMINAL ACTIVITY AND LAW ENFORCEMENT

17. Adopted Resolution No. 2010-333. Caption of said resolution is as follows:

RESOLUTION NO. 2010-333

A RESOLUTION AUTHORIZING INTERLOCAL AGREEMENT WITH MIDLAND COUNTY, TEXAS REGARDING COOPERATION BETWEEN THE MIDLAND POLICE DEPARTMENT AND THE MIDLAND COUNTY SHERIFF'S DEPARTMENT IN THE INVESTIGATION OF CRIMINAL ACTIVITY AND LAW ENFORCEMENT

18. Adopted Resolution No. 2010-334. Caption of said resolution is as follows:

RESOLUTION NO. 2010-334

A RESOLUTION AUTHORIZING INTERLOCAL AGREEMENT WITH CITY OF ODESSA, TEXAS REGARDING COOPERATION BETWEEN THE MIDLAND POLICE DEPARTMENT AND THE ODESSA POLICE DEPARTMENT IN THE INVESTIGATION OF CRIMINAL ACTIVITY AND LAW ENFORCEMENT

19. Adopted Resolution No. 2010-335. Caption of said resolution is as follows:

RESOLUTION NO. 2010-335

A RESOLUTION ACCEPTING A DONATION OF \$7,500.00 FROM THE YARBOROUGH FOUNDATION; THE DONATED FUNDS WILL BE DEPOSITED IN THE INVEST-IN-A-VEST PROJECT TO PURCHASE BULLET PROOF VESTS FOR THE MIDLAND POLICE DEPARTMENT

21. Adopted Resolution No. 2010-336. Caption of said resolution is as follows:

RESOLUTION NO. 2010-336

A RESOLUTION RATIFYING ALL THE PRIOR ACTIONS OF THE CITY ATTORNEY OR HIS DESIGNEE RELATED TO LITIGATION STYLED HERITAGE CONSOLIDATED, LLC, ET AL., CASE NO. 10-36484- HDH-11 JOINTLY ADMINISTERED IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION; AND THE CITY ATTORNEY IS HEREBY AUTHORIZED TO FILE ALL MOTIONS AND APPEALS AND RESPOND TO ALL SETTLEMENT OFFERS IN ANY WAY RELATED TO THIS LITIGATION

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

- 5a. Mayor Perry noted that he asked to have the item pulled from consent agenda so that he could abstain from voting on this set of minutes.

Council Member Dufford moved to approve the minutes of the special City Council meeting of November 15, 2010; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Dufford, James, and Sparks. NAY: None. ABSTAIN: Perry. ABSENT: None.

- 5b. Mayor Perry noted that he asked to have the item pulled from consent agenda so that he could abstain from voting on this set of minutes.

Council Member Trost moved to approve the minutes of the regular City Council meeting of November 16, 2010; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Dufford, James, and Sparks. NAY: None. ABSTAIN: Perry. ABSENT: None.

6. A discussion ensued about recent changes to the law that prevent local preferences on procurements over \$100,000.

Council Member Trost moved to adopt Resolution No. 2010-337; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said resolution is as follows:

RESOLUTION NO. 2010-337

A RESOLUTION AUTHORIZING THE PURCHASE OF TWENTY-ONE (21) POLICE PACKAGE AUTOMOBILES FOR THE MIDLAND POLICE DEPARTMENT FROM SAM PACKS 5 STAR FORD OF CARROLLTON, TEXAS, AT A TOTAL COST OF \$482,090.00

7. Facilities & Fleet Management Director Mark Phillips noted that the reason the lowest bidder was not used for some vehicles was due to the fact that they did not meet specifications. A discussion ensued about the feasibility of using green vehicles.

Council Member Trost moved to adopt Resolution No. 2010-338; seconded by Mayor Pro Tem James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said resolution is as follows:

RESOLUTION NO. 2010-338

A RESOLUTION APPROVING THE PURCHASE OF NINETEEN (19) ADMINISTRATIVE VEHICLES OF VARIOUS TYPES, FROM ROGERS FORD OF MIDLAND, TEXAS, AND SAM PACKS 5-STAR FORD OF CARROLLTON, TEXAS, AT A TOTAL COST OF \$357,481.00; BIDS NOT CHOSEN INCLUDE STATE CONTRACT PRICES WHICH DO NOT MEET ADVERTISED SPECIFICATIONS AND SEVERAL BIDS SUBMITTED FROM CALDWELL COUNTRY FORD, OF CALDWELL, TEXAS, WHICH DO NOT MEET ADVERTISED MECHANICAL SPECIFICATIONS

12. A discussion ensued regarding the project.

Council Member Hailey moved to adopt Resolution No. 2010-339; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said resolution is as follows:

Adopted Resolution No. 2010-339. Caption of said resolution is as follows:

RESOLUTION NO. 2010-339

A RESOLUTION REJECTING ALL BIDS RECEIVED FOR THE LAMESA ROAD WATER AND SEWER RECONSTRUCTION PROJECT; RESCINDING RESOLUTION NO. 2010-225 WHICH AUTHORIZED EXECUTION OF A CONTRACT WITH DIGITAL COMM, INCORPORATED, FOR SAID PROJECT; AND APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR SAID PROJECT; SAID PROJECT WILL BE FOR THE REPLACEMENT OF WATER LINES AND REPAIR OR REPLACEMENT OF SEWER MANHOLES AND RELATED UTILITY LINES; NOTICE WAS PROVIDED TO DIGITAL COMM, INCORPORATED, AS REQUIRED BY SECTION 271.027 OF THE TEXAS LOCAL GOVERNMENT CODE

20. Council Member Morales invited Sue Mercer of Oncor Electric forward for a presentation. Sue Mercer presented the city with a check for \$108,924.84 for two matching grants of \$50,000 each and \$8,924 as a partial payment toward the airport project.

Council Member Morales moved to adopt Resolution No. 2010-340; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said resolution is as follows:

RESOLUTION NO. 2010-340

A RESOLUTION ACCEPTING \$100,000.00 IN GRANT FUNDS FROM THE ONCOR GRANT PROGRAM; AND DEPOSITING SAID FUNDS INTO THE CITY OF MIDLAND GENERAL FUND

**SECOND READINGS**

22. Interim City Secretary Turner read the caption of Ordinance No. 8849.

Council Member Hailey moved to approve the second and final reading of Ordinance No. 8849 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, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said ordinance is as follows:

ORDINANCE NO. 8849

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOTS 7, 8 AND 9, BLOCK 106, RESURVEY BLOCK 106 WEST END ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF SOUTH "I" STREET AND HOLLOWAY AVENUE), BY PERMITTING AN ENCROACHMENT INTO THE REQUIRED FRONT YARD SETBACK FOR CONSTRUCTION OF A FENCE; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ORDERING RECORDATION BY THE INTERIM CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION

23. Interim City Secretary Turner read the caption of Ordinance No. 8850.

Council Member Hailey moved to approve the second and final reading of Ordinance No. 8850 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said ordinance is as follows:

ORDINANCE NO. 8850

AN ORDINANCE TEMPORARILY CLOSING A PORTION OF FRANCIS AVENUE BETWEEN RANKIN HIGHWAY (STATE HIGHWAY 349) AND CAMP STREET FROM THE EAST RIGHT-OF-WAY LINE OF CAMP STREET CONTINUING EAST TO THE PROJECTED WEST BOUNDARY LINE OF LOT 1A, BLOCK 2, LINDSAY ACRES ADDITION, SECTION 6, AT ITS INTERSECTION WITH THE SOUTH BOUNDARY LINE OF FRANCIS AVENUE AND THE NORTH BOUNDARY LINE OF FRANCIS AVENUE ABUTTED BY BLOCKS 31 AND 32, HALEY HEIGHTS ADDITION, IN THE CITY OF MIDLAND, TEXAS; 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

24. Interim City Secretary Turner read the caption of Ordinance No. 8851.

Council Member Morales moved to approve the second and final reading of Ordinance No. 8851 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said ordinance is as follows:

ORDINANCE NO. 8851

AN ORDINANCE PROVIDING A MAXIMUM TIME LIMIT OF FIFTEEN (15) MINUTES FOR PARKING ON THE WEST SIDE OF "O" STREET BEGINNING AT A POINT FORTY-FOUR (44) FEET NORTH OF THE NORTH CURB LINE OF TEXAS AVENUE AND CONTINUING NORTH A DISTANCE OF SEVENTY-FIVE (75) FEET, IN MIDLAND, TEXAS, DURING WEEKDAYS BETWEEN THE HOURS OF 9:00 A.M. AND 6:00 P.M.; 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 FIVE HUNDRED DOLLARS (\$500.00); AND ORDERING PUBLICATION

25. Interim City Secretary Turner read the caption of Ordinance No. 8852.

Council Member Hailey moved to approve the second and final reading of Ordinance No. 8852 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, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said ordinance is as follows:

ORDINANCE NO. 8852

AN ORDINANCE ESTABLISHING INTERSECTION STOPS AT VARIOUS LOCATIONS WITHIN THE CITY OF MIDLAND, TEXAS; REQUIRING AND AUTHORIZING THE POSTING OF APPROPRIATE SIGNS AT INTERSECTIONS; 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

26. Interim City Secretary Turner read the caption of Ordinance No. 8853.

Mayor Pro Tem James moved to approve the second and final reading of Ordinance No. 8853 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said ordinance is as follows:

ORDINANCE NO. 8853

AN ORDINANCE VACATING AND ABANDONING A 0.075-ACRE UTILITY EASEMENT OUT OF LOT 14, BLOCK 2, GREEN HILL TERRACE, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF TATTENHAM CORNER, EAST OF HOLIDAY HILL ROAD); ADOPTING THE APPRAISAL BY THE

CITY MANAGER OF \$703.20; WAIVING THE FEE FOR THE COST OF THE EASEMENT; AND ORDERING RECORDATION BY THE INTERIM CITY SECRETARY. (FIRST READING HELD NOVEMBER 16, 2010.)

**PUBLIC HEARINGS**

27. Planning Division Manager Walker gave an overview of the item, noting that no letters of opposition had been received and that the Planning & Zoning Commission unanimously recommended approval.

Mayor Pro Tem James opened the public hearing at 11:06 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Interim City Secretary Turner read the caption of Ordinance No. 8854.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 8854 in accordance with the Charter of the City of Midland; seconded by Mayor Pro Tem James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said ordinance is as follows:

ORDINANCE NO. 8854

AN ORDINANCE HANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 7.27-ACRE TRACT OF LAND OUT OF SECTION 33, BLOCK 38, 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 AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS A CE, COUNTRY ESTATE DISTRICT (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF ELKINS ROAD AND BUCKWHEAT ROAD); 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

28. Planning Division Manager Walker gave an overview of the item, noting that the property is a retirement center and was in place prior to the rezoning. He further noted that no letters of objection had been received.

Mayor Perry opened the public hearing at 11:10 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Interim City Secretary Turner read the caption of Ordinance No. 8855.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 8855 in accordance with the Charter of the City of Midland; seconded by Mayor Pro Tem James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said ordinance is as follows:

ORDINANCE NO. 8855

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 3.24-ACRE TRACT OF LAND OUT OF LOT 1, BLOCK 26, WEDGEWOOD PARK ADDITION, SECTION 4, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED MF-1, MULTIPLE-FAMILY DWELLING DISTRICT, TO BE USED AS AN O-1, OFFICE DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF MIDLAND DRIVE, 170 FEET SOUTH OF DENGAR AVENUE); 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

29. Planning Division Manager Walker gave an overview of the item noting that the item was unanimously approved by the Planning & Zoning Commission and that no letters of objection had been received.

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

Interim City Secretary Turner read the caption of Ordinance No. 8856.

Council Member Sparks moved approval of the first of two readings of Ordinance No. 8856 in accordance with the Charter of the City of Midland; seconded by Mayor Pro Tem James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said ordinance is as follows:

ORDINANCE NO. 8856

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 1 AND 2, BLOCK 68, WEST END ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A TRANSITION DISTRICT, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST ILLINOIS AVENUE AND NORTH "I" STREET); 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

30. Planning Division Manager Walker gave an overview of the item, noting that no letters of objection had been received.

Mayor Perry opened the public hearing at 11:18 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Interim City Secretary Turner read the caption of Ordinance No. 8857.

Council Member Dufford moved approval of the first of two readings of Ordinance No. 8857 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, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said ordinance is as follows:

ORDINANCE NO. 8857

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 40.12-ACRE TRACT OF LAND OUT OF SECTION 23, 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 AN AE, AGRICULTURE ESTATE DISTRICT (GENERALLY LOCATED BETWEEN GOLDEN GATE DRIVE AND AVALON DRIVE, ONE-FOURTH MILE SOUTH OF MOCKINGBIRD LANE); 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

31. Planning Division Manager Walker gave an overview of the item, noting that no letters of objection had been received and that the Planning & Zoning Commission unanimously recommended approval.

Mayor Perry opened the public hearing at 11:24 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Interim City Secretary Turner read the caption of Ordinance No. 8858.

Council Member Dufford moved approval of the first of two readings of Ordinance No. 8858 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, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said ordinance is as follows:

ORDINANCE NO. 8858

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 43.920-ACRE TRACT OF LAND OUT OF THE SOUTHEAST

QUARTER OF SECTION 9, BLOCK "X", H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED 1F-1, ONE-FAMILY DWELLING DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE NORTH SIDE OF MOCKINGBIRD LANE, 700 FEET WEST OF GARFIELD STREET); 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

32. Planning Division Manager Walker gave an overview of the item, noting that the Planning & Zoning Commission unanimously recommended approval and that no letters of objection had been received.

A discussion ensued about whether the kitchen would remain open with the full menu until 2 a.m.

Mayor Perry opened the public hearing at 11:30 a.m.

Gene Roumell, 4805 Briarwood, noted that he intends to maintain a full menu the entire time the restaurant is open.

Building Official Steve Thorpe noted that with a 120-seat restaurant, full fire sprinkling is required.

There being no one else present wishing to speak, the public hearing was closed at 11:36 a.m.

Interim City Secretary Turner read the caption of Ordinance No. 8859.

Council Member Morales moved approval of the first of two readings of Ordinance No. 8859 in accordance with the Charter of the City of Midland; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said ordinance is as follows:

ORDINANCE NO. 8859

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 1, BLOCK 2, MIDKIFF PLAZA ADDITION, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF NORTH MIDKIFF ROAD AND WEST LOOP 250 NORTH), WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED 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

33. Planning Division Manager Walker gave an overview of the item noting that this is the third step in the annexation process.

Mayor Perry opened the public hearing at 11:40 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Interim City Secretary Turner read the caption of Ordinance No. 8860.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 8860 in accordance with the Charter of the City of Midland; seconded by Mayor Pro Tem James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said ordinance is as follows:

ORDINANCE NO. 8860

AN ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO CERTAIN AREAS ADJOINING THE PRESENT CITY LIMITS, BEING AN 84.01-ACRE TRACT OF LAND OUT OF SECTION 5, BLOCK 39, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF (GENERALLY LOCATED ON THE NORTH SIDE OF INTERSTATE 20, WEST OF WAREHOUSE ROAD); AND APPROVING A PUBLIC SERVICE PLAN

34. Mayor Perry opened the public hearing at 11:42 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Council Member Dufford moved approval of Resolution No. 2010-341; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said resolution is as follows:

RESOLUTION NO. 2010-341

A RESOLUTION PROVIDING FOR THE ANNEXATION OF CERTAIN SPARSELY POPULATED PROPERTY; THE OWNER HAS REQUESTED THAT THE PROPERTY BE ANNEXED; SAID PROPERTY IS ADJACENT TO AND CONTIGUOUS TO THE PRESENT BOUNDARY LIMITS OF THE CITY OF MIDLAND; SAID PROPERTY BEING A 3.10-ACRE TRACT OF LAND OUT OF SECTION 5, BLOCK 39, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY TEXAS; THE MIDLAND CITY COUNCIL HEREBY GRANTS THE PETITION FOR ANNEXATION AS AUTHORIZED BY SECTION 43.028 OF THE TEXAS LOCAL GOVERNMENT CODE; AND AUTHORIZING AND DIRECTING THE INTERIM CITY SECRETARY TO FILE A CERTIFIED COPY OF THIS RESOLUTION AND ALL EXHIBITS IN THE MIDLAND COUNTY DEED RECORDS MAINTAINED BY THE MIDLAND COUNTY CLERK

35. Planning Division Manager Walker gave an overview of the item noting that this is the third step in the annexation process and that no letters of objection had been received.

A question was raised by the added costs of long term maintenance. Planning Division Manager Walker clarified that the added costs would include the provision of maintaining public services such as paving roads, sidewalks and water lines, if those were installed.

Mayor Perry opened the public hearing at 11:45 a.m.

Nathan Knowles, 3601 Andrews Highway, introduced himself as the I-20 Wildlife Preserve Manager. He clarified that the property that is being annexed is referred to as the buffer zone, which creates a buffer around the playa and that the area currently has a tower on, that there are no plans to move the tower, and therefore no facility will be built on that land at this time.

There being no one else present wishing to speak, the public hearing was closed at 11:47 a.m.

Interim City Secretary Turner read the caption of Ordinance No. 8861.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 8861 in accordance with the Charter of the City of Midland; seconded by Mayor Pro Tem James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said ordinance is as follows:

ORDINANCE NO. 8861

AN ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO CERTAIN AREAS ADJOINING THE PRESENT CITY LIMITS, BEING A 3.10-ACRE TRACT OF LAND OUT OF SECTION 5, BLOCK 39, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF (GENERALLY LOCATED ON THE NORTH SIDE OF INTERSTATE 20, WEST OF WAREHOUSE ROAD); AND APPROVING A PUBLIC SERVICE PLAN

36. Mayor Perry opened the public hearing at 11:48 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Council Member Dufford moved approval Resolution No. 2010-342; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: Trost. ABSENT: None. Caption of said resolution is as follows:

RESOLUTION NO. 2010-342

A RESOLUTION PROVIDING FOR THE ANNEXATION OF CERTAIN SPARSELY POPULATED PROPERTY; AND THE OWNER HAS REQUESTED THAT THE PROPERTY BE ANNEXED; THAT SAID PROPERTY IS ADJACENT TO AND CONTIGUOUS TO THE PRESENT BOUNDARY LIMITS OF THE CITY OF MIDLAND; SAID PROPERTY BEING AN APPROXIMATE 19.32 ACRE TRACT OF LAND OUT OF SECTION 22, BLOCK 40, T-1-S, T&P RR CO. SURVEY MIDLAND COUNTY TEXAS; AND THE MIDLAND CITY COUNCIL HEREBY GRANTS THE PETITION FOR ANNEXATION AS AUTHORIZED BY SECTION 43.028 OF THE TEXAS LOCAL GOVERNMENT CODE; AND THAT THE INTERIM CITY SECRETARY IS HEREBY AUTHORIZED AND DIRECTED TO FILE A CERTIFIED COPY OF THIS RESOLUTION AND ALL EXHIBITS IN THE MIDLAND COUNTY DEED RECORDS MAINTAINED BY THE MIDLAND COUNTY CLERK

37. Planning Division Manager Walker gave an overview of the item.

Mayor Perry opened the public hearing at 11:50 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Interim City Secretary Turner read the caption of Ordinance No. 8862.

Mayor Pro Tem James moved approval of the first of two readings of Ordinance No. 8862 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: Trost. ABSENT: None. Caption of said ordinance is as follows:

ORDINANCE NO. 8862

AN ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO CERTAIN AREAS ADJOINING THE PRESENT CITY LIMITS, BEING A 19.32-ACRE TRACT OF LAND OUT OF SECTION 22, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF (GENERALLY LOCATED NORTH OF SADDLE CLUB RANCH ESTATES); AND APPROVING A PUBLIC SERVICE PLAN

38. Planning Division Manager Walker gave an overview of the item noting that the next step of bringing the property into city is the need to establish zoning and that it is not subject to site plan review at this time.

Mayor Perry opened the public hearing at 11:54 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Interim City Secretary Turner read the caption of Ordinance No. 8863.

Council Member Dufford moved approval of the first of two readings of Ordinance No. 8863 in accordance with the Charter of the City of Midland; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said ordinance is as follows:

ORDINANCE NO. 8863

AN ORDINANCE ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING AN 84.01-ACRE TRACT OF LAND OUT OF SECTION 5, BLOCK 39, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF, AS A PD, PLANNED DISTRICT FOR A RECREATION CENTER; SAID TRACT IS GENERALLY LOCATED ON THE NORTH SIDE OF INTERSTATE 20, WEST OF WAREHOUSE ROAD; 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

39. Planning Division Manager Walker gave an overview of the item.

Mayor Perry opened the public hearing at 11:56 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Interim City Secretary Turner read the caption of Ordinance No. 8864.

Council Member Dufford moved approval of the first of two readings of Ordinance No. 8864 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, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said ordinance is as follows:

ORDINANCE NO. 8864

AN ORDINANCE ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 3.10-ACRE TRACT OF LAND OUT OF SECTION 5, BLOCK 39, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF, AS A PD, PLANNED DISTRICT FOR A RECREATION CENTER; SAID TRACT IS GENERALLY LOCATED ON THE NORTH SIDE OF INTERSTATE 20, WEST OF WAREHOUSE ROAD; 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

40. Planning Division Manager Walker gave an overview of the item.

Mayor Perry opened the public hearing at 11:57 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Interim City Secretary Turner read the caption of Ordinance No. 8865.

Council Member Dufford moved approval of the first of two readings of Ordinance No. 8865 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: Trost. ABSENT: None. Caption of said ordinance is as follows:

ORDINANCE NO. 8865

AN ORDINANCE ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 19.32-ACRE TRACT OF LAND OUT OF SECTION 22, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF, AS AN AE, AGRICULTURE ESTATE DISTRICT; SAID TRACT IS GENERALLY LOCATED NORTH OF SADDLE CLUB RANCH ESTATES; 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

41. Public hearing on a request by Pioneer Natural Resources (Mabee "E" #3) for an Oil and Gas Drilling Permit located in Section 12, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the east side of N. Big Spring Street across from the Midland County Club. Located 660' FSL and 467' FWL.)

Planning Division Manager Walker gave an overview of the item noting that the following three items were the first applications received under new oil and gas ordinance. He further noted that he would provide Council with CDs containing the exhibits for all three applications.

Mayor Perry opened the public hearing at 12:03 p.m.

Marc Dingler and Heather Barcia, 303 W. Wall, of Pioneer Natural Resources, noted their availability to questions. They spoke regarding the application process noting that it was pleasurable working with city staff and that the Oil & Gas Commission seems to be a well rounded group.

There being no one else present wishing to speak, the public hearing was closed at 12:15 p.m.

42. Public hearing on a request by Pioneer Natural Resources (Mabee "D" #7) for an Oil and Gas Drilling Permit located in Section 12, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the east side of N. Big Spring Street across from the Midland County Club. Located 2150' FSL and 1980' FWL.)

Mayor Perry opened the public hearing at 12:15 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

43. Public hearing on a request by Pioneer Natural Resources (Mabee #4) for an Oil and Gas Drilling Permit located in Section 12, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the east side of N. Big Spring Street across from the Midland County Club. Located 467' FNL and 467' FWL.)

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.

#### **DEVELOPMENT SERVICES**

45. Transportation Manager Saunders gave an overview of the item, noting that it is anticipated the project will begin in January or February.

Bryan Raschke, 3901 W Highway 80, Odessa, estimated that the project would take about three months to complete.

Interim City Secretary Turner read the caption of Ordinance No. 8866.

Council Member Morales moved approval of the first of two readings of Ordinance No. 8866 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said ordinance is as follows:

#### ORDINANCE NO. 8866

AN ORDINANCE ESTABLISHING A TEMPORARY CONSTRUCTION SPEED ZONE OF 55 MILES PER HOUR ON A PORTION OF STATE HIGHWAY 349/FARM-TO-MARKET ROAD 1788 FOR A PAVEMENT REHABILITATION PROJECT BY THE TEXAS DEPARTMENT OF TRANSPORTATION; AUTHORIZING INSTALLATION OF APPROPRIATE SIGNS AND MARKINGS; 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**

46. Interim City Secretary Turner read the caption of Ordinance No. 8867.

Council Member Morales moved approval of the first of two readings of Ordinance No. 8867 in accordance with the Charter of the City of Midland; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: None. Caption of said ordinance is as follows:

#### ORDINANCE NO. 8867

AN ORDINANCE AMENDING TITLE VII, "FIRE REGULATIONS," CHAPTER 1, "FIRE PREVENTION CODE," OF THE MIDLAND CITY CODE SO AS TO ADOPT THE 2009 EDITION OF THE INTERNATIONAL FIRE CODE AS THE FIRE PREVENTION CODE OF THE CITY OF MIDLAND, TEXAS; AND REPEALING ORDINANCE NUMBER 8374 AND ALL OTHER ORDINANCES OR PARTS OF ORDINANCES WHICH ARE IN CONFLICT WITH THIS ORDINANCE; 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

47. Consideration of appointments to various Boards and Commissions.

Council Member Dufford nominated Elvin Brownlee III to the Permian Basin Airport Board, seconded by Mayor Pro Tem James. The motion carried by the following vote:

AYE: Morales, Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None.  
ABSTAIN: None. ABSENT: None.

**RECESS/EXECUTIVE SESSION**

48. Mayor Perry announced that the meeting would be recessed to the conference room for lunch.
49. 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 litigation styled Heritage Consolidated, LLC and Heritage Standard Corporation, in the United States Bankruptcy Court for the Northern District of Texas – Dallas Division; Case No. 10-36484 and Case No. 10-36485; Chapter 11.

Discuss a claim from the Law Offices of Brockett and McNeel, LLP regarding the construction of the Blue Ridge Apartments. The said Blue Ridge Apartments being located north of West Loop 250 North and between Garfield Street and Midkiff Road and south of Bluebird Lane.

**Section 551.087 Deliberation Regarding Economic Development Negotiations**

Discuss business prospects and projects that the city seeks to have locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives

Mayor Perry recessed the meeting at 12:24 to Executive Session.

Mayor Perry recessed the meeting at 3:00 p.m.

Mayor Perry reconvened the meeting in open session in the Council Chamber at 6:00 p.m. with all Council Members present.

44. Planning Division Manager Walker gave an overview of the item noting that the item was a request from Santa Rosa Development Group for the approval of an amended plan district. He noted that the property was approved for multi-family development in 2007 and a site plan was approved in 2008. The applicant has requested changing the fencing on the site plan from wood material on the east, west and south sides to a 7-foot wrought iron fence and has requested to change their site. He stated that letters of objection were received from 6.11% of the owners within the 200-foot radius and noted that a petition is circulating involving land owners beyond the 200-foot radius.

Questions were asked and answered pertaining to when the developer initially made contact with the city pertaining to changes to the site plan. Mr. Walker stated that an application had been made and was heard by the Planning & Zoning Commission in October.

Mayor Perry opened the public hearing at 6:09 p.m.

Ken Lokey, 902 Milwaukee, Lubbock, Texas, stated that he was the developer. He noted that his company was working on an analysis which they had not yet completed and asked for a postponement until the next Council meeting.

Mayor Perry noted that this was a public hearing and asked Mr. Lokey to present what information he had.

Mr. Lokey noted that they were doing a line of sight analysis and the primary alternative would be to construct carports behind the houses on the south side of Caldera that would terminate the line of sight from the apartments.

Council Member Morales asked why the carports were being raised now as a possible solution rather than when the apartments were first identified as not going in the correct direction.

Mr. Lokey noted that design changes had to be made to the site plan due to access requirements to Whitman Drive and setback requirements from power line poles on the west side. Impacts from both sides of the project required reorientation of the buildings

throughout the project. He noted that plans were presented to the city to obtain a building permit.

Council Member Morales asked who presented the building plans to the city and if it was brought out that one of the buildings had changed orientation. Mr. Lokey noted that his civil engineer presented the plans and he was not aware if the moving of buildings was discussed.

Council Member Dufford asked Mr. Lokey who has the authority to amend site plans. Mr. Lokey stated that he did not know. Council Member Dufford asked if he had any staff that knew the answer. Mr. Lokey noted that his civil engineer had worked in Midland for a number of years and he relied on his judgment. It was determined that the civil engineer was not present and it was unclear if Mr. Lokey made him aware of the meeting. When Mr. Lokey was asked when he was made aware of a problem with the site plan, he noted he knew a couple of months ago.

Mayor Pro Tem James asked Mr. Lokey to clarify why changes that were made to the site plan. Mr. Lokey noted one change was the right-of-way for Whitman Drive to allow fire department access. Other changes were the utility easement along Whitman Drive, the requirement to provide utilities to the two sites between the project and the feeder road, the city requirement of 8" water lines instead of 6" water lines throughout the project, and the requirement to install feeders to the tract to the south between the project site and the feeder road.

It was clarified that the utility easements were already in place prior to the project. Mayor Pro Tem James asked if the changes required by the city on the east side of the project precipitated the change in orientation of the building on the west side. Mr. Lokey responded that the building that changed orientation was due to a power line and was a requirement of his lender.

Mayor Pro Tem James asked if Mr. Lokey recognized that continuing to build was risky and noted that he was proceeding at his own risk. Mr. Lokey noted that they have a building permit and that they had to abide by other constraints and conditions and that they couldn't just pull up on the project because the situation was unresolved. Mayor Pro Tem James noted that he wanted to make sure everyone was clear that Mr. Lokey was proceeding at his own risk knowing that the Council has the ability to not issue a certificate of occupancy. Mr. Lokey noted that he understood.

Council Member Morales noted that although he has a building permit, it is not the same as the site plan that was approved by the City Council. Mr. Lokey acknowledged that fact.

Council Member Trost reaffirmed the fact that Mr. Lokey had knowledge about the changes to the site plan in October. Council Member Trost noted that he had information that it was being reviewed or talked about as far back as August and September and maybe even July and asked why it took so long for that information to get to Mr. Lokey. Mr. Lokey stated that he could not answer that question.

Council Member Trost asked if Mr. Lokey built to the site plan approved by the City Council in July of 2008. Mr. Lokey responded no. When asked if he had spoken with the residents in the surrounding neighborhoods, Mr. Lokey noted that he had not and noted that he had been working with engineers and architects to design something that would resolve the issue. He clarified that they were in the city daily with plans and felt like they were doing things in accordance with what was accepted. He further noted that they would prefer to build the site plan that was approved by the City Council because the changes that were made were detrimental to the project. It was determined that although the site plan was reconfigured, the number of apartments did not change.

Council Member Morales asked about the proposed screening of third floor balconies and windows, noting that the proposal was to install opaque windows, wooden louver systems and evergreen trees. Mr. Lokey noted that was one plan, they were also looking at installing carpports that would obstruct the line of sight.

Council Member Dufford asked Mr. Lokey if he felt anyone in the city had intentionally misled him. Mr. Lokey responded that he did not, but one could be provided.

Mayor Pro Tem James asked if there was an overlay of the buildings showing easements. Mr. Walker noted that there was not.

Council Member Trost asked if the movement of the building for the cul-de-sac on Whitman would trigger the need for approval of a new site plan. Mr. Walker noted that the shifting of a building by 15-20 feet for access of emergency vehicles would not be a requirement for an amendment to the site plan.

Rhonda Trammell, 4801 Whitman Drive, noted that she has lived there for two years. When she received the notice about the zone change at the Planning and Zoning meeting she called. She felt like the developer finds it easier to get forgiveness than permission because one of the requests they were making was to change the fencing. She provided Council with pictures she took on October 1 showing that the fencing has already been installed. She further commented that on September 3 she had a meeting with Mr. Compton and pointed out that the buildings were turned the wrong way. She spoke about nuisances from the construction such as concrete pouring at 4 a.m. and hearing hammering at 7:14 a.m. on Thanksgiving Day. She spoke about lowered property values and that she did not like the ideas presented like opaque windows because those fixes could all be undone. She showed Council pictures of the roof of the new buildings and noted that the decking was warped. She also noted that real estate agents are unable to sell homes or rent homes on Caldera.

Paul St. Hilaire, 4902 Spy Glass Circle, noted that he lives about a block and a half away from the apartments. He stated that in 2007-2008 the residents fought against the apartments to protect property values and family safety. He noted that concessions were made such as keeping Whitman Drive closed to through traffic, an eight-foot stone fence to the north, wood fencing to the west and east, two story buildings to the north except for one three-story building orientated from north to south to minimize the direct line of sight into the back yards. He noted that the original intent was that the northern buildings were to be two stories with the exception of one three story building oriented north and south. He further noted that now that construction has begun, the property values have been lowered, especially on Caldera. He stated that realtors feel it is not even worth showing a home in the area because of the apartments. He felt the city should revoke the building permit and did not like the developer's ideas of opaque windows and fast-growing trees. He stated that they have lost privacy and the ability to have peaceful enjoyment of their homes.

Kristopher Moore, 2817 Caldera Boulevard, noted that he is the person who is unable to sell or rent his house. He noted when they first looked at the home, the builder ensured him that whatever was built behind them, their privacy would be protected. Their home is now on the market due to a move to D.C. and in the five months their home has been on the market, only five people have looked at it. They thought they had renters, but that also fell through. He noted that the options that have been laid out to protect privacy are unacceptable and pointed out the noise problems with construction. He felt the only acceptable option for the homeowners is to have the apartments torn down.

Ronnie Trammell, 4801 Whitman Drive, noted that he and his wife met with Mr. Compton on September 3<sup>rd</sup>. During that meeting it was discovered the buildings were not in accordance with the plat and they learned about the developer's request for the change in fencing materials. He spoke about their loss of privacy, construction noise, and construction debris. He noted that his property value has been decreased from 10-25% and is worried that his equity will disappear. He further commented that he does not like any of the solutions proposed to protect their privacy. He felt the only way to rectify the issue was for the property to be torn down or for the developer to buy his property.

Larry Hendricks, 2818 Purple Sage, noted he was here to support his neighbors. He commented that he had plans to install a pool or Jacuzzi and now he feels uncomfortable doing so because the apartments could see into his yard.

Sam Lichenstein, 2901 Caldera Drive, noted that he a right to privacy in his back yard and that has been taken away from him and noted that the only solution is to do something on his property to protect his privacy. He noted his property value has gone down. He stated that the developer was quoted in the newspaper that the apartments were only going to be two stories and wondered what happened.

Sally Papasan, 4902 Sundown Circle, has lived in her home for 20 years. She noted that the previous City Council stated that there would not be an apartment complex there as long as they were in office. She stated that the lowered property values would have a ripple effect across the whole community. She further noted that the trees and opaque windows were just band-aids and that a promise was made to build a masonry fence.

She further noted that a property previously built by Mr. Lokey had to be completely renovated within 10 years of construction.

Callie Stevens, 2701 Sentinel, stated she owns two houses on Faulkner and expressed concern about increased traffic, parking issues and property values. She wanted assurance that if a new site plan was approved, that traffic would not be opened onto Whitman.

Bonnie Sohl, 2706 Caldera Drive, noted that the Blue Ridge Apartments look into her front yard and expressed her displeasure with the developer's quick-fixes of opaque windows and fast-growing trees. She commented that if she does something wrong she has to suffer the consequences and would like to see the developer suffer the consequences of his mistakes, noting that she wanted the apartments torn down. She also noted her decreased property value.

Leonard Mornes, 4603 Thomason Drive, noted that he could potentially work at this property as a maintenance man and noted that just as the people in the apartments could look down at the homeowners, the homeowner could also watch the people living in the apartments.

Sue Mercer, of Oncor Electric Delivery, expressed concern about tall fast-growing trees and suggested that the developer look at oncor.com for suggested tree heights and distances from electric lines.

Manuel Benavides, 2609 Caldera, expressed concern about the proposed window coverings, and the safety of his daughter because of increased traffic from the apartments.

Richard McFarlin, 4802 Melville Drive, expressed concern about increased traffic along the frontage road and throughout the neighborhood when drivers will try to get back to Garfield. He suggested installing a traffic signal on Caldera and Midkiff to help ease traffic onto Midkiff. He also noted concern about the possibility of traffic backing up on the loop, and spoke about increased traffic speeds in the residential neighborhoods.

Larry Stevens, 2701 Sentinel, noted that he developed the 2500 and 2600 block of Faulkner and expressed concern that the Blue Ridge Apartments developer is allowing his lender to make changes to the site plan without getting permission from the City Council. He also wondered how the utility fall line on the west side of the property caused 12 buildings to move on the whole property.

Todd Brown, 3200 Mariana, stated then when you don't follow protocol, you have to suffer the consequences.

There being no one else present wishing to speak, the public hearing was closed at 8:08 p.m.

Mayor Perry asked if the original site plan called for two-story or three-story buildings. Mr. Walker noted that the Site Plan called for buildings between 41-45 feet and the adopting ordinance Section 3 states, "The maximum building height shall not exceed three stories or 45 feet above average grade." The original site plan was reviewed for setbacks.

Mr. Walker clarified that the site plan indicates the gate on Whitman is for emergency access only.

Richard Russell, 2605 Culver Drive, noted that some of the same issues were raised on the three-story building on Culver Drive.

Interim City Secretary Turner read the caption of the Ordinance:

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 18, BLOCK 5, NORTH PARK ADDITION, SECTION 12, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED NEAR THE NORTHWEST CORNER OF THE INTERSECTION OF WEST LOOP 250 NORTH AND WHITMAN DRIVE); 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 (THIS REQUEST FOR A CHANGE IN ZONING CLASSIFICATION IS ON APPEAL TO THE CITY COUNCIL FROM THE PLANNING AND ZONING COMMISSION.) THIS INVOLVES THE BLUE RIDGE APARTMENTS. THE BLUE RIDGE APARTMENTS ARE GENERALLY LOCATED NORTH OF LOOP 250 NORTH, SOUTH OF BLUEBIRD LANE AND BETWEEN GARFIELD STREET AND MIDKIFF ROAD

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

All of the business at hand having been completed, the meeting adjourned at 8:30 p.m.

PASSED AND APPROVED the 11th day of January, 2011.

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W. Wesley Perry, Mayor

ATTEST:

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Amy M. Turner, Interim City Secretary