

EDMOND CITY COUNCIL MINUTES

August 28, 2006

Mayor Sandra Naifeh called the regular meeting of the Edmond City Council to order at 5:30 p.m., Monday, August 28, 2006, in the City Council Chambers.

2. Approval of Minutes. Motion by Miller, seconded by Lamb, to approve August 14, 2006, Minutes. **Motion carried** as followed:

AYES: Mayor Naifeh, Councilmembers Page,
Sanford, Lamb and Miller
NAYS: None

3. City Council Presentations:

A. **Character Council presentations by Terry Byers to the following citizens:**

- 1) Chip Miller for Meekness
- 2) Weta Thomas for Endurance

B. **Presentation of award to Edmond Fire Chief Gil Harryman from the Oklahoma Emergency Management Association by Major Brian Davis.**

C. **Presentation by Edmond Fire Chief Gil Harryman to Travis Sears and Bob Little for their heroic actions.**

D. **Announcement of Councilmember Charles Lamb's induction into the Oklahoma Municipal League Hall of Fame.**

E. **Presentation of proclamation recognizing September, 2006, as "*National Preparedness Month*" in the City of Edmond.**

4. Appointment to Boards and Commissions:

A. **Mayor Naifeh nominated the following youth for appointment:**

- 1) Derek Case to the Parks and Recreation Advisory Board to serve a one-year term expiring in August, 2007
- 2) Chenoa Barker to the Visual Arts Commission to serve a one-year term expiring in August, 2007
- 3) Chenxi Nie to the Arts and Humanities Council to serve

- a one-year term expiring in August, 2007
 - 4) Brooke Baker to the KickingBird Golf Advisory Board to serve a one-year term expiring in August, 2007
 - 5) Michael Allen to the Central Edmond Urban Development Board to serve a one-year term expiring in August, 2007
 - 6) Maggie Courtney to the Urban Forestry Commission to serve a one-year term expiring in August, 2007
- B. **Appointment to the Arts and Humanities Council.** Mayor Naifeh nominated Carol Naifeh for appointment to replace Dennis Garton to serve a term expiring in February, 2007.
- C. **Appointment to the Social Agency Review Commission.** Mayor Naifeh nominated Dr. Dan Tallerico for re-appointment to serve a term expiring in May, 2011.
- D. **Appointment to the Parks and Recreation Advisory Board.** Councilmember Miller nominated Ed Cunliff for appointment to replace Jamie Hooyman to serve a term expiring in July, 2007.

Motion by Lamb, seconded by Sanford, to approve Items 4.A. (1-6) through 4.D. **Motion carried** as followed:

AYES: Mayor Naifeh, Councilmembers Page,
Sanford, Lamb and Miller
NAYS: None

5. **GENERAL CONSENT ITEMS:** (General Consent Items were voted on collectively except where noted.)

A. **Approval of Administrative Items:**

- 1) **Acceptance of City Manager's Financial Report for month ending July 31, 2006.**
- 2) **Acceptance of City Treasurer's Investment Report for month ending July 31, 2006.**
- 3) **Approval of transfer of appropriations from the 2000 Capital Improvement Tax Fund for the 33rd Street widening project from Kelly to Santa Fe - \$158,967.30**
- 4) **Approval of increase of City's 20% cost share for the Boulevard/Broadway widening project, Danforth to one-fourth mile north of Covell, in conjunction with**

the Oklahoma Department of Transportation in the amount of \$228,322.34.

5) Acceptance of Final Plat, public improvements and maintenance bonds for Oak Tree Park V.

6) Acceptance of water line easement from Kay-Bee Investment Co., LLC, for Kelley Pointe Plaza at 2601 Kelley Pointe Parkway.

7) Approval of transfer of appropriations for MIS Department - \$81,159.21

8) Acceptance of water well easement from the Turner Revocable Trust for Water Well No. 63 as part of the 2020 Water System Master Plan Improvements, Contract 8B.

9) Acceptance of street right-of-way easements from Gap Development, LLC, for the Hampden Hollow Addition.

10) Acceptance of Final Plat, public improvements and maintenance bonds for Wal-Mart at 15th Street and I-35 and clarification of wall sign standards.

11) Acceptance of public improvements and maintenance bonds for the following:

- a) Contemporary Cabinets
- b) Homestead Medical Clinic
- c) Brewer Building
- d) Road bores 16" crude oil pipeline under Coffee Creek Road
- e) Road Bores 16" crude oil pipeline under Boulevard
- f) Road Bores 16" crude oil pipeline under N. Broadway
- g) Acts II United Methodist Church
- h) Edmond Memorial High School
- i) Edmond North High School

12) Public Hearing and Consideration of Ordinance No. 3038 amending the Edmond Municipal Code, Sections 10.16.120(A)(1), 10.16.120(A)(2) and 10.16.120(A)(3), Restrictions on tinted windshields and windows to provide for definition of glass coating material and sun screening devices; adding New Section 10.16.120(A)(5) providing for definition of window; amending Sections 10.16.120(D)(1) and 10.16.120(D)(10)

providing for light transmission percentages for vehicle windows and vehicle specifications; and removing Section 10.16.120(L) and 10.16.120(M); providing for Repealer and Severability.

Motion by Lamb, seconded by Miller, to approve General Consent Items 5.A.(1-12). **Motion carried** as follows:

AYES: Mayor Naifeh, Councilmembers Page,
Sanford, Lamb and Miller
NAYS: None

13) **Public Hearing and Consideration of Ordinance amending the Edmond Municipal Code, Chapter 21.07 by adding New Section 21.07.050, notice of Plat changes, providing for Notice Requirements; and providing for Repealer and Severability.** The proposed ordinance provides for changes in notice requirements to surrounding property owners regarding public hearings to consider plat changes.

Councilmember Lamb stated he feels the ordinance is extremely burdensome for relatively minor corrections such as bearing lines and survey issues.

Steve Murdock, City Attorney, addressed Council and stated the Municipal codes do not currently contain any requirements regarding notices by developers or property owners when they submit changes to plats, such as lot splits, when the plats have already been approved and recorded. He noted the proposed ordinance attempts to provide for notices to surrounding property owners. Mr. Murdock stated Ronnie Williams visited with him regarding his concerns when property owners request approval for lot splits and surrounding homeowners are not notified. He stated he worked with Mr. Williams to draft an ordinance to conform with existing notice requirements for other issues that require notices. He stated the ordinance was his first attempt to draft an ordinance regarding this matter and that he would contact Oklahoma City for a sample ordinance and submit a report to Council.

Councilmember Page stated he felt this issue began because of a lot split. He stated as it stands now, there is no requirement to notify neighbors if a

lot split is requested. He noted the ordinance does not specifically address lot splits.

Ronnie Williams addressed Council and stated he and Mr. Murdock attempted to solve a problem rather than create problems. He stated the issue evolved because when a developer or property owner requests approval for a lot split, the surrounding homeowners are not notified. He stated he spoke with a representative of Oklahoma City and was informed that Oklahoma City does require that notice be given for any substantial changes to a plat but for minor changes they approve an "administrative amendment".

Mary Ann Karns, local attorney, addressed Council and stated if the problem is lot splits then she suggested a requirement for better notices be approved prior to an application being considered by the Planning Commission. She felt the proposed ordinance is very burdensome and expensive to request any changes to a plat for whatever reason. Ms. Karns encouraged Council to review the notice requirements for lot splits and deed certifications that are currently required in an attempt to enhance those requirements. She stated the proposed ordinance will create a lot of work for City staff and a lot of expense for developers, citizens and homeowners associations for no reason.

J.W. Armstrong (local developer) and Carl Reheman (Citizens for Edmond) addressed Council in opposition. They both felt the ordinance would be a burden to developers and Mr. Armstrong preferred the procedure for lot splits remain as it currently is. Mr. Reheman requested the item be continued indefinitely for further study.

Dan O'Neil, representing the Edmond Neighborhood Alliance, addressed Council and stated homeowners need to be notified of what is happening in their neighborhood. He stated the City has gone too long not notifying homeowners regarding plat changes and now is the time to correct the problem.

Councilmember Page stated he felt a notice should be given for lot splits in mature or partially developed plats and he requested this item be

continued for further discussion.

Councilmember Sanford stated she felt the proposed ordinance was too extreme and unnecessary and warranted further review.

Motion by Sanford, seconded by Lamb, to continue General Consent Item 5.A.(13) indefinitely for further study.
Motion carried as follows:

AYES: Mayor Naifeh, Councilmembers Page,
Sanford, Lamb and Miller
NAYS: None

B. **Approval of Purchases:**

- 1) Approval of Change Order No. 3 with Downey Contracting, LLC, for the Fire Department Training Grounds, Phase II project in the amount of \$64,146.22.
- 2) Award of bid for the repair/reconditioning of miscellaneous transformers for the YourGovShop member participants.
- 3) Approval of Change Order No. 1 with Luckinbill, Inc. for the Coltrane Bridge Waterline relocation project in the amount of \$5,730.40.
- 4) Approval of contract amendment with CEDRA Corporation for maintenance of the GIS data layers consisting of parcels, water, wastewater and storm infrastructure and ongoing maintenance through FY 2007 in the amount of \$160,000.
- 5) Approval of Change Order Nos. 2 and 3 with the Oklahoma Municipal Power Authority for customer information software in the amount of \$150,159.21.

Motion by Miller, seconded by Page, to approve General Consent Items 5.B.(1-5). **Motion carried** as follows:

AYES: Mayor Naifeh, Councilmembers Page,
Sanford, Lamb and Miller
NAYS: None

Motion by Miller, seconded by Page, to recess the City Council meeting in order to convene the Edmond Public Works Authority

meeting. **Motion carried** as follows:

AYES: Mayor Naifeh, Councilmembers Page,
Sanford, Lamb and Miller
NAYS: None

8. Discussion and Consideration of approval to accept donation of Historic Home from private developer, located at 30 E. Campbell and approval to solicit bids to relocate the home to a permanent location within the downtown historic area and approval of utilizing the City Council contingency reserve to cover the expense of moving and relocating the home to a permanent location in the estimated amount of \$30,000. A private developer is willing to donate the historic home with a timeline of the end November 1, 2006, for the home to be removed from it's present site. This item was requested by Councilmember Page.

Stuart Howard, Executive Director of the Edmond Historical Society, addressed Council and stated they and the Edmond Historical Trust support the project. He stated the Society felt that the house does have historical significance since it was constructed in 1903. He noted it was restored in the 1990s and is in great shape for a house of that age. Mr. Howard stated they have researched areas to relocate the home and felt that it would enhance the cultural feel of downtown if the home were relocated to an area close to the Historical Society Museum in Stephenson Park or the Territorial Schoolhouse on 2nd Street. He stated they have spoken with several area property owners about acquiring property and feel property can be purchased for a reasonable sum. He noted the goal of the Society is to preserve the home, to operate it as a historic home and gardens, furnish it with period pieces and operate an education program. Mr. Howard stated they have a commitment of \$25,000 in private funds to use toward moving expenses but they have not secured funds for purchasing property. He did note that the donor probably would not object to the funds being used to purchase the property if they were assured that funds could be secured to relocate the house. He stated the estimated cost of moving the house is \$15,000 to \$30,000. He stated if Council accepts the donation, the Society will begin fundraising for operation expenses of the home. Mr. Howard stated initially the Society considered a site in Stephenson Park but are also considering alternative sites.

Councilmember Page stated the Society is in the process of meeting with area property owners regarding purchasing property and would rather not divulge the location or purchase prices of property being considered at this time. He stated the request is more of an impetus to help the project move forward and provide seed money to the Society to help in this endeavor. He noted once the seed money is received, then the Society can move forward with their fund raising efforts.

Thomas Small, architect, addressed Council and stated his firm is experienced in preservation work and he has been involved in relocating historical structures. He stated he felt the amount set aside for this project is adequate. Mr. Small stated as a citizen and business owner in Edmond he felt it was important for Council to consider a way to move this project forward. He stated due to the existing Territorial Schoolhouse and the Historical Society Museum, the Stephenson Park area would be a fitting place to relocate this house.

Pete Reeser, owner of the historical home and property, addressed Council and stated he would like the home to be preserved which is why he contacted the Historical Society. He stated due to some unforeseen circumstances and delays, the house can remain in the present location until just prior to the end of the year.

JaVonna Nett, owner of JaVonna's Painted Lady Antique Mall, addressed Council and stated her business is located in the subject home. She stated she has offered to donate the antiques that are presently in the home on a long-term basis.

Mayor Naifeh stated since Council has not previously discussed this matter and it is not in the budget, she wanted to be assured that the City would have financial partners in this endeavor. She also stated she was concerned about the costs escalating and too many unknown factors.

Councilmember Sanford stated she was supportive of the project but she also felt there are too many unknowns. She stated there are no details on operation costs or who will operate the facility.

Mr. Howard stated they are in the process of establishing a task force to explore all the issues. He stated the Society was trying to move fast due to the short time frame and have not determined all the details at this time. He stated his understanding of the scenario is the City would own the property and the Society would become a tenant of the property in the same manner that the Historical Society operates the Museum.

Councilmember Lamb stated the City does not have many properties of true historical significance since Edmond is a relatively young community. He stated he understands and supports the house being located near Stephenson Park but he was not in favor of losing a portion of the park. He noted the Council could

limit the funding to \$30,000 and allow the project effort to mature. Councilmember Lamb stated he felt if the project was to move forward it should be done correctly in order to maintain the historical integrity of the house. He noted the project could qualify as a Centennial project because of its age.

Mayor Naifeh requested that Mr. Howard contact the Centennial Commission to see if this project could be approved as a Centennial project.

Motion by Lamb, seconded by Page, to accept the house donation and approve funding not to exceed \$30,000 to match funding raised by the Historical Society for the relocation of the home . **Motion carried** as follows:

AYES: Mayor Naifeh, Councilmembers Page,
Sanford, Lamb and Miller
NAYS: None

9. PLANNING CONSENT ITEMS:

- A. **Public Hearing and Consideration of commercial Site Plan approval for a retail building to include Starbucks, located north of 15th Street, east of McDonald's/Conoco (Onyx Holdings, LLC, applicant) Case No. SP060032.** The applicant will preserve approximately .33 acres of riparian forest along the stream on the east side of the property and installing 94 plant units of new landscaping around the building. Because the preservation area exceeds the required plant units, the applicant is requesting a variance on the evergreen and 50% in front requirements. Councilmember Lamb requested this variance be noted.
- B. **Consideration of Final Plat for Forest Creek Estates, located north of Sorghum Mill Road, west of Midwest Boulevard (Tanner Consulting, applicant) Case No. PR050024**
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- C. **Consideration of Final Plat for Kingston Office Park, located west of Bryant, 500 feet south of Danforth Road (WHJ, LLC, applicant) Case No. PR050028.**
- D. **Consideration of Correction of Plat of Kimberly Crossing regarding an error in the legal description shown on the recorded plat, located north of W. Edmond Road, one-half mile east of Santa Fe (Kimberly Crossing, LLC, applicant) Case No. PR040045.**

Motion by Lamb, seconded by Sanford, to approve Items 9.A. through 9.D. subject to the variance noted in Item 9.A.
Motion carried as follows:

AYES: Mayor Naifeh, Councilmembers Page,
Sanford, Lamb and Miller

NAYS: None

10. Public Hearing and Consideration of Ordinance No. 3039 amending Edmond Plan III from Office and Restricted Commercial to Restricted Commercial usage, located north of Danforth Road, one-quarter mile west of Kelly (Ho C and Young W. Kang, applicants) Case No. Z060056. The site contains five acres east of the Ketch Acres Addition. Sanitary sewer will need to be extended off-site to the northeast corner in order to serve this tract. There is a shared access with the property owner to the east. Planning Commission recommended denial. Staff stated the Planning Commission had not reviewed the amended Ketch Acres office rezoning application to the west. That application will be considered at the next meeting.

Randel Shadid, attorney representing the applicant, addressed Council and stated that 2 ½ acres of the site will be down zoned to Suburban Office if this portion of the tract is rezoned to Restricted Commercial. He noted most of the Danforth frontage will probably at some point be rezoned to Suburban Office due to the character of the area. He stated the applicant will provide whatever buffer is required and will connect to City utilities. Mr. Shadid stated the property owners adjacent to the property have not objected.

Dan O'Neil, representing the Edmond Neighborhood Alliance, addressed Council in opposition. He stated he felt it was important to maintain Suburban Office on the property as a transitional buffer for the neighbors. He stated nothing has changed in the area to warrant a change in the zoning.

Councilmember Lamb stated restricted commercial has previously been used to line up with general commercial across the street. He stated there is a similar condition with this property with respect to the commercial opportunity across Danforth and also with Ketch Acres being across from the soccer fields. He stated he felt there was a better way of buffering than using zoning by encouraging physical buffering in the development of the site plans.

Mr. O'Neil stated the above scenario was only approved due to significant negotiations by the property owner with the adjacent residents and payment of money to the residents. He noted an eight foot brick fence was also installed as a buffer for those residents.

Councilmember Lamb noted there were 10 property owners regarding the above mentioned project and there are only two property owners adjacent to this application. He stated there are no objections from the residents of Ketch Acres to this application.

Motion by Lamb, seconded by Sanford, to approve Ordinance No. 3039 as read by title by City Planner. **Motion carried** as follows:

AYES: Mayor Naifeh, Councilmembers Sanford
and Lamb
NAYS: Councilmembers Page and Miller

Motion by Sanford, seconded by Miller, to attach Emergency Clause to Ordinance No. 3039. **Motion carried** as follows and Ordinance No. 3039 is in effect immediately:

AYES: Mayor Naifeh, Councilmembers Sanford,
Lamb and Miller
NAYS: Councilmember Page

11. Public Hearing and Consideration of Ordinance No. 3040 rezoning from "A" Single Family to "D-1" Restricted Commercial District, located north of Danforth Road, one-quarter mile west of Kelly (Ho C and Young W. Kang, applicants) Case No. Z060057. This is a companion to the above item and was discussed at that time.

Motion by Miller, seconded by Sanford, to approve Ordinance No. 3040 as read by title by City Planner. **Motion carried** as follows:

AYES: Mayor Naifeh, Councilmembers Sanford
and Lamb
NAYS: Councilmembers Page and Miller

12. Public Hearing and Consideration of Ordinance No. 3041 amending Edmond Plan III from Multi-Family to Suburban Office usage, located north of Danforth Road, one-quarter mile west of Kelly (Ho C and Young W. Kang, applicants) Case No. Z060054.

The site contains five acres and is a companion to the above items. There are no stub-out streets in the Ketch Acres Addition extending to this parcel. There has historically been a horse operation on the 10 acres immediately east. This tract is land locked without the frontage in the companion item. Access to this parcel would be from Danforth through the companion tract or along the east edge of the property where there has been a common driveway. Sanitary sewer is located to the northeast of this tract and will need to be extended off-site. Planning Commission recommended denial.

Motion by Miller, seconded by Page, to approve Ordinance No. 3041 as read by title by City Planner. **Motion carried** as follows:

AYES: Mayor Naifeh, Councilmembers Page,
Sanford, Lamb and Miller
NAYS: None

Motion by Miller, seconded by Page, to attach Emergency Clause to Ordinance No. 3041. **Motion carried** as follows and Ordinance No. 3041 is in effect immediately:

AYES: Mayor Naifeh, Councilmembers Page,
Sanford, Lamb and Miller
NAYS: None

13. Public Hearing and Consideration of Ordinance No. 3042 rezoning from "A" Single Family to "D-O" Suburban Office District, located north of Danforth Road, one-quarter mile west of Kelly (Ho C and Young W. Kang, applicants) Case No. Z060055. This is a companion to the above item and was discussed at that time.

Motion by Miller, seconded by Lamb, to approve Ordinance No. 3042 as read by title by City Planner. **Motion carried** as follows:

AYES: Mayor Naifeh, Councilmembers Page,
Sanford, Lamb and Miller
NAYS: None

14. Consideration of Special Use Permit to include Site Plan approval for a car wash, located on the northwest corner of Danforth Road and Kelly (Auto Spa Car Wash, applicant) Case No. U060007. The site contains 64,172 square feet and 20 parking spaces are provided. There will be no driveway on Kelly and the

development will share a drive on Danforth with a proposed restaurant on the western portion of the property. Mechanical equipment will be located on the roof behind a parapet wall. A six foot tall, 42 square foot sign is proposed but is not allowed on Kelly due to the minimal right-of-way required on Kelly. The walls will be brick on all four sides with awnings on the Kelly side of the building. The applicant was previously approved as a Special Use Permit in December, 2002, but never moved forward with the project. Planning Commission recommended denial.

Randel Shadid addressed Council and stated there is one shared access on Danforth and none on Kelly. There is an additional shared access that is currently being used by Tinker Federal Credit Union and the Edmond School administrative offices. He stated the site still contains a curvy sidewalk but there is not adequate space for berms on Danforth. He noted there will be intensive landscaping on the corner and a piece of public art will also be added. Mr. Shadid stated the dumpster will be relocated to the northwest corner of the site and enclosed with access from the adjoining business's parking lot. He noted the applicant has agreed to allow the Credit Union to move their unenclosed dumpster to their property as long as they access it from their property. He stated the applicant has the absolute right to use the access on Danforth and the detention facility according to the access agreement with the School Board and Credit Union. Mr. Shadid stated the applicant will remediate the detention facility which is grown up with weeds.

Mayor Naifeh stated when this item was previously approved, the property contained berms next to Danforth and the sidewalks curved. She stated the information provided to Council did not contain those items and she asked why the berms were eliminated.

Steve Manek, City Engineer, addressed Council and stated the sidewalk will be in the right-of-way and the applicant did not want berms in the right-of-way due to maintenance issues.

General discussion was held regarding the original application that was approved in 2002. It was noted the previous application contained the car wash and a drive-thru facility which the Council at that time felt needed to be screened.

Brent Niles, applicant, addressed Council and stated the first application contained self-serve bays that faced Danforth. He stated at that time there was concern about the self-serve bays facing Danforth and a recommendation was made to install berms.

Mr. Niles stated when they requested an extension of the original Special Use Permit the self-serve bays were eliminated. He stated at that time he offered to install curvy sidewalks to make the area more aesthetically pleasing.

Todd McKinnis, attorney representing the Edmond School Board, addressed Council in opposition. He stated the applicant does not have an absolute right to use the access on Danforth for this parcel and is specifically excluded from using it. He noted the applicant does have access rights for the companion item on the adjoining parcel. He stated the original easement agreement was entered into in 1993 between his client, Tinker Federal Credit Union and the adjoining property owner. He noted one property owner can not unilaterally amend an easement. Mr. McKinnis stated each property owner pays a certain percentage of maintenance costs in accordance with the amount of property they own. He noted the current application is different from the previous application because at that time the applicant did not have a development plan for the remainder of the property. Mr. McKinnis stated they did not object at that time because they did not know that a fast food restaurant would be constructed on the adjoining property. He stated the School Board's primary objection is with the northern access which uses the School Board's access to stack cars entering the applicant's property. He stated if the applicant would eliminate that access, they would have no objection.

Robert Sheets, attorney representing Tinker Federal Credit Union, also addressed Council in objection. He also stated the applicant does not have an absolute right to use the access. Mr. Sheets stated the reason this parcel was specifically excluded is because the original plan, when the easement agreement was signed, was for this parcel to develop with a convenience store and have access onto both Kelly and Danforth thus they did not need the cross access. He stated approving this application would create a significant maintenance burden on a private easement on which the property owner only has to pay 20% of the maintenance costs. Mr. Sheets stated the access was never meant to be a public access.

Mr. Shadid addressed Council and stated this is the same access that was previously approved and at that time there was no objection from either party. He stated when the access agreement was drafted, the parties did not consider that one owner would acquire all the property. Mr. Shadid stated it would be unrealistic to prohibit a property owner from crossing their own property to access another portion of their property.

He noted this is a private issue and should not involve the City of Edmond.

Mr. McKinnis stated the access easement is a legal document filed of record and it contains terms of how it can be modified. He noted because the applicant clearly does not have access to his property through the shared drive makes his application flawed. He requested the application be denied based upon the legal document approved and signed by the three property owners.

Motion by Sanford, seconded by Lamb, to approve Item No. 14.
Motion was denied as follows:

AYES: Mayor Naifeh and Councilmember Sanford
NAYS: Councilmembers Page, Lamb and Miller

15. Public Hearing and Consideration of commercial Site Plan approval for a new restaurant, located north of Danforth Road, west of Kelly, south of the Tinker Federal Credit Union (Carl's Jr., applicant) Case No. SP060035. The site contains 36,016 square feet and 32 parking spaces are provided. The site shares a driveway with the existing Edmond School District administration office and Tinker Federal Credit Union. The mechanical equipment will be on top of the building behind a parapet wall. The building will be a combination of brick veneer and EFIS but mostly brick. A red awning and accent stripe will be around the building. Planning Commission recommended denial.

Randel Shadid, attorney for the applicant, addressed Council and stated the applicant has absolute access to the shared drive. He stated a piece of public art will be located on the property and the applicant will only request minimum parking when the Site Plan is submitted.

Motion by Lamb, seconded by Miller, to approve Item No. 15.
Motion carried as follows:

AYES: Mayor Naifeh, Councilmembers Sanford,
Lamb and Miller
NAYS: Councilmember Page

16. Consideration of Final Plat for a car wash located on the northwest corner of Danforth Road and Kelly (Auto Spa Car Wash, applicant) Case No. PR060018. The applicant requested this item be withdrawn.

17. **Public Hearing and Consideration of Ordinance No. 3043 amending Edmond Plan III from General Agricultural to Rural Estate Dwelling usage, located east of Westminster, one-half mile north of Danforth Road (Mark Moore, applicant) Case No. Z060058.** The site contains 80 acres and a development containing 26 two acre lots is proposed. The area is the most rural part of the City. Covell Road has never been opened to the north of this property and Covell Road from Westminster to Post Road and Post Road to Douglas is not paved. The section from Post Road to Douglas is planned for re-surfacing. The applicant does not intend to submit a plat but will develop the property under the State Statute exception since they are more than one-quarter mile from existing water and sewer. Planning Commission recommended denial.

Barry Rice, attorney representing the applicant, addressed Council and stated the development will not have any access other than on Westminster. He stated the two acre lots will allow much of the trees to be preserved. Mr. Rice noted there has been a lot of development in east Edmond and that area is also part of the Edmond School District now. He stated the application is compatible with the area and will comply with Title 23. He noted the two ponds on the property will be utilized as detention facilities.

Jay Buxton, former owner of the subject property and also adjacent property owner, addressed Council and stated he was not opposed to the application.

Motion by Lamb, seconded by Sanford, to approve Ordinance No. 3043 as read by title by City Planner. **Motion carried** as follows:

AYES: Mayor Naifeh, Councilmembers Page,
Sanford, Lamb and Miller
NAYS: None

Motion by Lamb, seconded by Miller, to attach Emergency Clause to Ordinance No. 3043. **Motion carried** as follows and Ordinance No. 3043 is in effect immediately:

AYES: Mayor Naifeh, Councilmembers Page,
Sanford, Lamb and Miller
NAYS: None

18. **Public Hearing and Consideration of Ordinance No. 3044 rezoning from "G-A" General Agricultural to "R-1" Rural Estate**

Dwelling District, located east of Westminster, one-half mile north of Danforth Road (Mark Moore, applicant) Case No. Z060059. This is a companion to the above item and was discussed at that time.

Motion by Miller, seconded by Page, to approve Ordinance No. 3044 as read by title by City Planner. **Motion carried** as follows:

AYES: Mayor Naifeh, Councilmembers Page,
Sanford, Lamb and Miller
NAYS: None

Mayor Naifeh announced a five minute break.

19. Discussion and Consideration of the following items related to the calling of a Special Election for zoning ordinances and plan amendments related to real property located near the northeast corner of 15th Street and Bryant.

a) Approval of Resolution No. 25-06 authorizing the calling and hold of election in the City of Edmond, in the State of Oklahoma, on the 7th day of November, 2006, for the purpose of submitting to the registered, qualified voters of said City, four questions related to zoning ordinances and plan amendments for real property located near the northeast corner of 15th Street and Bryant.

b) Consideration of Election Proclamation and Notice authorizing the calling and holding of an election on the 7th day of November, 2006, for the purpose of submitting to the voters four questions related to zoning ordinances and plan amendments for real property located near the northeast corner of 15th Street and Bryant.

Steve Murdock addressed Council and stated the items relate to Edmond Plan III amendment and rezoning ordinances for the corner of 15th Street and Bryant submitted and approved on June 26th. He stated two Referendum Petitions to rescind Council's approval of the two rezoning ordinances were submitted with appropriate signatures and no challenges were filed during the challenge period. He noted on July 24th Council approved adding the Plan Amendment ordinances to the ballot to eliminate the need for citizens to circulate and file Initiative Petitions. Mr. Murdock stated he researched state statutes which give various options on when an election can be held. He stated the items can be placed on the November 7th state general election or on April 3, 2007, during the next municipal general election. He

noted Council can determine when to place the ordinances on the ballot.

Councilmember Page stated he wanted to clarify election costs that were incorrectly printed in the newspaper.

Nancy Nichols, City Clerk, addressed Council and stated since the election in April, 2007, would be a scheduled municipal election, the costs would be approximately \$25,000 to \$30,000. She noted the City is required to pay the entire cost of the election since it is a municipal election. Ms. Nichols stated if Council approved the Election Resolution and Proclamation to be placed on the November 7th election, the City would piggy back these four propositions onto that election and then would only need to pay for the costs of printing the ballots, which is approximately \$5,000. She noted if a special election were held in December, the election costs would be approximately \$25,000 to \$30,000.

Councilmember Page stated he felt the ballot language was confusing since citizens will not be able to vote all yes or all no. He stated he also preferred the election be held on April 3, 2007, since that is the date that is included on the Referendum Petitions filed with the City Clerk.

Tim Reese, President of the Edmond Neighborhood Alliance, addressed Council in opposition. Mr. Reese stated the City Charter states that the State Constitution should be applied regarding Referendum and Initiative Petitions. He noted the Constitution states that the Mayor shall submit the ordinances to the qualified electors at the next general municipal election which in his opinion is the April 3rd election. Mr. Reese also took issue with the ballot language and agreed with Councilmember Page that the ballot was too confusing for the average citizen to understand. He stated if the propositions are placed on the November 7th ballot, there will be challenges by various citizen groups by writ of mandamus to force the Council to follow the constitution. Mr. Reese noted that originally the election proclamation and resolution stated the election would be held in April but later it was amended to the November 7th election. He stated an ordinance can not trump the constitution, thus the four propositions should be placed on the April election ballot. He stated it would be easier to place the proposition and proclamation on the April 3rd election ballot since that election is already scheduled. He noted this date was represented to the citizens when the petitions were being circulated and also complies with the state constitution. Mr.

Reese stated the November 7th ballot will contain numerous items and the addition of these items will make the ballot longer and more crowded.

Lydia Lee, attorney representing Bryant ACCORD III and a circulator of the petitions, addressed Council and stated the two issues before the Council are when and how the election should be conducted. She agreed with Mr. Reese that the state constitution stipulates that the propositions should be placed on the next general municipal election ballot which would be the April 3, 2007, election. Ms. Lee stated the state constitution is the supreme law and must be followed. She stated any statutes which are in conflict with the constitution must give deference to the constitution. She stated when the petitions were circulated they were very precise in following the law and she felt the Council should also follow the law which in this case is the state constitution. She stated the language used on the petitions clearly state that the election would be held on April 3rd and that is also the date that the circulators told the citizens. She also agreed that the ballot language was confusing which is also not allowed by the constitution. Ms Lee stated the Oklahoma Supreme Court has previously ruled in 1990 that a City Council can combine all cognizant propositions, especially when the propositions are united due to various reasons and may be viewed as a single issue and placed on the ballot and submitted to the voters as one vote. She urged Council to combine all the propositions into one item to eliminate confusion for the public.

Cliff Henderson and Jean Brewer also addressed Council and requested the propositions be placed on the April 3rd election ballot. Ms. Brewer also requested the ballot language be clarified for public understanding.

Randel Shadid addressed Council and stated he supported the propositions being placed on the November 7th election ballot. He disagreed with Ms. Lee that all the issues could be combined on the ballot title which is illegal under Oklahoma election law. Mr. Shadid also stated the language on the ballot was basically the same language that appeared on a ballot title in the 1980s and the public seemed to understand the language at that time and will do so again.

Mayor Naifeh asked the City Attorney if he had a different opinion on when the election regarding these propositions could be held. Mr. Murdock reiterated his position that the constitution gives Council the power to place the propositions

on either a general election, general municipal election or special election ballot which includes the November 7th generalelection.

Mayor Naifeh stated when citizens requested the remaining two rezoning ordinances be placed on the ballot to eliminate the need for circulating Initiative Petitions the Council agreed. She noted there was not much precedence for that request but Council agreed for the good of the public and in order to move forward and accelerate the process. She stated she wanted to allow the public to vote on these issues as soon as possible and felt that because of the number of important issues on the November 7th ballot that more citizens would vote than would in April, 2007. She stated she also wanted the ballot to be as simple as possible and not be confusing to the public. Mayor Naifeh stated she was in favor of placing the propositions on the November 7th ballot.

General discussion was held regarding the ballot language. It was determined by Council to leave Propositions I and II as is and to amend the language on Propositions III and IV as follows:

Proposition III to be amended with the following language "Shall an Ordinance be adopted amending Edmond Plan III, 1999-2004, to redesignate certain real property generally located east of Bryant Avenue, south of Hafer Park, north of 15th Street in the City of Edmond, being approximately 2.89 acres in size from the present General Commercial Planned Unit Development usage and designation as set forth in Ordinance No. 3025, to Single Family Dwelling Designation?"

Proposition IV to be amended with the following language "Shall an Ordinance be adopted amending Edmond Plan III, 1999-2004, to redesignate certain real property generally located east of Bryant Avenue, south of Hafer Park, north of 15th Street in the City of Edmond, being approximately 28.35 acres in size from the present Restricted Commercial Planned Unit Development usage and designation as set forth in Ordinance No. 3027, to Single Family Dwelling Designation?"

Motion by Miller, seconded by Lamb, to approve Resolution No. 25 -06 and Election Proclamation as amended above. **Motion carried** as follows:

AYES: Mayor Naifeh, Councilmembers Sanford,
Lamb and Miller
NAYS: Councilmember Page

20. Executive Session to discuss the following pending claim/litigation (Executive Session authorized pursuant to 25 Okla. State. Sec. 307 (B)(4)):

Spencer vs. City of Edmond
White vs. City of Edmond

Motion by Lamb, seconded by Miller, to meet in Executive Session to discuss the above items. **Motion carried** as follows:

AYES: Mayor Naifeh, Councilmembers Page,
Sanford, Lamb and Miller
NAYS: None

Mayor and Councilmembers recessed to the City Council Conference Room at 9:40 p.m. and returned to the City Council Chambers at 9:56 p.m.

Motion by Miller, seconded by Page, to adjourn Executive Session. **Motion carried** as follows:

AYES: Mayor Naifeh, Councilmembers Page,
Sanford, Lamb and Miller
NAYS: None

21. Consideration of action with regard to the claims of Spencer and White vs. City of Edmond.

Motion by Lamb, seconded by Miller, to authorize City Attorney to proceed with settlement negotiations on the White claim and to take no action on the Spencer claim. **Motion carried** as follows:

AYES: Mayor Naifeh, Councilmembers Page,
Sanford, Lamb and Miller
NAYS: None

22. NEW BUSINESS:

Mayor Naifeh reminded citizens to follow traffic signals since school has recently started.

Mayor Naifeh also congratulated Councilmember Lamb for his induction into the Oklahoma Municipal League Hall of Fame.

23. Motion by Lamb, seconded by Miller, to adjourn meeting.

Motion carried as follows:

AYES: Mayor Naifeh, Councilmembers Page,
Sanford, Lamb and Miller
NAYS: None

City Clerk

Mayor