



# City of Rowlett Meeting Minutes City Council

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*City of Rowlett City Council meetings are available to all persons regardless of disability. If you require special assistance, please contact the City Secretary at 972-412-6109 or write PO Box 99, Rowlett, Texas, 75030-0099, at least 48 hours in advance of the meeting.*

Tuesday, February 3, 2009

5:30 PM

Municipal Building - 4000 Main Street

As authorized by Section 551.071 of the Texas Government Code, this meeting may be convened into closed Executive Session for the purpose of seeking confidential legal advice from the City Attorney on any agenda item herein.

The City of Rowlett reserves the right to reconvene, recess or realign the Regular Session or called Executive Session or order of business at any time prior to adjournment.

## 1. CALL TO ORDER

*Mayor Harper called the meeting to order at 5:30 p.m.*

**Present:** Mayor Harper, Mayor Pro Tem Gottel, Deputy Mayor Pro Tem Maggiotto, Councilmember Phillips, Councilmember Rushing, Councilmember Jackson and Councilmember Kilgore

## CONVENE INTO EXECUTIVE SESSION

*The City Council convened into closed session at 5:30 p.m.*

## 2. EXECUTIVE SESSION

2A The City Council shall convene into executive session pursuant to the TEXAS GOVERNMENT CODE, §551.071 and §551.087 to seek legal advice and to deliberate on economic development incentives and financial prospects for property located at or around Pecan Grove Park. (30 minutes)

2B The City Council shall convene into executive session pursuant to the TEXAS LOCAL GOVERNMENT CODE, §551.074(a) (1), Personnel, regarding duties and functions of the City Manager. (30 minutes)

## RECONVENE INTO OPEN SESSION

*Reconvened into open session at 6:30 p.m.*

## 3. WORK SESSION ITEMS (6:30 P.M.)

3A Joint meeting with the Senior Advisory Board. (10 minutes)

*Bobbie Jo Kelly, Senior Advisory Board Chair gave a brief history of the Board. Spoke concerning various accomplishments of the Board. A summary of the goals of the Board is*

*to design plans for a Senior Center; better communication with the senior population; happy they received a dedicated room for seniors; research funding options for a Senior Center; organize a volunteer program; to contract with Meals-on-Wheels to make meals available for delivery in Rowlett; and the desire for senior influence on the various Boards and Commissions.*

**3B** Hear Quarterly Investment Report for period ended December 31, 2008. (10 minutes)

*Staff briefly updated the Council regarding the City's investment portfolio. Spoke regarding a decline in interest income compared to the same period in FY2008. Two factors that may have contributed to the decline are the reduction in the interest rates and a reduction in the balance that was available to invest.*

*Stated the City's funds are invested in secure instruments; they are diversified as to the maturity and the type; and they are actively monitored to ensure compliance with the City's Investment Policy and the Public Funds Investment Act.*

*Council asked if the interest income is part of the revenue for the General Fund.*

*Staff answered in the affirmative.*

*Council asked if operational issues or capital expenditures issues would occur if the interest income continues to decline.*

*Staff answered in the affirmative if a revenue string does not generate to offset the decline.*

*Council asked if debt would be paid down this fiscal year at the rate previously planned.*

*Staff stated the debt is being paid according to the bond schedules; stated staff has created an internal Investment Review Committee to provide checks and balances.*

**3C** Hear update on the 2009 Legislative Program. (10 minutes)

*Staff spoke regarding different proposed legislation categorized as Municipal Revenue, Public Safety, Transportation, Quality of Life, Home Rule/Local Control, Economic Development, Environment, and CAPP (Cities Aggregation Power Project).*

*Stated staff would continue to monitor legislative issues.*

*Council stated the City does not do individual lobbying; the City relies on the Texas Municipal League (TML) for the most part. However, there are two (2) lobbying opportunities for the City. The first opportunity for the City is at the Rockwall County Days from February 15 - 17, 2009. And the second opportunity will be with the North Texas Commission (NTC) on March 25 - 26, 2009.*

**4. DISCUSS REGULAR SESSION ITEMS**

*Item 10H was removed from the Consent Agenda to be considered individually.*

**CONVENE INTO THE COUNCIL CHAMBERS (7:30 P.M.)**

*Convened into regular session at 7:30 p.m.*

**5. INVOCATION**

*The invocation was led by Pastor Allen Gregory, Cornerstone Church in Rowlett.*

**6. PLEDGE OF ALLEGIANCE**

*Mayor Harper led the Pledge of Allegiance.*

**7. TEXAS PLEDGE OF ALLEGIANCE**

*Mayor Harper led the Texas Pledge of Allegiance.*

**8. PRESENTATIONS AND PROCLAMATIONS****8A** Update from the Mayor: Financial Position, Major Projects, Operational Issues, Upcoming Dates of Interest.

*Mayor Harper gave a brief update regarding the City's December sales taxes and property tax payments; and the City Council Finance and Audit Committee will meet with staff regarding the details for the March 3rd meeting.*

*Stated all segments of the President George Bush Turnpike Eastern Extension (PGBT EE) are now under contract and the turnpike will open in mid to late 2011; on January 19, 2009, the Coyle House was moved to Pecan Grove Park; the Dallas Area Rapid Transit (DART) Blue Line Extension design contract was awarded on January 27, 2009 and the extension will open in late 2012. A groundbreaking ceremony is planned for mid-March 2009. Spoke concerning the purchase of the northern section of the Elgin B. Robertson Park from the City of Dallas.*

*Spoke concerning several road construction projects and neighborhood revitalizations. Stated the Comprehensive Capital Improvement Projects (CIP) review is scheduled to occur on February 17, 2009.*

*Spoke concerning the Bond Committee and their continued research. Stated a plan will be made publicly during the summer months. Spoke about expanding Code Enforcement, the screening wall issues, and leaning utility poles. Stated the IESI fuel surcharge will be rescinded during the month of February.*

*Spoke concerning several dates of interests including the February 4, 2009 Planning Consortium with Rockwall County; the February 5, 2009 Town Hall meeting at Cullins-Lake Pointe Elementary School; the February 6, 2009 Dallas Regional Mobility Coalition transportation meeting; the February 12, 2009 Regional Transportation Council meeting; and the February 16, 2009 Rockwall County Legislative Day in Austin.*

**8B** Hear presentation of the First Quarter Financial Report for Fiscal Year 2008-2009 from the City Manager.

*City Manager Lynda Humble briefly spoke concerning the City's financial situation.*

Brian Funderburk, Director of Financial Services presented a PowerPoint presentation entitled, "Quarterly Financial Report, December 31, 2008" (14 slides).

#### Overview

- City has earned \$17.7 million through the first quarter, representing 23.0% of the amended operating budget of \$77.0 million.
- City has spent \$14.5 million for the year, representing 18.6% of the amended operating budget of \$77.9 million.
- City has spent \$3.3 million in capital improvements and has \$9.6 million committed off the amended capital budget of \$60.3 million.

#### Revenue Trends

- Sales taxes have earned \$0.6 million, flat compared to FY 07-08 but 4.5% below target for the first two months of the year.
- We will not receive the December returns until approximately February 13, 2009 but are projected to be 4.5% below target.
- Property taxes totaled \$6.0 million, a decrease of 38.2% compared to FY 07-08 and 39.8% below target thru the quarter.
- The decrease may be due to timing but given the signs of economic stress, staff is preparing for lower collection rates.
- Water revenues totaled \$2.6 million, an increase of 9.5% over FY 07-08 but 1.6% below target thru the quarter.
- Sewer revenues totaled \$2.3 million, an increase of 3.5% over FY 07-08 and 1.9% above target thru the quarter.
- Other revenues that appear to be softening include:
  - Electric franchise fees are \$87,688 or 20.0% below target.
  - Fines & forfeitures are \$74,177 or 15.8% below target.
- Other revenues that are currently okay but are deemed vulnerable include:
  - Licenses & permits - particularly those that are construction related.
  - Fees & charges - particularly those that are "discretionary" to our customers (i.e. recreational).
  - Interest earnings - market is at and expected to remain at historically low levels.

#### Budget Targets

- Overall, revenues are \$3.8 million or 17.6% lower than the target thru December 31st primarily due to the timing of property tax collections and lower sales tax projections.
- Expenditures are \$1.3 million or 8.2% lower than the target thru December 31st primarily due to lower operating costs in the General and Water/Sewer Funds.
- Electric expenses are expected to be \$500k lower due to the new Five Year CAPP agreement.

#### Summary

- The past six months have been extremely challenging as the nation has reeled from back-to-back negative economic news.
- As a result, the economy has shed jobs and businesses have closed at historically high rates.
- While Rowlett has fared better than most, our crystal ball is cloudy and it will be difficult for anyone to predict what will happen over the remainder of the year.
- The single biggest challenge for FY 2008-09 remains the economy. The City is already experiencing lower revenues than projected and predicts a shortfall in the General Fund and staff evaluating the impact to other City funds.
- Staff is currently working on a plan to address the shortfall and will present a plan to the City Council on March 3, 2009.

*Staff stated as additional information is gained; the information will be shared with the City Council to keep everyone informed.*

## 9. CITIZENS' INPUT

1. *Eric Gigon - 3910 Southridge Drive - spoke concerning Item 10H.*
2. *Colleen Elledge - 6317 Joel Court - spoke concerning Item 10H.*
3. *Gary Fisher - 2081 Ash Bourne Drive, Rockwall - spoke concerning Item 10H.*
4. *Kathy Ratliff - 111 Crestwood Drive, Rockwall - spoke concerning Item 10H.*
5. *Lonnie Cornwell - 4106 Baywatch Drive - spoke concerning Item 10H.*
6. *Ron Free - 7309 Kingston - spoke concerning Item 10H.*
7. *Chris Cigainero - 4102 Cavalier Drive - spoke concerning Item 10H.*

## 10. CONSENT AGENDA

*Mayor Harper explained the procedure regarding the Consent Agenda and the rights of each Councilmember and each citizen to have any consent agenda item removed to be considered individually.*

*Item 10H was removed from the Consent Agenda to be considered individually.*

*City Secretary read items into the record.*

10A Consider approving minutes from the January 20, 2009 Regular Council Meeting.

**This Matter was approved on the Consent Agenda.**

10B Consider an ordinance of the City of Rowlett, Texas, amending the Rowlett Code of Ordinances by amending Chapter 42 ("Parks and Recreation"), by repealing Division 2, ("Athletic Facilities"), Division 3, ("Park Facilities"), Division 5, ("Water Park") and Division 6 ("Skate Park") of Article II, ("Rules and Regulations") in their entirety and replacing it with a new Division 2, ("Athletic Facilities"), Division 3, ("Park Facilities"), and Division 5, ("Water Park").

**This Matter was approved as ORD-002-09 on the Consent Agenda.**

10C Consider a resolution authorizing the City Manager to execute an agreement to exercise the option to extend the term of the bank depository services agreement with American National Bank for a period of one year under the same terms and conditions as the Memorandum of Understanding.

**This Matter was approved as RES-010-09 on the Consent Agenda.**

- 10D Consider a resolution awarding the bid for the purchase of seven (7) patrol motor vehicles to Dallas Dodge Chrysler Jeep in the amount of one hundred fifty-five thousand one hundred forty-six dollars (\$155,146) through the inter-local cooperative purchasing agreement with Houston-Galveston Area Council (H-GAC).
- This Matter was approved as RES-011-09 on the Consent Agenda.**
- 10E Consider a resolution awarding a bid to purchase police vehicle equipment and installation services to Pursuit Safety, Inc. in the amount of fifty-four thousand six hundred fifty-nine dollars and eighty-five cents (\$54,659.85) and authorizing the City Manager to issue appropriate purchase orders.
- This Matter was approved as RES-012-09 on the Consent Agenda.**
- 10F Consider a resolution endorsing certain legislative changes to enhance the competitive electric market supported by Cities Aggregation Power Project, Inc. ("CAPP").
- This Matter was approved as RES-013-09 on the Consent Agenda.**
- 10G Consider a resolution granting a special exception for alternate building materials for a single family home, located on 1.53± acres being Lot 1, being Lot 1, Block A of the KC Subdivision.
- This Matter was approved as RES-014-09 on the Consent Agenda.**

### Passed The Consent Agenda

**A motion was made by Councilmember Rushing, seconded by Councilmember Phillips, including all the preceding items marked as having been adopted on the Consent Agenda. The motion carried by the following vote:**

**Ayes:** 7 - Mayor Harper, Mayor Pro Tem Gottel, Deputy Mayor Pro Tem Maggiotto, Councilmember Phillips, Councilmember Rushing, Councilmember Jackson and Councilmember Kilgore

- 10H Consider an ordinance banning smoking in public places, repealing and replacing Chapter 22, Article VI. Smoking, Sections 22-241 through 22-248 and providing an effective date of May 1, 2009.

*Mayor Harper read the item into the record.*

*Mayor Harper stated "Mr. Gottel, you had a question on that."*

*Mayor Pro Tem Gottel stated "Yes, Mayor. I had asked that we have it pulled for*

*individual consideration, just simply due to the amount of interest in this specific item."*

*Mayor Harper stated "And no specific questions?"*

*Mayor Pro Tem Gattel replied "No, no specific questions."*

*Mayor Harper stated "Okay. Council, questions?"*

*Councilmember Rushing replied "No, Mayor. May I make a motion?"*

*Mayor Harper replied "In one moment, let me check on this side. Mr. Maggiotto?"*

*Deputy Mayor Pro Tem Maggiotto stated "Thank you, Mayor. Question for staff, there was an email, I believe there was a question that pertained to how many establishments qualify as a 'bar' in the City of Rowlett."*

*Keri Samford, Director of Developmental Services replied "I did not see that email. Actual bars in the City, I believe just off the top of my head, we may have one (1) that is grandfathered in. It was originally in the ETJ and annexed in."*

*Deputy Mayor Pro Tem Maggiotto stated "That's my recollection. I think the name is Rambling Rose?"*

*Ms. Samford replied "I believe so. Yes, sir."*

*Deputy Mayor Pro Tem Maggiotto stated "Thank you. Thank you, Mayor."*

*Mayor Harper replied "Thank you, Mr. Maggiotto. Anybody else? Mr. Kilgore."*

*Councilmember Kilgore stated "I have a motion when it's time."*

*Mayor Harper replied "All right. Does anybody else have a question? You had the first motion, Ms. Rushing."*

*Councilmember Rushing stated "Yes, Mayor, I would like to make a motion that we pass the smoking ban but for new construction leaving existing establishments in the City of Rowlett to have the choice that they currently have. If they feel they need to compete with any new construction then they could go smoke free, but I would...is that the right way to say it, for our City Attorney?"*

*Mayor Harper stated "I'm looking to the attorney, as well. Is that sufficient?"*

*Councilmember Rushing stated "This ordinance is to be effective for only new construction."*

*David Berman, City Attorney replied "I'm thinking; you're not making it easy. I think what you're trying to do is grandfather in all pre-existing establishments in town, is that right?"*

*Councilmember Rushing answered in the affirmative.*

*Mr. Berman continued "All restaurants, cigar bars, tobacco shops, and everything else."*

*Councilmember Rushing answered in the affirmative.*

*Mr. Berman stated "What conditions do you want to impose on? The changes of*

ownership? On the pre-existing establishments that have been grandfathered in connection with remodeling? Or changes in ownership, do you want them to be prohibited as well?"

Councilmember Rushing replied "Yes, sir. If there's any changes in ownership or remodeling; just like it states in the ordinance under 'cigar bars'. It takes that into consideration that they are grandfathered in as an allowed establishment but if they change ownership or expand in size or anything else like that, then they have to go smoke-free."

Mr. Berman stated "All right, let's go over quickly what we've got in the ordinance that was in your packet that is up for consideration this evening. We do have a provision in the ordinance that grandfatheres a 'cigar bar' and there's a definition of a 'cigar bar' in there. It just simply says that if it was operating as of today's date which was the assumption that tonight would be the night that the ordinance would be adopted, if it meets certain conditions then it can continue but their grandfathered status will terminate if it is expanded, relocated, or changes majority ownership after today."

Councilmember Rushing replied "Yes."

Mr. Berman continued "So you want to put in similar prohibition...I'm sorry, a similar grandfathering provision for restaurants?"

Councilmember Rushing stated "Existing establishments that allow smoking today in the City of Rowlett. Any new construction, new ownership, or expansion of existing facilities would fall under the total smoking ban that we're looking at today."

Mr. Berman stated "All right, so you're talking about all...going through the definitions, what the ordinance attempts to prescribe, eating establishments, all employers, all enclosed spaces including municipal facilities."

Councilmember Rushing replied "Yes, sir."

Mr. Berman continued "Retail service establishments."

Councilmember Rushing stated "Yes; our current ban covers most of those anyway. This basically would cover the ten (10) or less restaurants or eating facilities that we currently have in town that allow smoking."

Mr. Berman replied "Okay, it would not be difficult therefore, to include similar to what we currently have now for cigar bars, a defense to prosecution if any establishment, not just restaurant or eating establishments but any enclosed spaces that are in existence as of a specific date would be grandfathered and could use that as a defense in a criminal prosecution."

Councilmember Rushing answered in the affirmative.

Mr. Berman stated "I can do that."

Mayor Harper stated "Okay, is there a second?"

Councilmember Phillips seconded the motion.

Mayor Harper stated "Is there any discussion? No discussion, we'll call the question, Ms. Quinn."

*The motion fails (3 - 4 vote with Mayor Harper, Deputy Mayor Pro Tem Maggiotto, and Councilmembers Jackson and Kilgore voting against).*

*Mayor Harper stated "Mr. Kilgore."*

*Councilmember Kilgore stated "Your Honor, I move that the Council adopt an ordinance as prescribed in the packet or as provided in the packet amending Chapter 22 of the Code of Ordinances, Environment by repealing Article VI, Smoking, in its entirety and replacing that with a new Article VI to provide new regulations regarding smoking in public places with an effective date of May 1, 2009."*

*Mayor Harper stated "And is there a second?"*

*Councilmember Jackson seconded the motion.*

*Mayor Harper stated "Any discussion? Call the question please, Ms. Quinn."*

*The motion fails (2 - 5 vote with Mayor Harper, Mayor Pro Tem Gottel, Deputy Mayor Pro Tem Maggiotto, and Councilmembers Phillips and Rushing voting against).*

*Mayor Harper stated "Motion fails. Any other motions?"*

*Deputy Mayor Pro Tem Maggiotto replied "Motion, Mayor."*

*Mayor Harper stated "Mr. Maggiotto."*

*Deputy Mayor Pro Tem Maggiotto stated "Mayor, between this council meeting and the last council meeting, staff had presented a list of criteria for possible exceptions. I guess when I look at this ordinance that we currently have before us written up, the exceptions speak to a private residence except when used as a childcare, daycare, or healthcare facility; a stage, set, or production company of a television program of theatrical presentation; or a movie; a cigar bar that was lawfully operated on this date loses exemption if relocated, expanded or changes majority ownership after this date; a tobacco shop; an enclosed outdoor seating area; and a private rented guest room designated as smoking with additional stipulations. I would like to add to that exception list a bar. It is defined as an establishment that derives at least seventy-five percent (75%) of gross revenue from the sale of alcoholic beverages as defined by the Texas Alcoholic Beverage Code. My perspective, Mayor, on this motion when I look at how we...we currently have a smoking ordinance in effect. And as Ms. Samford alluded to under that definition, we have one (1) bar in the City and it was grandfathered under the current ordinance. When I look at our current smoking ordinance and we're talking about health and safety and welfare, we currently do not have an effective smoking ordinance. Our system that we put in place, I guess what, two (2) decades ago, 1988 or there about, doesn't speak to, as a gentleman referred to a physically isolated environment. We currently have a system where we believe that two (2) ventilation systems protects the non-smoking section and we know from experience that all you have to do is walk into Chili's or the Bowl-A-Rama, we find that the smoke is everywhere; it ingresses and egresses. So, I looked at this ordinance, the original intent of the 1988 ordinance was to protect the non-smoking class. The intent of the ordinance was that. Its effectiveness however is not there and I think we've had some definition as to how we would get there. We can have a physically isolated situation or we can have an outdoor. In this particular ordinance that we're considering it allows for restaurants to have outdoor seating areas where you can eat. So I kind of addressed my perspective, not on personal rights or choice, although I can argue that the only Chili's in town, while if you don't want to smell smoke, you can drive to the Chili's in Rockwall. Well, we've talked about economic development; I would like our citizens to have equal choice to drive to the only Chili's in the City of Rowlett and not be inconvenienced to have to drive somewhere else. So when I*

look at choice, I am looking at equal, as that word is defined in the dictionary, equal access to...those businesses that are within our city limits. And as shown, the 1988 ordinance is not effective in creating that equal environment. So, I'd like to make the motion that we consider an ordinance banning smoking in public places, repealing and replacing Chapter 22, Article VI, Smoking, Sections 22-241 through 22-248 and providing an effective date of May 1, 2009 with the addition of the bar as an exception."

Mayor Harper stated "In that effect, just for clarification before I get a second, and that effect is to add the bar restriction or release the bar restriction."

Deputy Mayor Pro Tem Maggiotto replied "Correct and I would put in parentheses the same requirements, loses exemption if located, expanded or changes majority ownership after this date."

Mayor Harper stated "So, Council, what we have is a motion to adopt the ordinance as presented to us but add the exception of a bar as defined by and we'll get to that in discussion. Is there a second?"

Councilmember Kilgore seconded the motion.

Mayor Harper stated "Okay, so we have a first and a second. Let's have discussion, Ms. Rushing."

Councilmember Rushing stated "So my understanding is that we would grandfather in the existing bar but we could not open new bars?"

Deputy Mayor Pro Tem Maggiotto replied "Our current ordinance has stipulated on how far it goes back but you cannot open a bar in the City of Rowlett. You can open a restaurant but your majority of business has to be food. You can sell alcohol but it cannot dominate the business; therefore, that's why we carry this stipulation that a bar is qualified as seventy-five percent (75%) or more in terms of alcohol sales. Our ordinances do not allow a bar to be open in the City of Rowlett anymore and that's been in existence for ten (10) plus years."

Councilmember Rushing stated "So the only difference between your motion and the previous motion is that the one (1) existing bar gets to stay?"

Deputy Mayor Pro Tem Maggiotto replied "Right, which would be consistent when we passed the ordinance basically disallowing bar only establishments to be open in the City of Rowlett, we purposely grandfathered the Rambling Rose. So for consistency sake, yes, that's correct. It's the same as what we've got; we don't allow used car dealerships to open in the City of Rowlett. You can sell used cars but you have to also...it has to be a new car dealership so it's that kind of an ordinance."

Mayor Harper stated "For clarification, I know our attorney will be wondering this if this goes through. Would you be using then calendar year 2008 as the baseline for establishing whether we do or do not have someone who meets the definition of a bar?"

Deputy Mayor Pro Tem Maggiotto replied "I think the City Attorney is comfortable with...I know that in our packet it says December 10, 2008 but he made a reference to today's date. Is that..."

Mr. Berman replied "The ordinance that I drafted calls out an exception; my mandate was to reprint verbatim the City of Dallas ordinance. I made some changes because the City of Dallas ordinance in some sections didn't fit. For example, where it says City of Dallas, it now says City of Rowlett. One of the provisions in their ordinance had an exemption for

cigar bars, a grandfathering provision, where the effective date was April of; I think it was 2008, whenever they adopted their ordinance. I changed that to February 3, 2009 in the event that this ordinance was adopted tonight, the new effective date would begin now and the grandfathering period would begin tonight. But that date only applies to cigar bars and nothing else."

Mayor Harper stated "So let's be clear if I might, we've got a lot going on here Council; be sure to ask questions. The ordinance that we're looking at does indeed exempt existing cigar bars, correct?"

Mr. Berman answered in the affirmative.

Mayor Harper continued "And Mr. Maggiotto has proposed to exempt existing bars that meet the definition of a bar as provided by the State of Texas."

Deputy Mayor Pro Tem Maggiotto answered "Correct and you can use February 3rd if you so choose."

Mr. Berman stated "Grandfathering bars?"

Deputy Mayor Pro Tem Maggiotto replied "Correct, as defined by..."

Mayor Harper stated "That's what we really got to be clear on. If we're going to grandfather an institution other than a cigar bar, that's pretty clear, but if we're going to grandfather any other kind of an entity and we want it only to be bars, we need to define that very clearly so Council knows what they're voting on. And again, I think you said earlier in your conversation with Ms. Samford that the definition of a bar is seventy-five percent (75%) or more of their income derived from alcohol sales."

Deputy Mayor Pro Tem Maggiotto replied "Correct."

Mayor Harper continued "So that's all you're going to exempt is a bar which is deriving more than seventy-five percent (75%) of its sales from alcohol?"

Deputy Mayor Pro Tem Maggiotto answered in the affirmative.

Mayor Harper stated "And what I'm asking our City Attorney is what period of time will we use to measure that? A point in time, February 3rd? Or a period of time, calendar year 2008? I want it clear so that the citizens know exactly where we are."

Mr. Berman replied "I'm understanding Councilmember Maggiotto as making the motion with the intent to grandfather only those bars as defined in our proposed ordinance that exists as of today's date. Is that correct?"

Deputy Mayor Pro Tem Maggiotto replied "Correct."

Mayor Harper stated "But you see, you have to measure the alcohol sales."

Deputy Mayor Pro Tem Maggiotto replied "That's fine; we're doing that right now."

Mayor Harper stated "So the alcohol reported as of February 3rd is what will govern it?"

Deputy Mayor Pro Tem Maggiotto replied "Correct, in accordance to the Texas Alcohol Beverage Commission."

Mayor Harper stated "Okay, now I get it."

Councilmember Rushing stated "Well, we only have one (1) bar in town, I mean; we just as well name it, the Rambling Rose."

Mayor Harper stated "Well, maybe I'm thinking too much like an attorney. Mr. Kilgore and Mr. Berman are rubbing off on me."

Councilmember Rushing stated "Nothing else qualifies as a bar."

Mayor Harper stated "Okay, Council, are we clear on the motion and second that we have before us? And that motion and second is to adopt the proposal as presented but with the added proviso that any bonafide bar as defined by the State of Texas in existence as of this moment would also be excluded. Have I said it right, Mr. Maggiotto? Mr. Berman, have I said it right for your purposes?"

Both, Deputy Mayor Pro Tem Maggiotto and Mr. Berman answered in the affirmative.

Mayor Harper stated "Council, any questions or comments? Mr. Phillips."

Councilmember Phillips stated "I would like to make a comment if I might. Just regarding the discussion that we've had with the regard to choice. I think we need to be careful here in talking about choice and opportunity. You have the choice now, anybody has the choice to go to a restaurant that they choose and there's consequences plus and minus to any of those choices. The food may be good; the food may be bad. There may be smoking; there may not be smoking. It may be too expensive. There are a lot of things there. I think what we want to do is to make sure everyone has the option to choose any restaurant they want and the opportunity to go to any restaurant they want but I don't think that means we necessarily have to provide the same experience at every restaurant. Chili's isn't the same as Sammy Walker's Bar-b-que for example. You get a different experience when you go there. So it's a choice that you make. And I'm just very careful...I want to be very careful that we're not poking something that is a...impacting on people's ability to make a choice as giving people a choice."

Mayor Harper stated "Thank you. Mr. Gottel, you wanted to say something."

Mayor Pro Tem Gottel stated "Yes, Mayor. My main concern with what I think you are speaking about Mr. Maggiotto, if I'm clear with this what it really has to do with is economic development. And as we look at economic development we think of downtown areas and things like that. Generally speaking a lot of those places...I'm not advocating a bar necessarily but you have wine bar, you have cigar bar, you have different things like that that may open up from time to time. And the concern I have is I don't want to limit economic development so if somebody wants to go back and remodel at some point and what you're suggesting is that we just have the ban but we recognize this one (1) bar within the community. I think it should be the right of the individual business owner to make that decision about what kind of food they serve, the environment that they create and the type of clientele. And we've both often talked about Nick's and very honestly, I don't eat at Nick's because of the smoke; my kids don't like it but it's my choice not to go there. I'll be honest, they're always packed, they have lots of people that show up there; they have lots of people that patronize there. So, I personally cannot support that."

Mayor Harper stated "Any other questions or comments?"

Councilmember Rushing stated "Mayor, I'd like to make one comment. There are some restaurants here in town that will be able to build a patio and become smoke-free inside."

*There are others that don't have that choice and I just don't see why we would single out one (1) bar and chose to keep a bar and hurt the other establishments we have here in town."*

*Mayor Harper stated "We have a motion. We have a second. We've finished our comments and questions. Call the question please."*

**A motion was made by Deputy Mayor Pro Tem Maggiotto, seconded by Councilmember Kilgore, that this matter be approved as amended as ORD-003-09. The motion carried by the following vote:**

**Ayes:** 4 - Mayor Harper, Deputy Mayor Pro Tem Maggiotto, Councilmember Jackson and Councilmember Kilgore

**Noes:** 3 - Mayor Pro Tem Gottel, Councilmember Phillips and Councilmember Rushing

## 11. ITEMS FOR INDIVIDUAL CONSIDERATION

- 11A Conduct a Public Hearing and consider an ordinance approving a Special Use Permit (SUP) for convenience store and gas station uses on 2.768± acres of land located on the southwest corner of Chiesa Road and Dalrock Road.

*Mayor Harper read the item into the record.*

*Keri Samford, Director of Developmental Services stated "We're here tonight to discuss a Special Use Permit (SUP) that has been requested by RaceTrac at the corner of Dalrock Road and Chiesa Road. The Planning and Zoning Commission considered the request for the SUP at their January 13, 2009 Planning and Zoning Commission meeting. It was recommended to City Council by the Planning and Zoning Commission for approval of the SUP including allowing the dumpster to face Dalrock Road. That vote was 5 - 1 at the Planning and Zoning Commission. The applicant has requested to build an approximate five thousand five hundred square foot (5,500 sq. ft.) facility with gas pumps. There were twenty-eight (28) notices that were mailed out and a total from the Planning and Zoning Commission and here tonight, we've received back six (6) that were for the request and seven (7) that were against the request. I know this is a public hearing; I'm available for questions and I do know the applicant is here and they have requested to do a PowerPoint presentation, as well, tonight."*

*Mayor Harper replied "Alright, and a question for me. What was the recommendation from Planning and Zoning?"*

*Ms. Samford answered "That they recommend approval of the SUP for the convenience store with the...let me get to that exact recommendation. They made motion to recommend to the City Council the approval of the SUP to include allowing the dumpster enclosure to face Dalrock Road. And that was a 5 - 1 vote. And that being we usually do not allow that but there are...it faces two (2) roads. It faces Chiesa and Dalrock so they did ask for that."*

*Mayor Harper stated "Thank you, Ms. Samford. Council, we've got two (2) steps now in this particular agenda item. We're going to first have a public hearing, which I'll open up in just a moment and then secondly, we'll be voting on an ordinance for the SUP. So before I open up the public hearing, any questions or comments for Ms. Samford or anyone else?"*

*Councilmember Kilgore stated "One question on the Planning and Zoning. I noticed the first motion from the Planning and Zoning Commission had failed. On the second motion it carried. What factors were persuasive to the Planning and Zoning Commission to reverse their first decision?"*

*Ms. Samford replied "I know they had asked for more general discussion in the conversation that took place at the meeting. There was discussion about traffic and how it affected the others; the conversation really turned to 'was it the right thing' and 'did it conform to the zoning that was in place at the time' and I felt like that was the reason."*

*Councilmember Kilgore stated "There was no additional objective information; it was just a subjective discussion of it?"*

*Ms. Samford replied "No, once that happened, they felt like they needed more discussion and one of the Commissioners asked for more discussion and that's what carried it further."*

*Mayor Harper stated "Other questions or comments? We'll open the public hearing (8:54 p.m.), now during the public hearing anyone who is present is allowed to come forward and speak for or against the motion. Is there anyone who wishes to come forward and speak either for or against? Hearing and seeing no one, we'll close the public hearing. Again, unless there is more discussion I'll ask for a motion. The public hearing is still open, come forward and let us know what's on your mind. Please give us your name and address for the record."*

*Eric Wesley, 566 Reed Drive, Rockwall stated "I come on behalf of a relative who stays on 1901 Chiesa Road, directly across from where the RaceTrac will be built. I guess the main...he had a lot of questions for the Planning and Zoning and they did answer those questions. The main concern I guess at this point and time, from my recollection, there were safety concerns, as well as, traffic concerns. Obviously, with this coming in we feel like there will be additional traffic that will be brought. And so a big concern was what will happen with Chiesa Road. Will Chiesa Road be widened out and if so, at what point and time will that take place?"*

*Mayor Harper stated "And I want to make sure that everyone understands, during Citizens' Input there is no interaction but during a public hearing, I'm allowed as the presiding officer to receive a question and answer those questions. There's not deliberation but certainly exchange of information. So let me...go through me as the rule, that's our Robert's Rules of Order. City Manager and Interim City Manager, do we have any knowledge? Is Mr. Baugh available with regard to Chiesa Road? Keri, if you could answer that, that would be great."*

*Ms. Samford replied "I do not believe that Mr. Baugh is here right now but I did ask him before the meeting, it is on our...Chiesa is on our Master Thoroughfare Plan as a four-lane divided roadway at ultimate build out; however, it is not in our Capital Improvement Plan (CIP) at this time."*

*Mayor Harper stated "It's not in the spending plan at this point."*

*Ms. Samford stated "That is correct, it is not."*

*Mayor Harper stated "So what that means is that it is one of those projects that we have identified to do but we have not set aside funds for that purpose. There's potential for that to be funded through the November 2009 or May 2010 Bond Election and if that were to occur, the likelihood of that happening is probably the year 2011 late or 2012 early. Does that help you?"*

*Mr. Wesley replied "Yes, at that point and time would there be another public hearing regarding the expansion of Chiesa Road because obviously, there are those who live directly on Chiesa Road and that would affect them and their property."*

Mayor Harper stated "There will be...anytime we affect people's property, we ask them to give us their comments and concerns; we do conduct public hearings. So the answer to your question, the short answer, is yes."

Mr. Wesley continued "So at this point, if the expansion does come, it wouldn't happen until 2011?"

Mayor Harper replied "Now that's me speculating as your Mayor, only because I know what the process is. I am thinking that very likely the soonest it could occur is late 2011. That's what I'm thinking."

Mr. Wesley stated "And again, I guess you could understand the traffic concerns that we have. There's already a lot of traffic that comes through there. We realize that a four-way stop light has been put up but Chiesa Road is a two-lane road at this time and there are still family members with children who frequent 1901 Chiesa and some of the other residents there. So cars coming through would be a concern as far as a gas station being put there, a convenience store and gas station, we can only see that there will be additional traffic that would take place. So a big concern is the safety. We also have concerns with safety during the construction period. I understand that there is not a fence or perimeter to keep anyone out. I know there is a RaceTrac going up in Garland, Texas right at Country Club and SH66, so I'm keeping myself, I'm keeping a close eye to see how that process works and what will be brought in. I know there's heavy-duty equipment that comes in to carry that through, so obviously safety is a big concern for those that live in that area, as well as, with their children and their relatives."

Mayor Harper stated "Let me see, Council, any other questions or comments that you wish to make?"

Councilmember Rushing replied "Yes, Mayor. Let me ask Ms. Samford again, there are deceleration lanes on Chiesa and on Dalrock for the entrance to this gas station, is that correct?"

Ms. Samford answered "I believe they've shown a deceleration lane on Dalrock Road. I do not believe that they have one at Chiesa Lane and the applicant is here and she will do a presentation and she can address that question."

Mayor Harper stated "Pat, I just noticed you out in the lobby, if you have anything to add would you come forward please."

Councilmember Rushing stated "On Chiesa Road it would just be because they would be going to turn into the gas station you would be going westbound and that's too close to the corner to need a deceleration lane?"

Patrick Baugh, Director of Public Works and Utilities replied "We don't see a need for deceleration lane on Chiesa Road; the speed limit is low as you're already coming to the stop."

Councilmember Rushing stated "It's 30M MPH on that road anyway."

Mr. Baugh replied "35 MPH."

Councilmember Rushing stated "But there would be one on Dalrock?"

Mr. Baugh replied "Yes, they're showing one on Dalrock."

Councilmember Rushing asked "Did we do a traffic study on that?"

Mr. Baugh replied "I'm not aware of one. I'm not sure we're far along in the process to have done that yet."

Anita James (with RaceTrac Petroleum), 3225 Cumberland Boulevard, Atlanta, Georgia stated "We did do a traffic study on that. We use Kimley-Horn Engineering Associates."

Councilmember Rushing stated "Did that traffic study indicate that there would be additional new traffic or just current traffic that's already there that would be stopping by to get gas?"

Ms. James replied "Yes, the traffic study and many of the other traffic studies that we've done indicates that we are passerby and we are not a destination; we're simply a convenience for existing traffic on the road."

Councilmember Rushing stated "So this is someone that's probably already driving down Dalrock on their way to work or down to Chiesa on their way to work anyway and they would just come. You don't anticipate someone living in north Rowlett coming over there just to get gas?"

Ms. James replied "No, we are definitely passerby convenience and to speak to Chiesa Road, we are dedicating thirty (30) feet to the City whenever they do want to widen Chiesa Road. And we're also dedicating five (5) feet on Dalrock for any future widening."

Mayor Harper stated "Thank you. Thank you all very much. Any other questions?"

Mr. Wesley stated "Can I make one last comment? I understand the widening of the thirty (30) feet that's allocated, is that to the south side or the north side of Chiesa?"

Mayor Harper stated "Pat, can you help with that? This is a technical question, an engineering question. Let's have Pat answer it since he's our director."

Mr. Baugh replied "Whenever there is a development and we ask for dedication, we usually get the full width that's indicated in the Master Thoroughfare Plan. We usually take that equally off of each side as the development comes through. And this roadway is no different than those; we'll take one-half (1/2) of the additional necessary right-of-way for future development. This case, Chiesa Road, is designated as a four-lane divided roadway."

Mayor Harper stated "Okay, good. Does that answer your questions?"

Gentleman who did not identify himself replied "RaceTrac sent a letter, Rowlett didn't send a letter; RaceTrac sent a letter to notify me that it's going to thirty (30) foot, four lanes. I measured thirty (30) feet from my property line to my house and the road will be right in my driveway. So I'm asking, you know, what are y'all going to do about that when y'all widen the road? It's on Chiesa."

Mr. Baugh stated "The only side of the roadway that's going to be impacted by a dedication or a future road widening is whatever is being developed right now, unless you're going to develop your property, we're not asking for any property off of your...any necessary right-of-way off of your property. And we have no plans to widen the roadway in our CIP right now; it's not programmed and it's not funded. There's no timeline for when the roadway will be widened."

Mr. Wesley stated "So for clarity, at this point though, the widening would take place toward the RaceTrac gas station? It's my understanding it's correct..."

Councilmember Rushing stated "Well, RaceTrac is giving us thirty (30) feet in case..."

Gentleman who did not identify himself replied "The thirty (30) feet is coming in my yard."

Councilmember Rushing continued "RaceTrac is giving us thirty (30) feet on their side in case we ever want to widen, they won't have to move back. If we ever choose to widen, then anything on the other side would be purchased. The City would have to pay fair market value to buy it just as they have when we're doing 190 through the northern part of the City. No one's taking land from any other residents along the road."

Mr. Wesley stated "And we're not assuming that anybody would take land."

Mayor Harper stated "And you understand Mr. Baugh's comment? We don't know that this project will get funded; there's a long way between here and there because we have to do it through a bond election and that will depend on the voters. All right?"

Mr. Wesley stated "Which we assume..."

Mayor Harper stated "One more time and then we've got to close the public hearing. What else would you like?"

Mr. Wesley replied "That would be it; we just wanted to get clarity. The main concerns again would be the widening of Chiesa and then the safety of the cars. I still don't, I don't necessarily agree that it's just passerby traffic. You put the RaceTrac up there; those who are traveling east or west on Interstate 30 going out of town will go to that gas station just like they go to the other two (2)."

Mayor Harper stated "Thank you very much. Anybody else wish to speak for or against? Yes, ma'am. Welcome, name and address please."

Bertha Wallace, 1926 Chiesa Road, stated "I'm just up from the proposed area. First, I'd like to say to the Mayor and to the members of this City Council, my areas of concern, I am in opposition and I'm a little bit shaken because I'm really cold and so I'm going to speak from being kind of cold. I'm in opposition to the proposed special permit for the construction of the RaceTrac gas convenience station to be located at the corner of Dalrock and Chiesa Road. Progress and change will come to every City eventually, but careful consideration is always in the best interest of the citizens of that City, wherever they live in the City. Before stating specific reasons in opposition to the project, I would like to bring forward the City of Rowlett's Mission Statement. It says 'To provide high quality services. Utilize best practices and promote the well planned growth while enhancing our community sense of home'. The key words I would like to emphasize tonight are 'well planned growth while enhancing our community sense of home'. The I-30 and Dalrock entrance into the City is one of the first experiences you're able to get when you come into the City. If the view is one of a gas station, an inconsistent planning of businesses that takes place, it takes away from the home sense. The citizens of the City are impacted on a daily basis by this. This is my first reason. That corridor is the first place you come through. My second reason is that there are protected trees in the area where RaceTrac would like to put their proposed area."

Some of the things that have happened before is when it has been presented to this Council, one (1) or two (2) projects previously, I've been away about two (2) years caring for my mother and have not always been back in contact, but those trees and that area is home to us, as well as, home to this City. If RaceTrac comes in, they're going to take out all of

those trees. If the feel we'd like to have of what this City is all about is we already have two (2) service stations at the very entrance of I-30 coming into the City at Dalrock. If that's the view you would like to see, just keep in mind this is the City that represents us. The second thing is that will there...the third will be is what about the storage tanks which will be located underground? How will those impact possibly the water supply to residents if there is a problem or leakage occurs? How will the large trucks that come in to refill the storage tanks be able to access the location, maneuver and safely refuel? Think about it. The fourth reason is we already have the two (2) gas stations located within about one-fourth (1/4) of a mile from the proposed area that is going to be servicing the community. And we also have three (3) at the corner of Dalrock and Lakeview Parkway. My fifth reason is how will the approval of the RaceTrac Gas and Convenience Station impact the business owner across the street who probably spent close to one million dollars to build his building and his business? He opened up a view of the lake for the citizens driving down Chiesa Road turning onto Dalrock. This was growth with a sense of a hometown feeling. The last specific reason I speak to, and I'm cutting this shorter too, is that this location is within a neighborhood. And I'd like to share if someone will help me, I'm not good at technology, but I have a couple of pictures that I would like to show you."

Mayor Harper stated "Keri, would you help her with that?"

Ms. Wallace continued "Because I really, I'm not against progress but I'm against anything that occurs that is not looked at in all the areas. And I think this one especially is one that will impact this City for a long time and we need to think about it very carefully. You have said, Mayor, and I watched a couple of times that it's not necessarily the tax base, we have a lot of tax base, yea we got some things coming down. But I think when we do things very carefully, it will always add to rather than taking from. So if this City is going to grow, I was here before there was a lake, before a lot of the growth has come, some around here have not been here that long but I've been here a long time. Out of Garland and into Rowlett. So growth will come but we need to be very careful that we're inclusive of what we're doing and most of all, that the image when you're gone, our children come along, our grandchildren when they walk in, they will have a way when they come across that lake to know what we left here for them and that they didn't just develop a City haphazardly. But that it was on purpose."

Mayor Harper stated "Did you want to show some of those? If you'll move that chart. And if you'll tell us what we're looking at."

Ms. Wallace stated "I don't know if it shows up as clear. One of the things that I did was to check the areas where the RaceTracs are located within the Metroplex area. This particular one is located at Lavon Drive and SH78 in Garland. It is a wide thoroughfare; you notice it's an industrial area, that particular one is next to a Walgreens. The RaceTrac is next door to it and across the street is industrial area. You don't see that located quote 'within the neighborhood'. You've got enough space between all of that area. And the homes are not impacted. The RaceTrac also has left a lot of leeway on each side so that again, coming in off of SH78, you don't have any problems. One of the other things I did, this is a QT that's located at Centerville and Glenbrook. And at that point and time when I did this particular one, you can see its easy access. It's again an industrial area; a park across the street. It is not involved in a neighborhood. There's approximately twenty-five (25) to thirty (30) cars that came in and out of there in about two (2) to three (3) minutes; they exited and came in. Twenty-five (25) were filling at the station; I want you to see what that impact is and especially that kind of impact at the intersection of Dalrock and Chiesa. We cannot handle that. We already have difficulty when a car turns in right on Chiesa at the stop sign off of Dalrock; there's not enough room for the trucks, for the school buses, and cars. Especially since they added that left-hand turning lane, there's not enough room to navigate and it is very, very scary when you're sitting at that light and you're right there if someone else has to turn in; especially if it's a bus or if it is a truck. So those are the kinds of things that they

are going to impact, not only what you see here visually; now you take that image and see what it looks like when you come across the lake from I-30. You got Valero, then you got the Exxon, and then you're going to see the RaceTrac there. What we are going to add are going to be extra problems. It's also going to be water and sewer problems. There's already the City coming out there sometimes one (1) to three (3) times a month in order to take care of the problems. What will that add to the system? It's going to be more cost to the City especially if you don't go in and make all those other changes. Safety, problems, is a lot in just this particular project."

Mayor Harper stated "Okay, we need to move on, so if there's another picture or two you want us to see. Okay, thank you very much for your testimony this evening. And do you want to have something to say? Go ahead, please."

Ms. James stated "We just wanted to tell you a little bit more about our company and what we plan on doing here at the southwest corner of Dalrock and Chiesa. The layout that we're proposing is a convenience store with gasoline sales. There will be twelve (12) dispensers and twenty-three (23) parking spaces. Our design is our new five thousand (5,000) prototype; it's an all brick building with towers on the exterior and decorative lighting. The canopy columns and the price sign are bricked to tie into the overall design of the lot. We will provide extensive landscaping and preservation/mitigation of existing trees. We have an underground detection system and we will be installing a deceleration lane on Dalrock entrance to prevent interruption of traffic on Dalrock. We are requesting a variance on the dumpster location due to the difficulty of the corner site. At RaceTrac, we consider ourselves more than a gas station, we're a family-owned private company and we have our core values and our brand promise located all throughout our corporate headquarters and at everybody's desk. As you can see, our core values are honest, respect, teamwork, positive attitude, and efficiency. Our brand promise includes our brand vision: positioning, personality, and affiliation. Here's a rendering of our new prototype. As you see, like I said before, it's an all brick exterior, the decorative lighting, steel awnings, and here's the entire lot with the brick canopies and the brick building. Here's an actual building of a store that we've built already. These are the stores that we'll be building forth coming in the Dallas/Ft. Worth area. And another picture of the exterior. I put in here lighting evaluation, I want to point out that this is not our actual store but it is a lighting model that we use to show that our canopy lighting and our exterior lighting do not affect our neighbors. We use flat recessed lighting in our canopy to minimize the effect of lighting on our surrounding areas. So as you can see at the property boundaries, there's practically zero (0) foot candle. Just a picture of our inside offering; we've been focusing a lot more on our food offering inside the store. To bring customers inside the store to show that again, we're not just a gasoline station. Pictures of our beverage offering. Our breakfast menu items include donuts and coffee; fresh sandwiches prepared on a daily basis; salads and fresh fruit. Again, going along with our image that we're not just a gas station, we do contribute to the community and provide community service in every city that we go in to. We provide autograph signings with the Texas Rangers, the Dallas Cowboys, and the Dallas Mavericks. So football players, basketball players, cheerleaders and mascots come out and our customers and fans can come to the station and get autograph signings. We're a proud sponsor of Uptown Run and we donate to a lot of other athletic endeavors within the city. We believe the benefits to Rowlett will bring a beautiful building resembling surrounding development. Again, we're dedicating thirty (30) feet of right-of-way on Chiesa and five (5) feet of right-of-way on Dalrock for whenever the City decides to expand those streets. We're installing a deceleration lane into the site on Dalrock. We provide convenience, high-quality food, and beverages at an affordable price and we also keep fuel prices competitive in the City. We will provide an additional tax base for the City upon development and like I said, community involvement and contribution. We bring twenty (20) to thirty (30) jobs to the community which is important in these times. We strive to be good neighbors. We keep our lot clean. We have security cameras for safety reasons. We believe we will spear head development on surrounding areas and like I said earlier, zero (0) foot candle lighting at property boundaries to affect the neighbors as little as possible. I'm here for any questions. Our

*civil engineer and our real estate representatives are here if you have any questions. Thank you."*

*Mayor Harper stated "Thank you very much. I do have a couple of questions and I need Chief Walling, if he's out there. And Keri or Ben can help me on my second question. Keri, while we're getting the Chief in, you know we're working very hard to acquire the northern tract of Robertson Park, can you either show me a map or describe the location of this in conjunction with that parcel that we're trying to acquire?"*

*Ms. Samford replied "I do not have a map here that shows it in relation. Let me get my site plan. Okay, I was going to say this general vicinity map here would probably help too. As you can see, Chiesa Road, here is the rail line that comes through. This is the site location and right across this railroad track is Robertson Park."*

*Mayor Harper stated "Okay, so this will be right on the, we'll call it, northeastern border of that tract."*

*Ms. Samford stated "Again, location and the railroad track, and its northern side."*

*Mayor Harper stated "Looking at the document you just put up, directly to the east, is that the new office building or is that farther up north from there?"*

*Ms. Samford replied "Right here is the new Andrews Office Building."*

*Mayor Harper stated "That's the Andrews Office Building, okay. Chief, you know when we put in that deceleration lane and we put in those traffic lights, there was a lot of concern expressed by the Mayor and Council or at least by the Mayor, I remember that, about what that would do with the high speeds coming off of Dalrock Road. What's been your experience with regard to traffic accidents at that corner?"*

*Chief Walling replied "The intersection of...?"*

*Mayor Harper stated "The intersection of Chiesa and Dalrock."*

*Chief Walling replied "Of Chiesa and Dalrock? We have not had a high number of accidents. We have accidents there but since the light has been put in, the number of accidents has significantly decreased."*

*Mayor Harper stated "And what about the statement that there's difficulty in getting school buses and large trucks through that intersection coming, I presume, off of Chiesa onto Dalrock."*

*Chief Walling replied "I would not think so, sir, since it's a controlled intersection now."*

*Mayor Harper stated "Okay, good. Other questions? Other comments? Mr. Kilgore."*

*Councilmember Kilgore stated "Keri, I have two (2) questions. I just want to confirm what I read here. One, that this store will be open twenty-four (24) hours a day and two, that it will sell beer and wine."*

*Ms. Samford answered "That is what I understand from the applicant."*

*Mayor Harper stated "Mr. Kilgore, did you get your question answered about the Planning and Zoning Commission deliberations? As I understand it, the initial deliberation they were not in favor of it and then they received new information."*

Councilmember Kilgore replied "Well, reading the minutes and what I could read from the Planning and Zoning meeting, they discussed it some more. I don't know if it was necessarily...it seemed more subjective than new information."

Mayor Harper replied "Okay. And last question for you, Keri. To the north of that location on Dalrock Road, I believe that is all zoned commercial, is it not?"

Ms. Samford answered in the affirmative.

Mayor Harper stated "So there are alternative sites should this one not be approved?"

Ms. Samford replied "Yes."

Mayor Harper stated "Okay, thank you very much. Ms. Rushing."

Councilmember Rushing stated "I have a few questions. This corner is already zoned commercial as is the property behind it and the property to the north of it, correct?"

Ms. Samford answered in the affirmative.

Councilmember Rushing asked "So we are not changing zoning?"

Ms. Samford replied "That is correct. A convenience store is not an allowed use by right in a commercial zoning district; therefore, they have to come forward to get a SUP. So in any commercial district they would have to do that."

Councilmember Rushing stated "Okay, and there was a Tree Preservation Plat submitted and do you know approximately how many protected trees will be cut down and have to be mitigated?"

Ms. Samford replied "I don't know. We will ask for a Tree Preservation Plan submission at the time a Development Plan comes through."

Councilmember Rushing stated "Okay, that hasn't already been done?"

Ms. Samford replied "No, ma'am."

Councilmember Rushing stated "But according to our ordinances, they will have to provide new trees for every caliper inch that they cut down of a protected tree?"

Ms. Samford answered in the affirmative.

Councilmember Rushing stated "They will not be able to cut down any trees without planting new trees in the City or on their own property?"

Ms. Samford answered in the affirmative.

Councilmember Rushing stated "But we don't know right now how many trees they are saving?"

Ms. James replied "I don't have the exact number with me today but all the trees that we will be mitigating will be on our property. We will replace them on the property."

Councilmember Rushing stated "But you are saving trees?"

Ms. James replied "Yes, if possible. Trees that are behind our building...any trees that aren't affected by the site, we will preserve."

Councilmember Rushing stated "Okay and..."

Ms. James replied "I don't have...I'm sorry, I don't have the tree survey with me, and I apologize."

Councilmember Rushing stated "And the other question I had, is there lighting on the backside of the building that will affect that one (1) residence that's on the west side of your building?"

Ms. James replied "No, there's not. There's lighting at our dumpster. It will be in this area here in between our building and the dumpster."

Councilmember Rushing stated "Which is on the south side of the building?"

Ms. James answered "Yes, there's no lighting behind the building."

Councilmember Rushing stated "There's no lighting behind the building and the lighting on the east side of the building will actually be a good sixty (60) feet from the street? Close to it by the time you dedicate thirty (30) feet and then it's another thirty (30) feet off the street."

Ms. James answered in the affirmative.

Councilmember Rushing stated "For the residence across the street, there will be no lighting for over sixty (60) feet to the north and on the backside there won't be any lighting at all?"

Ms. James answered in the affirmative.

Mayor Harper stated "A gentleman in the back has a comment."

A member of the audience (the gentleman who did not identify himself earlier) stated "I've been discussing it with the guys that are building that place and all of them trees are coming out except four (4) and they're on the side. If y'all want to y'all can go out there and see because they got them tagged, the trees they're going to take out. I don't want to hear it. It's just like she said, I've been here forty-four (44) years; my daddy was here sixty (60) years and he struggled. RaceTrac is trying to move us out. I don't approve of this."

Mayor Harper stated "Thank you very much. Anybody else? Go quickly please."

Ms. Wallace stated "I'd just like to say that in the pictures that I gave you that I didn't get to, there are pictures of the particular tract that I spoke about so you can see."

Mayor Harper replied "Again, thank you. Okay, one more time."

Mr. Wesley stated "Thank you Mayor and Council for your patience. Just one last point, she did make mention that sometimes they have promotional events, the Mavericks, the Rangers, the Cowboys, etcetera. At that point, that location becomes a destination and it was said that it would be a passerby not a destination; people don't go there for a destination. Meantime, you bring in an event like that and it becomes a destination and then the traffic does increase."

Mayor Harper stated "Good, all good points. Thanks to everyone. Go ahead Lonnie."

A member of the audience (Lonnie Cornwell) stated "Mr. Mayor thanks again. I just want to make sure that this gentleman back here is comfortable because he was very concerned about the road possibly being right at his front porch. And I just want to make sure that we're not going to have eminent domain coming in here and rob this man of his property and that we've got an adequate amount of space to widen that road when and if it does come true."

Mayor Harper replied "Mr. Baugh responded to that I thought. Pat, would you mind responding to it one more time? You don't have to come all the way to the front, just speak from the rear."

The member of the audience (Lonnie Cornwell) stated "Actually, to tell you the truth, I just want this gentleman to be comfortable back there. I don't want him to have to go home and worry if he's not going to have a front yard."

Mayor Harper stated "Pat, why don't you respond to that specific question."

Mr. Baugh stated "Well, specifically we have no plans to widen Chiesa Road at this time; we have no funding; it's not planned; and it's not in the Capital Improvement Plan. We will not build any road on property we do not negotiate and purchase according to State law."

Mayor Harper stated "Good, thank you sir very much. Okay the public hearing is closed (9:29 p.m.) and at this time, Council I presume you've had all your questions answered. Mr. Maggiotto, you look like you have one."

Deputy Mayor Pro Tem Maggiotto stated "To the applicant, is any of your developments, I guess the new ones going forward, are any of them LEED certified?"

Ms. James responded "The engineers that we work with on our developments are LEED certified."

Deputy Mayor Pro Tem Maggiotto stated "No, I'm talking about the building not the people that work on it. The answer is no from the gentleman. Thank you very much."

Mayor Harper stated "Time to call the question. Actually we have to have a motion, excuse me. We're closing our public hearing and now we're going to move into the ordinance portion of this. Is there a motion from anyone on Council? No motion to approve? No motion at all. Alright, it fails for the lack of a motion. We'll move to agenda Item 11B."

Deputy Mayor Pro Tem Maggiotto stated "Mayor, sorry, I couldn't push my button fast enough."

Mayor Harper stated "Mr. Maggiotto, do you have a question?"

Deputy Mayor Pro Tem Maggiotto stated "Yes, Mayor. I want to get the exact description here. Motion is, Mayor to approve a Special Use Permit for the convenience store and gas station uses on 2.768 acres of land located at the southwest corner of Chiesa Road and Dalrock."

Mayor Harper questioned "How is that different than the motion that we have?"

Deputy Mayor Pro Tem Maggiotto stated "My motion is to approve."

Mayor Harper replied "So your motion is to approve as it was read into the record. Is there a second? It fails for lack of a second."

11B

Consider appointments to all of the various boards and commissions as listed by Resolution No. RES-098-08.

*Mayor Harper read the item into the record.*

*Mayor Harper stated "This evening we have several positions to fill on our boards and commissions.*

*Animal Shelter Advisory Board:*

*One (1) regular member position and one (1) alternate member position are available to be filled for the Animal Shelter Advisory Board.*

*Nominations were made for the Regular member position:*

*Regular member position:*

*Scott New was appointed, by acclamation, as a regular member.*

*The Regular member appointee for the Animal Shelter Advisory Board is:  
Scott New*

*Alternate member position:*

*Nominations were made for the Alternate member positions:*

*Richard McNeill was appointed, by acclamation, as an alternate member.*

*The Alternate member appointee for the Animal Shelter Advisory Board is:  
Richard McNeill*

*One (1) alternate member position was not filled due to a lack of applicants.*

*Arts and Humanities Commission:*

*Two (2) alternate member positions are available to be filled for the Arts and Humanities Commission.*

*Alternate member positions:*

*Nominations were made for the Alternate member positions:*

*Leila McNeill and Kris Kriofske were appointed, by acclamation, as alternate members.*

*The Alternate member appointees for the Arts and Humanities Commission are (in alphabetical order):*

*Kris Kriofske  
Leila McNeill*

*Board of Adjustment:*

*Two (2) alternate member positions are available to be filled for the Board of Adjustment.*

*Alternate member positions:*

*Nominations were made for the Alternate member positions:*

*Dr. Michael Lucas (received 7 votes), Debra Shinder (received 3 votes), and Juan Vasquez (received 5 votes)*

*The alternate member appointees for the Board of Adjustment are (in alphabetical order):  
Dr. Michael Lucas  
Juan Vasquez*

*With the appointment of Karl Crawley to the Planning and Zoning Commission, there is an alternate member position open.*

*Nominations were made for the Alternate member position:  
Deb Shinder was appointed, by acclamation, as an alternate member.*

*Library Advisory Board:*

*One (1) alternate member position is available to be filled for the Library Advisory Board.*

*Alternate member position:  
Nominations were made for the alternate member position:*

*Julie Plummer was appointed, by acclamation, as an alternate member.*

*The alternate member appointees for the Library Advisory Board is:  
Julie Plummer*

*Parks and Recreation Advisory Board:*

*One (1) regular member position is available to be filled for the Parks and Recreation Advisory Board as one (1) regular member was appointed to the Planning and Zoning Commission.*

*Regular member position:  
Nominations were made for the Regular member position:  
Ron Miller (received 5 votes) and the other nominee was not voted on.*

*The regular member appointee for the Parks and Recreation Advisory Board is:  
Ron Miller*

*With the appointment of Ron Miller as a Regular member position, there is an alternate member position open.*

*Alternate member position:  
Nominations were made for the Alternate member position:  
Becky Sebastian was appointed, by acclamation, as an Alternate member.*

*The alternate member appointee for the Parks and Recreation Advisory Board is:  
Becky Sebastian*

*Planning and Zoning Commission:*

*One (1) regular member position and one (1) alternate member position are available to be filled for the Planning and Zoning Commission.*

*Regular member positions:  
Nominations were made for the Regular member position:  
Joe Charles was appointed, by acclamation, as a Regular member.*

*The regular member appointee for the Planning and Zoning Commission is:  
Joe Charles*

*With the appointment of Joe Charles to a regular member position, one additional alternate member position is available (three alternate positions are now open).*

*Alternate member positions:*

*Nominations were made for the Alternate member position:*

*Karl Crawley and Robert Kittrell were appointed, by acclamation, as alternate members.*

*The alternate member appointee for the Planning and Zoning Commission are (in alphabetical order):*

*Karl Crawley*

*Robert Kittrell*

*With the appointment of Karl Crawley as an alternate member of the Planning and Zoning Commission, there is one (1) alternate member position available on the Board of Adjustment.*

*With the appointment of Robert Kittrell as an alternate member of the Planning and Zoning Commission, there is one (1) regular member position available on the Parks and Recreation Advisory Board.*

*Senior Advisory Board:*

*One (1) regular member position is available to be filled for the Senior Advisory Board.*

*Regular member position:*

*Nominations were made for the regular member position:*

*Susan Turek was appointed, by acclamation, as a regular member.*

*The regular member appointee for the Senior Advisory Board is:  
Susan Turek*

*Youth Advisory Council:*

*Four (4) alternate member positions are available to be filled for the Youth Advisory Council.*

*Alternate member positions:*

*Chase Gallops was appointed, by acclamation, as an alternate member.*

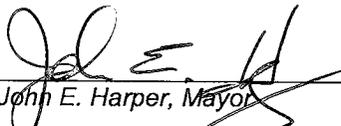
*The alternate member appointee for the Youth Advisory Council is:  
Chase Gallops*

## **TAKE ANY NECESSARY OR APPROPRIATE ACTION ON CLOSED/EXECUTIVE SESSION MATTERS**

*No action was taken following the Executive Session.*

### **12. ADJOURNMENT**

*Mayor Harper adjourned the meeting at 9:40 p.m.*

  
\_\_\_\_\_  
John E. Harper, Mayor

  
\_\_\_\_\_  
Susie Quinn, City Secretary

Date Approved: February 17, 2009