



**MINUTES  
OF THE  
MEETING OF THE  
BENBROOK CITY COUNCIL  
THURSDAY, JULY 5, 2007**

The regular meeting of the Benbrook City Council was held on Thursday, July 5, 2007 at 7:30 p. m. in the Council Chambers at 911 Winscott Road with the following Council members present:

Jerry Dittrich  
Keith Bailey  
Ron Sauma  
Rickie Allison  
James Schull  
Larry Stowe  
Dan Tully

Also Present:

Andy Wayman, City Manager  
Joanna King, City Secretary  
Dave Gattis, Deputy City Manager  
Cathy Morris, Administrative Analyst

Others Present:

Dorcas Neuman, Benbrook News  
Mark O'Connor, Assistant Fire Chief  
Ed Gallagher, City Planner  
Members of Benbrook Fire Department  
Madonna Tully  
Bill Smith  
Ron Rainey  
Patty Bissey  
Tammi Cauthen  
Norman Robbins  
and 5 other citizens

**I. CALL TO ORDER**

Meeting called to order at 7:30 p. m. by Mayor Dittrich.

**II. INVOCATION  
PLEDGE OF ALLEGIANCE**

Invocation given by Dr. Todd Pylant with First Baptist Church  
The Pledge of Allegiance was recited.

**MOMENT OF SILENCE HONORING LYNETTE TATE AND GEORGE BOLTON**

### **III. MINUTES**

#### **1. Minutes of the regular meeting held June 21, 2007**

Motion by Mr. Stowe, seconded by Mr. Schull to approve the minutes of the June 21, 2007 regular meeting.

Vote on the Motion:

Ayes: Mr. Schull, Mr. Bailey, Mr. Allison, Mayor Dittrich, Mr. Tully, Mr. Stowe, Mr. Sauma

Noes: None

Motion carries unanimously.

### **IV. PRESENTATION BY BENBROOK ECONOMIC DEVELOPMENT CORPORATION**

#### **EDC-2007-01 Ratify BEDC Business Entity Formation**

Ron Rainey gave the following report: On June 18, 2007, members of the Benbrook Economic Development Corporation's Board of Directors unanimously approved the formation of business entities to be owned and managed by the BEDC. The purpose of the business entity formations is to allow the BEDC to own property that is not exempt from ad valorem taxes. The entity formations will also give the BEDC flexibility in selling or ground leasing property for commercial development.

Dwight Heard, BEDC legal counsel and a member of the law firm Heard & Wright, has prepared the documents. Mr. Heard reports BRP GP, LLC, the General Partner of the N3 limited partnership, was filed on June 21, 2007. Mr. Heard reports that the LLC has to exist before the BEDC can do the Partnership Agreement itself, since the LLC is a "Party" to the agreement.

Benbrook Realty Holdings I. LLC, was also filed on June 21, 2007. This is the entity which has been formed to formalize a ground lease agreement on Benbrook Boulevard. The 30-year ground lease contract is being finalized at this time.

The BEDC requested an opinion from Jeff Moore, the former Chief of Municipal Affairs in the Texas Attorney General's office and working privately as an attorney in the firm of Brown & Hofmeister, L.L.P., in Richardson, on the legality of Economic Development Corporation's being involved or owning Limited Partnerships or Limited Liability Companies. Mr. Moore opined that it is legal in Texas under both the Texas Non-Profit Corporation Act and the Texas Development Corporation Act.

The BEDC is requesting City Council's ratification of its actions.

Motion by Mr. Sauma, seconded by Mr. Bailey to ratify the Benbrook Economic Development Corporation business entity formation.

Vote on the Motion:

Ayes: Mr. Schull, Mr. Bailey. Mr. Allison, Mayor Dittrich, Mr. Tully, Mr. Stowe, Mr. Sauma

Noes: None

Motion carries unanimously.

**EDC-2007-02            Ratify First Bank Loan to EDC for Purchase of N3  
Development Ltd. Property**

Mr. Rainey gave the following report: On June 18, 2007, the Benbrook Economic Development Corporation Board of Directors unanimously approved a Loan Commitment Letter from First Bank in the amount of 550,000.00 for the purchase of approximately 51,000 square feet owned by N3 Development LLC. The property is located at the corner of Benbrook Boulevard and the I20 frontage road. The purchase price is approximately \$495,000.00 to pay off a note currently owned by N3. The loan will include all closing costs associated with the purchase including a loan origination fee.

The EDC purchased the property on July 31, 2002 from the City of Benbrook and the Benbrook Water & Sewer Authority. Additional land was acquired from Margaret Smith and Dan Thomas Homes east of the current site allowing for the extension of Del Rio Street from San Saba to Goliad. The EDC also traded a portion of its property with Waffle House for the relocation and construction of the Waffle House's new facility. A clause discovered in the Waffle House transaction caused the EDC to work with Tarrant County courts to remove a reversion clause from the deed. The clause had been placed on the property in 1946.

Upon the successful removal of the clause, the BEDC sold approximately 70,951 square feet to N3 Development LLC for \$656,296.75. N3 has subsequently performed a "build to suit" location for Starbucks Coffee Shot and has sold the lease to an investment company.

The current situation has the BEDC contracting to repurchase approximately 51,000 square feet from N3 Development for the outstanding balance of a loan acquired by N3 to finance the site. The EDC recently acquired three lots owned by Gene Buckner which are directly east of the hooked end of Goliad. These three lots will be platted to include the hooked portion of Goliad when it is abandoned, as previously approved by City Council. Applications are moving through the Texas Department of Transportation which will permit the BEDC to acquire surplus right of way and also add a drive approach at the eastern edge of the former Buckner lots.

The reconfigured property will be either sold or ground leased to a national restaurant chain. A letter of intent has been received for the sale to a well known company. The LOI is contingent on the successful acquisition of TxDOT and City of Benbrook right of way, the closure of Goliad, access from the I20 frontage road and a sign on the frontage road.

The terms and conditions presented by First Bank were approved by the BEDC. The Commitment Letter was presented to the EDC by Tammi Cauthen, First Bank Benbrook Branch president. The agreement is subject to City Council ratification. Loan transfer and closing will be transacted as soon as possible following action by the City Council.

Motion by Mr. Schull, seconded by Mr. Stowe to ratify the First Bank Loan to the EDC for purchase of N3 Development Ltd., property.

Vote on the Motion:

Ayes: Mr. Schull, Mr. Bailey, Mr. Allison, Mayor Dittrich, Mr. Tully, Mr. Stowe, Mr. Sauma

Noes: None

Motion carries unanimously.

**V. PRESENTATION BY PLANNING AND ZONING COMMISSION**

**VI. REPORTS OF CITY MANAGER**

**A. GENERAL**

**G-1707 Charter Communications Franchise Fee Settlement**

Cathy Morris gave the following report: In 2004, the City of Benbrook, working with a consortium of other cities, began franchise renewal process with Charter Communications. As part of the renewal process, the consortium cities contracted with C2 Consulting Services to conduct a Charter franchise fee audit for July 2001-June 2004.

In 2005, C2 reported that Charter owed the City of Benbrook \$12,950 in underpayments based on revenue categories that were not included in Charter's franchise fee computations. Charter disagreed with most of the audit report, but conceded that Charter did owe the City of Benbrook \$1,280 in unpaid franchise fees for the reporting period.

In 2005, SB5 took affect allowing for a statewide cable franchise system. SB5 negated the need to continue local negotiations with Charter Communications. The consortium cities ceased to meet and the audit results were not pursued. The City of Benbrook had paid \$1,587.50 for the C2 audit.

Charter Communications is attempting to resolve the franchise fee audit issue through a settlement proposal. Charter is again offering the City of Benbrook \$1,280 for franchise fee underpayments. Other consortium cities have agreed to the proposed settlement. Charter disputes most of the C2 audit findings based on their interpretation of the Federal Cable Act, which designates franchise fees to be paid on gross revenue derived form the operations of the cable system to provide

cable services. It is unknown whether the City would prevail in litigation to collect the disputed amount.

Motion by Mr. Bailey, seconded by Mr. Tully to accept the Charter Communications settlement proposal as submitted in the amount of \$1,280.

Vote on the motion:

Ayes: Mr. Schull, Mr. Bailey, Mr. Allison, Mayor Dittrich, Mr. Tully, Mr. Sauma

Noes: Mr. Stowe

Motion carries 6-1.

**G-1708 Ordinance amending Chapter 10.40 of the Benbrook Municipal Code by revising no parking restrictions on Cozby North Street**

Mr. Wayman gave the following report: The principal of Benbrook Elementary has requested a “No Parking” zone on the south side of Cozby North during student drop-off and pick-up times. The request is made due to student safety concerns.

The hours of no parking would be 7:30 – 8:30 a.m. and 2:30 – 3:30 p.m. on school days. The no parking zone will enhance safety and facilitate quicker student drop-off and pick-up.

City staff has contacted the homeowners with side yards abutting Cozby North to inform them of the proposed amendment. If approved by City Council, the City will post no parking signs during the appropriate hours and paint the curb.

Motion by Mr. Stowe, seconded by Mr. Sauma to adopt Ordinance No. 1237 creating a no parking zone on the south side of Cozby North Street during school loading and unloading times.

Vote on the Motion:

Ayes: Mr. Schull, Mr. Bailey, Mr. Allison, Mayor Dittrich, Mr. Tully, Mr. Stowe, Mr. Sauma

Noes: None

Motion carries unanimously.

Ordinance No. 1237 being **“AN ORDINANCE AMENDING CHAPTER 10.40 OF THE BENBROOK MUNICIPAL CODE (1985), AS AMENDED, BY REVISING NO PARKING RESTRICTIONS ON COZBY NORTH STREET; PROVIDING FOR VIOLATIONS, PENALTIES AND INJUNCTION; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN PAMPHLET FORM; PROVIDING FOR ENGROSSMENT AND**

**ENROLLMENT; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.”**

SECTION III  
PENALTY CLAUSE

Any person, firm or corporation, who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance shall be fined not more than Five Hundred Dollars (\$500.00).

SECTION X  
EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after its passage and publication as required by law.

**G-1709 Ordinance amending Chapter 1.12 of the Benbrook Municipal Code by revising the fee schedule for ambulance service fees and Tarrant County filing and recording fees**

Mr. Wayman gave the following report: Ambulance fees have not been adjusted in over seven years. The current fees are \$375 for Benbrook residents and \$475 for nonresidents. As a result, Benbrook is about 50% below the Metroplex average for ambulance fees.

The proposed ambulance fee adjustments reflect the increased cost of service and the local municipal average. The adjusted fees are:

- Base ambulance charge - \$775 for a resident and \$875 for a nonresident, plus
- Actual cost to fire department for medical supplies and/or equipment, plus
- Five dollars per mile for patient transport from the point of pick-up to the point of delivery, or
- One hundred twenty-five dollars for treatment on scene with no transport

The proposed ambulance fee adjustments better reflects the cost of service and brings Benbrook back to market average.

The other proposed fee change is for filing and recording documents with the Tarrant County Clerk. The revision states that the City fee is equal to the actual charge by the Tarrant County Clerk. This fee applies to plats, deeds, easement, etc. As a result, Benbrook's fee would automatically adjust as Tarrant County changes its fee.

After discussion on history of ambulance fee rates, motion by Mr. Stowe to adopt Ordinance No. 1238 amending Chapter 1.12 of the Municipal Code to update fees and the base rate of \$775.00 be charged to both residents and nonresidents alike. Motion dies for lack of second.

Motion by Mr. Sauma, seconded by Mr. Schull to adopt Ordinance No. 1238 amending Chapter 1.12 of the Municipal Code updating ambulance billing fees and county filing fees.

Vote on the Motion:

Ayes: Mr. Schull, Mr. Bailey, Mr. Allison, Mayor Dittrich, Mr. Tully, Mr. Sauma

Noes: Mr. Stowe

Motion carries 6-1

Ordinance No. 1238 being **“AN ORDINANCE AMENDING CHAPTER 1.12 OF THE BENBROOK MUNICIPAL CODE (1985), AS AMENDED, BY REVISING THE FEE SCHEDULE FOR THE CITY OF BENBROOK, BY REVISING AMBULANCE SERVICE FEES AND TARRANT COUNTY FILING AND RECORDING FEES; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.”**

#### SECTION 5

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance shall be fined not more than Two Thousand Dollars (\$2,000.00) for all violations involving zoning, fire safety or public health and sanitation, including dumping of refuse, and shall be fined not more than Five Hundred Dollars (\$500.00) for all other violations of this Ordinance. Each day that a violation is permitted to exist shall constitute a separate offense.

#### SECTION 9

This Ordinance shall be in full force and effect from and after its passage and publication as provided by law, and it is so ordained.

### **B. CONTRACT**

#### **C-228 Authorize contract with Raymond Turco and Associates for Survey on School Issues**

Mr. Gattis gave the following report: City Council directed staff to proceed with a survey of citizen opinions about relationships between the City and the Fort Worth ISD. Staff contacted Raymond Turco and Associates regarding costs for a telephone survey. Turco performed surveyed citizens in 1997 regarding Parks and Recreation needs. More recently, Turco did the survey for the Benbrook library District.

Mr. Turco estimates that a one to two page survey by telephone will yield a result with 95 percent confidence limits at a cost of about \$8,500. Staff will work with Turco to develop the survey questions and Turco is available to start immediately.

Motion by Mr. Bailey to table this item in order to meet with Dr. Johnson and her responses to questions. Motion dies for lack of second.

Motion by Mr. Schull, seconded by Mr. Stowe to proceed with staff recommendation to execute a contract with Raymond Turco and Associates in the amount up to \$9,000 to be paid from Account 01-1501-5211.

Vote on the Motion:

Ayes: Mr. Schull, Mr. Stowe, Mr. Sauma

Noes: Mr. Bailey, Mr. Allison, Mayor Dittrich, Mr. Tully

Motion fails 3-4.

**VII. OTHER MATTERS OF BUSINESS**

**VIII. INFORMAL CITIZEN COMMENTS**

Samantha Spence and Tammi Cauthen spoke in disappointment to the failed motion to conduct citizen survey regarding Fort Worth ISD.

**IX. ADJOURNMENT**

Meeting adjourned at 8:35 p.m.

**APPROVED:**

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**Jerry B. Dittrich, Mayor**

**ATTEST:**

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**Joanna King, City Secretary**