

# MINUTES OF REGULAR MEETING

May 22, 2018

## MONTGOMERY CITY COUNCIL

### CALL TO ORDER

Mayor Sara Countryman declared a quorum was present, and called the meeting to order at 6:00 p.m.

Present: Sara Countryman Mayor  
John Champagne, Jr. City Council Place # 2  
T.J. Wilkerson City Council Place # 3  
Rebecca Huss City Council Place # 4  
Dave McCorquodale City Council Place # 5

Absent: Jon Bickford City Council Place # 1

Also Present: Jack Yates City Administrator  
Larry Foerster City Attorney  
Susan Hensley City Secretary  
Chris Roznovsky City Engineer

### INVOCATION

T.J. Wilkerson gave the Invocation.

### PLEDGE OF ALLEGIANCE TO FLAGS

### VISITOR/CITIZENS FORUM:

Any citizen with business not scheduled on the agenda may speak to the City Council. Prior to speaking, each speaker must be recognized by the Mayor. Council may not discuss or take any action on an item, but may place the issue on a future agenda. The number of speakers along with the time allowed per speaker may be limited.

Mayor Countryman advised that Mr. L. A. Washington has requested to speak regarding Agenda Item 7, which is regarding the scheduling of a public hearing for rezoning of the property located at 1005

Old Plantersville Road, Montgomery, from R1-Single Family to I-Industrial to be held on June 26, 2018 at 6 p.m. as requested by Robert L. Fisher.

Mr. Washington said that he did not know what type of business or endeavor is planned for this property, but currently this property is across the street from a primarily residential farm-like community. Mr. Washington said that the fear of anybody that lives in that area is what kind of industrial use they would be getting, will it be a junk yard, storage lot or a property that would be infested with mice, etc. Mr. Washington said that he wanted to address City Council so that they would know his concerns, because he intends on living in that area for a while. Mr. Washington said that he would like City Council to look closely at this situation before making a decision. Mr. Washington said that it was hard for him to say what he wants without knowing if this property is residential, and if it is residential then he has no requests, but if it becomes industrial then it will fall under a whole different zoning and would be right in the middle of three or four residential areas that are ranch or farm type neighborhoods. Mr. Washington said that right now there is just a metal building on the property with hardly any activity. Mr. Washington said that he was sure that City Council will listen to the residents that currently live there and the concerns that they have and he asked that they look at that and decide what kind of industrial business this is going to be so that the public will know. Mr. Washington said that there are some industrial applications that the residents might be able to live with and others they will have a problem with.

Mr. Mike Newman advised that he had two different items that he wanted to bring to City Council's attention. Mr. Newman said that the street lights that the City pays for are supposed to be repaired by the power company. Mr. Newman advised that there are two street lights on Caroline Street that have been going on, one in front of his house and the one at Louisa and Caroline goes on more than the traffic light at the corner. Mr. Newman said that in the past the power company was required to patrol the area to see what lights are on and off, mark them down and have them repaired. Mr. Newman said that the lights have been going on and off for about six to eight months, as said that he thought that it was the City's responsibility to push Entergy to do their job since the City is paying for it and the residents pay the City for the service. Mr. Newman said that the second thing is garbage collection. Mr. Newman said that the garbage company has gone to a two-truck pickup and one truck is a very large side loading truck, and the truck is very heavy. Mr. Newman said that the heavy truck has to make two trips since it only picks up the trash on one side of the street at a time, which he did not feel was a good fit, because he feels that the roads are too small and they are not in great condition because

of their age. Mr. Newman said that the way they are picking up the trash is efficient to the trash people, but he did not think that it was efficient for Montgomery.

Mrs. Julie Davis said that she agreed with Mr. Newman regarding the trash service, because she has exchanged numerous emails with Mr. Yates regarding the automated trash service. Mrs. Davis said that she wanted to talk about Agenda item 7, Old Plantersville Road and said that she is a neighbor of Mr. Washington, along with Mr. Potter and said that this is the same road that they just discussed two months ago regarding the young man that was severely injured and all the high school traffic and now they are going to zone the property for industrial use. Mrs. Davis stated that there was only one other property on the street that is zoned industrial on the entire Old Plantersville Road, and that property is a nuisance property that is full of roll off dumpsters that regularly house nasty trash with rodents. Mrs. Davis said that they are also storing two manufactured homes on the site and who knows if there are vagrants or squatters on the property and now City Council is asking the citizens to overlook a rezoning of a property that is across the street from their homes and within walking distance of her front door. Mrs. Davis asked City Council to please look into this matter before they zone the property industrial, because these are farm properties that have 10 plus acres, because they already have one that is a big nuisance that the City is not taking care of.

**CONSENT AGENDA:**

1. Matters related to the approval of minutes of the Regular Meeting held on May 8, 2018 and Special Meeting held on May 15, 2018.
2. Consideration and possible action regarding adoption of an Escrow Agreement by and between the City of Montgomery and the Lone Star Cowboy Church.

Dave McCorquodale moved to approve the Consent Agenda as presented. Rebecca Huss seconded the motion.

Discussion: John Champagne asked Mr. Yates to elaborate on the Escrow Agreement. Mr. Yates advised that the Church is planning on doing some building and dirt work that requires a site plan, so they need an Escrow Agreement to cover the costs. Mr. Yates said that the Escrow Agreement has been signed by the Lone Star Cowboy Church and they have paid their funds.

The motion carried unanimously. (4-0)

**CONSIDERATION AND POSSIBLE ACTION:**

3. Consideration and possible action electing the Mayor Pro Tem for the term of one (1) year as provided by Texas Local Government Code § 22.037(b).

Mayor Countryman called for a motion to open the floor up for nominations to elect the Mayor Pro Tem.

Dave McCorquodale moved to open the floor for nominations. John Champagne seconded the motion, the motion carried unanimously. (4-0)

John Champagne moved to nominate T.J. Wilkerson for Mayor Pro Tem.

Dave McCorquodale moved to close the nominations. Rebecca Huss seconded the motion, the motion carried unanimously. (4-0)

Mayor Countryman announced that T.J. Wilkerson was elected, by general consent of the City Council, as Mayor Pro Tem.

4. Consideration and possible action on Department Reports.

- A. Administrator's Report – Mr. Yates presented his report to City Council detailing his activities during the month. Mr. Yates stated that what he had just found out a couple of days ago, was that the City was denied the Texas A&M Program, however, the person that runs the program said that she liked the City's application and suggested that there were two other groups that possibly would work with the City. Mr. Yates said that he had met one person from one of the two groups, called the Texas Resiliency Program, which would be a no cost program and said that he would have more information at a future meeting. Mr. Yates said that they had also received the TxDOT plans for the FM 149 Project, which he has not yet seen, so he would ask City Council how they would like to proceed on this matter. Rebecca Huss asked if the plans were different than what is in the Engineer's Report. Mr. Yates said that he did not know because he has not seen the plans. Mr. Roznovsky said that they have received all the underground information, so from their point, that was what they needed to see, but

regarding the driveways and the overall plan, what is in the Council Pack is the most updated. Rebecca Huss said that she felt that it would be easiest to review the information in a small meeting that is not combined with other City Council business for the best use of time, because she is guessing that the meeting would run long. Mr. Yates stated that he would work on suggesting a date and time for that meeting. Mr. Yates said that he is also suggesting that they have a Saturday Workshop with just City Council, to review the current budget at this point, discuss the grant projects and the Water and Sewer Master Plan. Mr. Yates stated that the meeting would be open to the public with a specific agenda. Mr. Yates said that he is proposing that they conduct the meeting at Hodge Podge Lodge, just for a different atmosphere and the flow of the conversation. Rebecca Huss said that she was not opposed to that, but they are usually booked with weddings on Saturdays. John Champagne said that the Caroline House might be available. Mr. Yates said that he would also check with the churches. Mr. Yates said that he was proposing the first or second Saturday in June. Dave McCorquodale said that he would be gone the first Saturday in June.

John Champagne asked Mr. Yates if he had incorporated the new Escrow Policy and if they had incorporated the City of Conroe's procedures. Mr. Yates said that they do have a paragraph in the Escrow Agreement that puts a maximum to the Agreement, unless there is an extra inspection(s). Mr. Yates said that he has the City of Conroe's procedures, but has not reviewed the information at this time. Mr. Yates said that the paragraph that the Engineers had provided in the Development Pack last week, is a not to exceed figure. Mr. Yates said that he is working on the information. John Champagne asked if they could anticipate coming to some culmination this week or next. Mr. Yates said yes and said that he could propose it in the Emma's Way Escrow Agreement and he will get with the developer to see if they agree then it will come back to City Council probably at the next meeting. Rebecca Huss said that surely that would not mean that the City will bear the costs of any development expenses that go above a certain amount. Mr. Yates said that it is a set amount, unless there are circumstances and the developer would have to advance funds as needed.

John Champagne said that accessibility to our individuals for assessment and evaluation is an issue as well, and it has been in the past, also timely responses have

been an issue. John Champagne said that they are still in the customer service business and although developers are interested in their development, it has to be a happy medium. John Champagne said that the City has hired Jones & Carter to provide a service that should coincide with the mission statement and vision that the City has regarding serving our customers. John Champagne said that he was not saying that they haven't, he is just saying that it is a two way street. Rebecca Huss said that the Engineers provide specific bills for the services, whereas in other cities the tax payers are paying for the City Engineer on more of an amount and the charges may or may not cover the actual effort put into each development. John Champagne said that regarding Jones & Carter the City is not their only customer and our ability to respond to developers in a timely way is accessibility. John Champagne said that they could assume that Jones & Carter is doing everything that the City asks them to do and said that he is not sure that is taking place in a timely way. John Champagne said that he can't speak to specifics, he can only go by what he is hearing from their constituents, and in this particular case, developers. John Champagne said that he is looking to find a balance where everyone's concerns can be addressed. Rebecca Huss said that she did not feel that the taxpayers should bear the brunt of the write offs and if they commit to no more than a certain amount, the taxpayer should not bear the cost.

- B. Public Works Report – In the absence of Mr. Mike Muckleroy, Director of Public Works, Mr. Yates presented the report to City Council detailing the projects that had been completed during the month. Mr. Yates advised that Accurate Meter completed 15 miles of leak sounding and located six potential leaks. Rebecca Huss advised that at least one of the leaks is still leaking. Mr. Yates said that he thought that two or three were still leaking. Mr. Yates advised that there were four water leaks reported, 1 sewer stoppage, 10 water taps, nine sewer taps, they replaced the broken lights at Cedar Brake Park and Homecoming Park. Mr. Yates stated that the docents reported that they had a total of 1,145 visitors for the month and provided 66 tours. Mr. Yates said that the Technical and Operations Review Committee, City Engineer and Mr. Muckleroy recommended to him that Memory Park use the pond for irrigation, and the installation would be something that City staff can do at a cost of \$7,200. Mr. Yates said that the cost of a well would have been \$15,000 plus maintenance. Mr. Yates said that he has details that he can send out, as provided by Mr. Randy Burleigh. Mr. Yates said that

they have the funds in the budget to pay for this project. Rebecca Huss said that the project has a pretty quick payback period. John Champagne said that he thought it was a good plan. Rebecca Huss said that there was possibly some collateral benefits with the intake of the water for the irrigation system that will reduce the work for Public Works.

- C. Police Department Report – Chief of Police James Napolitano presented his report to City Council. Chief Napolitano stated that the Police Department welcomes the new Mayor and they are happy that she is here. Chief Napolitano reported that Old Plantersville Road has been patrolled by the Police Department, placing 3-4 officers out there, along with Constables from Precinct 1. Chief Napolitano advised that he also parked at the stop sign and stopped each student that drove up to the sign and asked if they knew the speed limit and if they did not he would advise them and he notified the ones driving pickup trucks that if they were caught driving off road they would be ticketed and arrested.

Chief Napolitano reported that two weeks ago they had a student overdose before school on Emma's Way. The Chief advised that the parking on Emma's Way is still an issue, and said that the students park over there even though they have passes so they can avoid getting their cars searched by the dogs, so they solved that by bringing their own dog. Chief Napolitano advised that one of the students smoked what he thought was marijuana and he did not even make it back to his car where he collapsed and fell in the middle of the road and could not be revived until two hours later at the hospital. Chief Napolitano said that they have a current investigation regarding that matter and the substance that the student was given.

Chief Napolitano advised that following the tragedy that occurred at Santa Fe, State Representative Will Metcalf came to his office to discuss school security, not just for our area but the surrounding area and they are developing a plan to go to the Governor to ask for funds. John Champagne asked if State Representative Metcalf went to visit every Police Chief. Chief Napolitano said no he did not. John Champagne asked why he came to Chief Napolitano. The Chief advised that State Representative had called and asked if he could meet with him because of his Secret Service experience. John

Champagne asked if the MISD Police have any jurisdiction over Emma's Way. Chief Napolitano advised that was the City's jurisdiction because it is outside of the School's property line. Chief Napolitano advised that if the vehicles are parked illegally they will ticket them, which is all they can do because it is a public street. Chief Napolitano advised that they did have a problem getting a fire truck into that location so they painted part of the curb red, and then if the student parks by the painted curb they will ticket and tow the vehicle. John Champagne asked if they could incorporate, as a City, an ordinance designating that as a tow away zone. Chief Napolitano said yes, they could put up no parking, but they would have to have an ordinance that designated that as a no parking zone. The Chief advised that what was done before the road was in place, the students would park over at Brookshire Bros. parking lot and have another student come and pick them up. Chief Napolitano said that the school is saying that once the new school opens off of FM 2854 this will eliminate the parking problem, except that the sophomores that are old enough to drive will still not be allowed to park on school property, per MISD regulations. The Chief advised that they had a meeting with the Superintendent of the schools and they asked if they could let students park on the school parking area by the stadium and they advised that it would be too much liability for them to allow the students to cross SH 105.

T.J. Wilkerson asked the Chief if he has floor plans of all the schools. Chief Napolitano advised that he has one from 2014 and since Chief Runnels has come on board he has requested an updated map, which he has not received yet. The Chief advised that he was supposed to meet with Chief Runnels yesterday, but he became ill and had to reschedule the meeting. T.J. Wilkerson said that if there is an incident where they require a lock down, who would handle that? Chief Napolitano advised that if it is in the City, his Department will take care of the initial set up of the arriving officers and then once it is all done then Chief Runnels should come to the command post and assume command at the school. Chief Napolitano advised that if Chief Runnels would be in contact with the shooter, then it would be left to whoever is next, which could be him and Chief Runnels. Chief Napolitano said that they want to organize these type of situations the best that they can.



- D. Court Department Report – Court Administrator Kimberly Duckett thanked City Council, Mr. Yates, Ms. Hensley and the Judge for bearing with her and giving her the opportunity to obtain her Level 1 Court Clerk Certification and to officially become the Court Administrator. Mrs. Duckett said that she is looking forward to the growth with the City and improving the efficiency of the Court, which is her number one project. Mrs. Duckett then presented her report to City Council. Mrs. Duckett said that for the month of April the Court funds were \$39,781. Mrs. Duckett said that they are going to be looking at new software to help with their warrants. Mrs. Duckett said that the company that the City currently has is not being utilized to the best of our ability. Rebecca Huss asked if Mrs. Duckett was talking about another software besides Incode. Mrs. Duckett said that it was Incode, but a higher version, Incode 10. Mrs. Duckett said that she has spoken with some other Courts, Brenham, Jersey Village and Spring Valley who use the latest version of Incode and they advised that it was making their Court a lot more efficient. Rebecca Huss asked if Mrs. Duckett thought that it would help with the Utility Billing. Mrs. Duckett said that the billing has a lot of different parts versus the Court, but as long as it is able to function with the different categories that Utility Billing has she thought that it would help.
- E. Utility/Development Report – Mr. Yates presented the report to City Council, advising that the Utility Billing receipts were \$127,373 for 651 accounts, which includes nine new accounts from last month. Mr. Yates said that the permits were \$19,084 for 50 permits, which is approximately 3-4 new homes, plumbing, mechanical and electrical permits. Mr. Yates advised that the Community Building only had \$300 in revenue, with 10 rentals that were all nonprofit groups. Mr. Yates said that except for the amount of work that was done in the kitchen of the Community Building they are pretty much staying close to revenue versus expenses. Dave McCorquodale asked where the \$300 revenue came from. Mr. Yates said that he was not sure, but he thought that it might be carryover from the previous month.
- F. Water Report – Mr. Michael Williams, with Gulf Utilities, presented his report to City Council. Mr. Williams advised that they had six district alerts, which the first three were due to power fluctuations on the evening of April 18 going into the morning of April 19, where they had power fluctuations of the Wastewater Plant 2 and Lift Station

6, which were reset and running normally. John Champagne asked what caused the power fluctuations. Mr. Williams said that it was most likely due to a storm in the area or issues with the incoming electricity. Rebecca Huss stated that if it was during the hail storm, there were two transformers that had blown out. John Champagne asked if it had anything to do with what they are experiencing at the wells. Mr. Williams said that it was the exact same thing. John Champagne said that this was a chronic issue at the wells. Mr. Williams said that they have not had any issues with the wells for a while now. Mr. Williams said that the alert on April 28 was due to a storm in the area, where they had two high wet wells at lift stations and a surge alarm at the Wastewater Treatment Plant. Mr. Williams advise that the effluent flow for the month was 4,096,000 gallons and the peak flow was on March 29 at 573,000 gallon, which is 143% percent of the permitted value. Mr. Williams advised that the daily average flow was 132,100 gallons that is 33% percent of the permitted value. Rebecca Huss asked about April 28 regarding the infiltrations and whether they had information on where the problem was. Mr. Williams said that they were compiling the information and will be getting with Public Works to determine the location. Mr. Williams advised that for the month of April they sourced a total of 7.61 million gallons, flushing 151,000 gallons and they sold 6,750,000 gallons for 91% accountability. Mr. Williams said the accountability was a little bit lower than they were used to, but they did have a high month last month, but they will continue to keep an eye on it. Mr. Williams said that last month they had a 61% percent return of sold water to the sewer treatment plant. John Champagne asked if that matched up with the irrigation that they anticipate. Dave McCorquodale said that 39% percent seemed like a lot of water going somewhere. Mr. Williams said that the City is trying to separate the irrigation meters in Incode and once they do that they will be able to have a better explanation on how much is being irrigated. Mr. Roznovsky advised that Incode setting up different classes has been an issue. Mr. Roznovsky said that Mr. Burleigh's spreadsheets has manually done the separation to breakout the irrigation meters. Mr. Roznovsky said that they can break out commercial and residential, but they can't break out irrigation. John Champagne said that is ridiculous, because they have expensive software that is separating everything and asked why they can't separate irrigation from residential. Mr. Roznovsky said that they were supposed to be working on that matter. John Champagne asked who was working on it and owns this project. Mr. Roznovsky

advised that Mike Muckleroy, Director of Public Works has been working on getting this matter resolved.

Rebecca Huss said that she appreciated the fact that they were staying within the City's permitted value ranges.

- G. Engineer's Report – Mr. Chris Roznovsky, Engineer for the City, presented his report to City Council. Mr. Roznovsky advised that he had handed out information regarding the FM 149 cleaning and televising to allow City Council to review the material for discussion at a future meeting. Mr. Roznovsky said that the quick summary of the information is there is a cost estimate of the repairs from north of FM 1097 to 149 downtown. Mr. Roznovsky said that what this will show is the items that are damaged that need to be repaired due to age, not because of the televising. Rebecca Huss asked, roughly, what percentage this accounts for the overall sewage mileage. Mr. Roznovsky said that he did not have an answer for that question right now. Mr. Roznovsky said that they televised a total of around 7,000 to 8,000 feet and he needs to look at the total miles in the system, which he thinks is in the range of 80,000 to 100,000 feet, which would be about 10% percent, but he will have to go back and check. Rebecca Huss said that if it is 10% percent that would be \$158,000. Mr. Roznovsky said that the repairs that need to be addressed which were picked out items, such as, the crossing at FM 149 and Lone Star Parkway intersection. Mr. Roznovsky advised that the Geographic Information System (GIS) Build should be complete in July.

Mr. Roznovsky said that all the water development projects are moving forward and they will have the Workshop Meeting to discuss those further in detail. Mr. Roznovsky reported that Baja Road CDBG improvements (waterline and drainage improvements) are expected to be completed in the next few weeks. Mr. Roznovsky said that the Baja Road FEMA paving project will be done after the completion of the Baja CDBG portion of Baja Road, which will be followed with the General Land Office (GLO) portion of Baja Road.

Mr. Roznovsky advised that the Montgomery Shoppes have a private bridge within their site and they returned their plans with comments yesterday. Mr. Roznovsky stated

that they returned the Spirit of Texas comments on the 18<sup>th</sup> of April, and Emma's Way plat comments on the 17<sup>th</sup> of April.

Mr. Roznovsky stated that the FM 149 plans, which they will go into detail during the Workshop Meeting, but they have included in the agenda pack are just the overall plan view of the street and have highlighted, from the original plan set to now the driveways that have changed and the turn lane that has been added. Rebecca Huss asked if they are ever going to give the City information about what the City is responsible for financially. Mr. Roznovsky said that they still need to answer what the City will be responsible for financially.

- H. Financial Report and Quarterly Investment Report – Mrs. Cathy Branco, Financial Consultant, presented her financial report and investment report to City Council. Mrs. Branco reviewed the Finance Report detailing all the different accounts for the benefit of the new Mayor.

Mrs. Branco advised that the General Fund has a net income of \$68,000, which is doing pretty well at this time. Rebecca Huss said that this is something that they have talked about repeatedly, the City is not, in fact, doing well because this does not include what the City owes on this year's revenues for Kroger. Mr. Yates said that he would be presenting that information with the budget amendments. Rebecca Huss said that she was noticing that the City collected some PID tax revenue, which is essentially a pass through, so \$35,000 of the \$68,000 is already gone and does not count as revenue. Rebecca Huss said that they should have a contra-revenue account for the Kroger funds, PID tax revenue and probably for permits and licenses, because they pay out a lot of that in fees, which shows up on a slightly more regular basis. Rebecca Huss said that without those three numbers the City is running significantly behind on revenues. Mr. Yates said that he thinks that he has an answer for that information that will be included in the budget amendments. Rebecca Huss said that was excellent, but she would also like to see it every month in the report, because fiscal restraint comes mentally when they don't feel like they have money to spend and they need to be cognizant of what they actually have to spend. Mr. Yates said that they do need to keep track of how much they have to spend versus how much has been accounted for.

Mr. Yates said that none of these funds will be spent until next year anyway, but as they go through the budget amendments he thinks that he can answer the questions. Rebecca Huss said that even if the funds don't actually flow out it has been accrued as an expenditure in this year and they will owe it early in the next fiscal year, so it should be in the account ready to write a check when we actually owe it and it should come from the year in which the money was earned. Rebecca Huss said that she feels that they need to be more conservative, because cities get themselves in trouble by pretending they have money that they don't have and then spending it, thinking that they will make it up later, but they don't. John Champagne said that he totally agreed with Rebecca Huss regarding the accounting clarity, but asked to confirm with Mr. Yates that he was aware of this information and it was not like he was flying blind. Mr. Yates said that he was aware of the information. Mrs. Branco said that Mr. Yates is getting information on the separation of the funds, so that they will have better information over the next couple of weeks.

Mrs. Branco advised that they still have several escrow agreements that have outstanding funds of about \$53,000. Rebecca Huss said that also brings up the question of which they sort of touched on earlier, of how much the City has actually written off for escrow agreements just this year. Rebecca Huss said that there has been quite a bit of pressure to do so, and she would like to know how much they have outstanding that the City has paid for services that has not been collected through escrow agreements or otherwise from the developer who has incurred those expenses. Rebecca Huss asked Mrs. Branco if she had any information regarding that matter, because they had spoken about that last week and she was curious whether she had found out any information. Mrs. Branco said that she had some information regarding that, advising that there were some problems with one particular individual that feels that he should not have to pay for the escrow agreement, stating that she was not sure exactly why and she has not really discussed that information with Mr. Yates, but there was some \$4,400 outstanding on that account, which has never been paid and another account has \$2,000 outstanding. Mr. Yates advised that he could give City Council a line by line report on that information next week showing the status of the escrow accounts, where they have been, how much they have collected and how much is outstanding. John Champagne asked if Mr. Yates was actively involved with the issue of the escrow accounts. Mr.

Yates advised that was correct. Rebecca Huss said that she felt they held one particular developer to account and they actually did recently provide a check and she felt that they should hold everyone to that same standard with the same type of treatment, and the City should not be losing their leverage for writing things off. Rebecca Huss said that they have spending limits without Council approval and she thought that City Council should be involved in writing off payments if it goes over a certain amount in total. Mr. Yates said that information would be in his report to City Council. Mrs. Branco said that she has all the breakdowns for Mr. Yates whenever they go over the information.

Mrs. Branco reviewed the Capital Projects account, which includes the Texas Water Development Board Certificates of Obligation A and B and those funds in escrow and the draws are to be made from those escrow accounts. Mrs. Branco advised that so far they have drawn about \$6,000 out of one account and about \$23,000 out of the other account. Mrs. Branco advised that the Buffalo Springs Bridge Repair funds are coming from FEMA and the CDBG projects, so they have to wait for those funds once the estimates are sent to FEMA and CDBG, and in the process the General Fund will transfer over funds to cover the costs until the FEMA and CDBG funds have been received. Mrs. Branco said that the General Fund has fronted the Capital Projects \$125,000 for pay estimate #1 and just over \$50,000 for pay estimate #2, and pay estimates #3 and #4 are in the works and she has not seen any funds come in for 2, 3 or 4. Mrs. Branco advised that they did receive the funds for pay estimate #1, which was mostly from FEMA, but they received \$70,000 of the \$94,000 that they were expecting because they pay a certain percentage and wait for the approval on the other percentage, but they have received the CDBG funds. Mrs. Branco said that she just paid back the \$125,000 to the General Fund for pay estimate #1.

John Champagne asked if Mrs. Branco interacts with an individual at these government agencies. Mrs. Branco said that she does not, typically Mr. Yates and Mr. Roznovsky interact with them and she is copied on the emails.

Mrs. Branco advised that on the 2017A Texas Water Development Funds the City has earned interest totaling \$3,442 and made a draw on \$6,560. Mrs. Branco stated that

the interest on the 2017B Texas Water Development Funds has drawn interest of \$5,476 and the City has made a draw of \$28,633 on that account.

Mrs. Branco advised that as City Council goes through the budget they will find that all the funds are in a positive net position, except for the Utility Fund and that will correct itself during the summer, because there will be a lot more income during those months. Mrs. Branco said that \$50,000 was submitted from the Utility Fund to Capital Projects that is being put back, because it was not needed, so that will bring the deficit balance from \$76,000 deficit to a positive figure.

Mrs. Branco advised that they are talking about a budget revision on June 12, 2018, so in the meantime she and Mr. Yates will be working on those revisions. Mr. Yates asked Mrs. Branco to review the Investment Report. Mrs. Branco advised that the Quarterly Investment Report is a report that is done by Municipal Accounts and Consulting for the purpose of bringing City Council up to date on what the investments have been, how much interest has been earned during that period of time and where the money has been and interest rates. Mrs. Branco advised that the TexPool accounts have gone from 1.67% percent to about 2% percent. Mrs. Branco advised that each page of the Investment Report is a different fund, with the main page being completed by Mr. Mark Burton, Investment Officer for the City. Mrs. Branco reported that they start with the operating fund, which shows all the funds that are in TexPool, which has a balance of \$208,547.49 with the interest on those funds of \$710.15. Mrs. Branco said that the Capital Projects Fund TexPool accounts has \$577.00, debt service fund with TexPool has \$24,568.19, Montgomery EDC has \$236,787 with interest on those funds of \$808.31, and the Utility Fund has \$18,099 with \$61.73 in interest. Mrs. Branco said that the Debt Service has no investments in CD's, but the Montgomery EDC has two investments.

Mr. Yates said that the key point is that, in Mrs. Branco's opinion, all the investments are proper investments and the investment officials are acting correctly in their deposits and securities, because the City has to have certain types of securities that is called for in the State Law, and State Law requires a quarterly report of the investments.

Mrs. Branco said that the last page of the report is a summary of the pledged securities that shows what is pledged against the City's investments at each bank. Mrs. Branco said that anything over \$250,000 has to be pledged, and said that up to that amount is covered by the FDIC. Mrs. Branco said that the final item is the Debt Service payments that the City has on September 1, 2018, and the City will have an interest only Debt Service payment of \$114,000. Mrs. Branco said that in March of each year the City will have the Principal and Interest payments, so the City will have \$559,000 due in March of next year, which at the present time the City has plenty of money to make that payment. Rebecca Huss said that payment is due right after the City receives their property tax funds. Mrs. Branco said that was correct.

Rebecca Huss moved to approve the Departmental Reports as presented. T.J. Wilkerson seconded the motion, the motion carried unanimously. (4-0)

5. Consideration and possible action regarding a conflict of interest question from Jones and Carter regarding work with Star of Texas Seniors, Ltd.

Mr. Yates advised that this was to give Jones and Carter permission to do work with the Star of Texas Senior Development project. Mr. Yates said that while this action is not required, it is the ethical thing for Jones and Carter to do. Mr. Yates said that this will be one branch of Jones and Carter doing the design and presentation work with Mr. Roznovsky, with the City's representative of Jones and Carter reviewing the plans, specs and site plans, just as he would in any other case. Mr. Yates advised that this has come up and been allowed approximately three times during his tenure with the City. Mr. Yates said that it came up as a matter of conflict, when Jones and Carter designed Lone Star Bend Road for Montgomery County, reviewed the plans with the subdivider and inspected the project on behalf of the City. Mr. Yates said that the other projects had no issues at all with the design work or the quality of the completed project. Mr. Yates said that it was his opinion that Jones and Carter is a large enough firm to where the designer of the project will hardly be known by the reviewer. Mr. Yates said that Mr. Roznovsky is responsible for getting a quality project on behalf of the City, regardless of who is the designer. Mr. Yates said that it was his recommendation that City Council approve Jones and Carter to perform the work with the Lone Star Seniors group.



John Champagne asked who would be the representative within Jones and Carter that will be leading the work for the Star of Texas Seniors development. Mr. Roznovsky advised that it would be Jeremiah Kamerer. John Champagne said that the City had nothing to do with Jones and Carter obtaining the work with Star of Texas Seniors, Jones and Carter solicited the work. Mr. Roznovsky said that Jones and Carter was contacted by the developer, and the City had nothing to do with the transaction. John Champagne said that Mr. Yates opinion implies that the size of the company is proportional to the individuals' ability to know each other, which would give the City ease of any perception of impropriety. Mr. Yates said that he did not know if it was about knowing so much about each other and said that he wanted to expand on that statement saying that he thought that the person that does the design would be working distinct from Mr. Roznovsky and would do his own design for Lone Star Seniors. John Champagne said that he was uncomfortable with this, not to say that anything unethical would take place, he just feels that it exposes the City to be second guessed by others.

Rebecca Huss said that she feels differently than John Champagne. Rebecca Huss said that the City allowed the Milestone transaction, which has a much bigger economic impact on the City and potential for conflict because Milestone is a bigger development and there is a lot more potential for future business for Jones and Carter, whereas this is a small multi-family project that has very little economic impact on the City. Rebecca Huss said that if the City hates the project and the developer gets mad and goes away, Jones and Carter has to decide whether to follow the developer or the City. John Champagne asked Rebecca Huss whether her argument is that 1) because it has been done before in the past, there is no reason that they should not do it now, and 2) it would be foolhardy for Jones and Carter to do anything other than what is absolutely in the best interest of the City, because so much is at risk in regard to their contract and relationship that they have with the City. Rebecca Huss said that her statement was misinterpreted and said what she actually meant was that it would not be in Jones and Carter's best interest to act in a way that is not in the City's best interest and said that most people act in their best interest.

Dave McCorquodale said that he took no issue and said that he thinks a great deal of Jones and Carter and he believes that, as a design professional, he understood the responsibility that they have as a professional designer and certainly as engineers. Dave McCorquodale said that the idea that Jones and Carter would not be doing what they said they are going to do would be so

low in probability that he did not see any issues at all. Dave McCorquodale said that he would think differently if they were looking at two ongoing projects, where they were about to enter into an agreement with hundreds of thousands of dollars in engineering fees for years and years, as opposed to designing a small 10-12 home community.

John Champagne said that from a practical standpoint he agreed with Dave McCorquodale, it is the potential of being looked upon as being less than the best way to do these things. John Champagne said that it was projecting a less than transparent and potentially unethical relationship. John Champagne said that he agreed with both Rebecca Huss and Dave McCorquodale's premise. Dave McCorquodale asked what would be the solution for John Champagne, to back off of the City portion or the project portion. John Champagne said that anytime Jones and Carter is doing City work he would contract another to evaluate. Rebecca Huss said that a third party could ultimately cost the City more money, because it would lead to billable hours for them to get in touch with the City's Codes to know whether they were reviewing our plans properly. Rebecca Huss said that when Katherine Vu came on line she was billing for reviewing the Code of Ordinances to make sure all the requirements included, because they are different for each City. Rebecca Huss said that ultimately, the fact that Jones and Carter brought up the matter and we are discussing this is the transparent part. John Champagne said that it would be foolhardy for Jones and Carter not to bring the subject up to City Council.

Dave McCorquodale asked what type of action they were considering. Mr. Roznovsky advised that there is a letter included in the Agenda Pack from him, signed by the developer, which would acknowledge the disclosure of the potential conflict of interest. Mr. Yates said that the City Attorney has just advised that they make a motion that they do see a conflict, or that you do not see a conflict of interest. Rebecca Huss said that they do acknowledge the conflict of interest and accept the conflict. Mr. Forester said that the purpose of the letter was to advise the City Council of the conflict of interest, so obviously there is a conflict, but the question is, does the City Council feel that this conflict impairs their ability to serve the City as they have in all other matters. Mr. Foerster said that they have an obligation to notify both clients of this information. Mr. Foerster commented that in his experience upon other occasions, depending on the project, City Engineers have done work for both the developer and the City. Mr. Foerster said that the developer sometimes comes to the City Engineer, because they think it will get

done right when it is done by the City Engineer and they want it done right to the City's specifications, so that is the reasoning that some City Councils use. Mr. Foerster said that Jones and Carter's obligation, as he read their ethics requirements, are similar to those that an attorney has. Mr. Foerster said that for years he used to represent ESD #2 and then he became the City Attorney for the City of Montgomery, which he had to bring to the attention of both of his clients. Mr. Foerster said that at that time it did not make any difference until there was a sales tax issue and at that point, ESD #2 released him from his obligation and hired another law firm to do the work, otherwise he would have had to step back from representing both sides. John Champagne said a potential exists for a conflict. Mr. Foerster said the exposure is primarily on Jones and Carter, because if they do something that is perceived by either client to not be in the best interest of the client, then they have to be accountable to that client. John Champagne said that the City would be culpable as well because we have approved that relationship. Mr. Foerster said that the City did not approve Jones and Carter doing anything that is not in the best interest of the City. John Champagne said that City Council has approved the potential conflict relationship.

After discussion, Dave McCorquodale moved to acknowledge the potential conflict of interest with the Star of Texas Seniors Development and the work that Jones and Carter is doing and to authorize the City to sign Jones and Carter's letter. Rebecca Huss seconded the motion.

Discussion: Rebecca Huss added that that we are placing our faith in Jones and Carter to do their job with the utmost attention to integrity that they have shown on other matters.

The motion carried with 3-Aye votes and 1-Nay Vote by John Champagne. (3-1)

6. Consideration and possible action regarding the request for paving of Mason Street as submitted by Bob Peel.

Mr. Peel was present for the discussion and thanked City Council for their service and time spent governing the City of Montgomery. Mr. Peel advised that Mason Street is about 300 feet right behind the Community Building, with one resident residing on it. Mr. Peel said that the street has not been paved since 1984, which is 34 years ago, by County Commissioner Bo Calfee. Mr. Peel said that he has been requesting that something be done about paving the

street because it has become a funnel for all the water that is flowing this way, north to south and goes under a home that was built in 1897. Mr. Peel said that the other streets around it have been paved many times and are higher than Mason Street, which makes it like a funnel. Mr. Peel said that you can't do anything worse for an old home than to have water flowing under the house. Mr. Peel said that this is probably something that should not have to come to City Council, but he was forced to come because he was told that the road was going to be paved for eight months. Mr. Peel said that he was told numerous times that the work would be done and Commissioner Mike Meador would take care of the road when he gets time. Mr. Peel said that nothing has been done. Mr. Peel said that he is coming to City Council to see if they are going to do the project, and asked that they advise if they are or are not going to pave the street. Mr. Peel said that if there is any opposition to the project he would like to know what it is.

Mr. Yates said that he has some new information from Commissioner Meador. Mr. Yates said that Commissioner Meador has stated that he is not going to be able to do the project, until next summer. Mr. Peel said that it seems odd to him that they can pave a section that is way over 1,000 feet, which runs on the west side of the City Park to accommodate a parking lot, because this is a street that is traveled through. Mr. Peel said that there is more traffic that goes on Mason Street than goes on Houston Street. Mr. Yates said that the Montgomery EDC paid for that project.

John Champagne said that he thought there was a solution for this project, and said that he was not at liberty to engage in the matter. Mr. Peel said that he was hesitant to come to the City.

Rebecca Huss said that there were options that they could discuss with Montgomery County and it would be a benefit to let staff have some time to work things out. Mr. Yates said that he thought that they could work on the drainage. Rebecca Huss said that if Mr. Peel was worried about the water going from north to south, then paving would not really change that and the drainage improvements might do a better job. Mr. Yates said that they could do some drainage work. John Champagne said that he thought that there was a solution for this matter before next summer.

Mayor Countryman asked if a motion was required. Mr. Foerster stated that he did not know what the motion would be other than directing Mr. Yates and staff to continue looking for a solution that will resolve this problem before next summer. John Champagne said that it needs to be done in a timely way.

No motion was required for this item.

7. Consideration and possible action regarding scheduling a Public Hearing for rezoning of the property located at 1005 Old Plantersville Road, Montgomery, from R1-Single Family to I-Industrial to be held on June 26, 2018 at 6 p.m. as requested by Robert L. Fisher.

Mr. Yates advised that Mr. Fisher had passed away and Mrs. Theresa Fisher, the actual occupant, is present. Mr. Yates advised that this is a situation where the original zoning of the City split this piece of property into one half Industrial Use and one half R1 – Single Family Residential Use. Mrs. Fisher is wanting to sell the property and the prospective buyer wants it for all Industrial Use. Mr. Yates said that the more recent 2017 Zoning Maps, he believed, are in error in their representation of this area, by not following the 2003 map, which is called a “scriveners error”, since there was no action since the 2003 map, that clearly had half of the property zoned Industrial, on the western side with the barn and the road that leads up to the barn, and the eastern half of the property zoned Residential. Mr. Yates said that Mrs. Fisher provided him a letter from the Mayor at that time, with a request from her husband to the Mayor about the use of the property. Mr. Yates said that the Mayor’s letter states that both uses would be within the Zoning Ordinance, but Mr. Yates said that he did not know what “both uses” meant, because it does not describe what the request was for both uses. Mr. Yates said that a clear way of resolving this matter is to either zone the property or they could do a Specific Use Permit, so that anyone that is concerned about the Industrial Use could get an answer by the Specific Use Permit. Mr. Yates said that they could use a Special Use Permit that is essentially an ordinance that specifies how the property can be used. Mr. Yates said that the most recent example is a Special Use Permit that they did for firewood sales on FM 149, which only had one allowable use for the sale of the firewood, along with specifying other requirements.

T. J. Wilkerson asked if the Special Use Permit would be seasonal. Mr. Yates said that it could be as long and the term of the Permit provides and could be tied to the specific person that

purchases the property or to a time frame, but he did not think that they would want to use a time frame. Dave McCorquodale said that Special Use Permits always seem to be cut out for uses other than a particular situation like this, because he did not see how a business owner could plan and said that it just needs to be the correct zone.

Mr. Yates said that they could go ahead and call the Public Hearing for Industrial Use and then City Council could change their mind in the course of their action and go to just Commercial Use.

Mrs. Fisher advised that she would like to say that she and her late husband purchased the property in 2003, when they thought that it was all Light Commercial, which was how it was on the deed as one tract, and how it got split, she had no clue. Mrs. Fisher said that she can't sell the property with Residential Use on it, because no one is going to purchase it. Mrs. Fisher said that she has been a Realtor for 38 years, and she did not think that anyone would build their dream home with a railroad in the backyard. Mrs. Fisher said that the Appraisal District is taxing her on all of it as Commercial Use. Mrs. Fisher said that she had put the property up for sale as Commercial property. Mrs. Fisher said that they always thought that the property was Commercial Use, which was why they built the barn so that her husband could restore old vehicles. Mrs. Fisher said that now that her husband is deceased she does not need or want the property and it is costing her a lot of money to keep the property. Mrs. Fisher said that she can sell the property if it is all Light Commercial, which is how she listed the property, until she found out the property was split.

John Champagne asked Mr. Foerster about the legal or actual description of the property. Mr. Foerster said that Mr. Yates advised that the property has the two uses. John Champagne asked if the information has been researched. Mr. Yates said that they have gone back to the original zoning map. Mr. Foerster said that what City Council has to do tonight is to determine if they want to call a Public Hearing on this issue, they are not being asked to vote on the matter, they are simply being asked to have a Public Hearing as part of the process.

John Champagne moved to schedule the Public Hearing to consider the rezoning of the property at 1005 Old Plantersville Road to be held on June 26, 2018 at 6 p.m. at City Hall. T.J. Wilkerson seconded the motion.

Discussion: Rebecca Huss said that she did not feel that they really needed to have a Public Hearing at all, because they have heard from residents in the area that having Industrial property in a Residential District does not do them any favors. Rebecca Huss said that basically the choices are to do nothing or zone it as Industrial and she did not think that the choice that the landowner is asking for does the City any favors and it does not do the neighbors any favors. Rebecca Huss said that if they are to do anything, she thought it was more along the lines of after the property sells, if the owner comes in and says they would like to do something with the property and they have an exact plan and we give them a Special Use Permit that keeps them within millimeters of the exact plan, that is something that they can live with. Rebecca Huss said that the use would have to be compatible with the Residential District. Rebecca Huss said that if they go with an Industrial Use, they have no control of what the property ends up with, because if the use is on the approved list of uses for an Industrial Zone, that is what you could have there in this Residential District, whether it is by a railroad track or not, so she felt that they were wasting money by setting a Public Hearing. Rebecca Huss said that it was not the governments business to rezone things to make people money, it is the governments business to try and figure out ways to make the community a place that the residents want to live. John Champagne asked if Rebecca Huss' premise was that two people speaking against is enough. John Champagne stated that Rebecca Huss said that a Public Hearing is unnecessary because we have already heard that it is not acceptable. Rebecca Huss said that she has also spoken to her other neighbors that have not spoken here today, because this is actually in her backyard and she is aware of the other Industrial Use property, of which was referenced by both of the people that spoke here, and again it is a public nuisance, a public nuisance legally and actually, that the City has not done a good job of regulating. Rebecca Huss said that they are wasting money. John Champagne asked what money they were wasting. Rebecca Huss said that the City has to send out legal notices. John Champagne asked what the cost was and was it burdensome. Mr. Yates advised the cost of the notices is borne by the requestor. John Champagne said then that goes away. Rebecca Huss said that she did not feel that it was necessary, when again the solution is something that is not potentially suitable for the neighborhood. John Champagne said that instead of filibustering why not vote on the motion.

Dave McCorquodale said that he would like to add one thing, he did not feel that Industrial Zoning has any place in a town that is one square mile and said that he is totally opposed to any new Industrial Zoning in the City, ever. Dave McCorquodale said that he did think that

the Public Hearing plays the part, because that is where people get to come back and make comments, even though it seems like it is being done tonight. Dave McCorquodale said that is the way that the items are set up, where all they are talking about tonight is setting the Public Hearing, they can't talk about the merits of whether or not it is good, bad or indifferent. Dave McCorquodale said that if the landowner is willing to pay for the Public Hearing that the public can come to, then he is confident that there are some public that would love to be given a few minutes to speak on more than what we have heard tonight. John Champagne said that his point is the person has every right to request the Public Hearing, and everyone else has a right to refute it, which is where he is at.

Mayor Countryman called for a vote regarding scheduling the Public Hearing for rezoning of the property located at 1005 Old Plantersville Road, Montgomery, from R1-Single Family to I-Industrial to be held on June 26, 2018 at 6 p.m.

The motion carried with 3-Ayes and 1-Nay by Rebecca Huss. (3-1)

8. Consideration and possible action regarding scheduling a Public Hearing for a Special Use Permit to allow a multi-family development to be located on property zoned for Industrial Use, at 2500 Lone Star Parkway, Montgomery, to be held on June 26, 2018 at 6 p.m., as requested by Star of Texas Senior, Ltd. Property located on the northwest side of the Lone Star Community Center.)

Mr. Yates advised that this property is currently zoned Industrial but it does not list Multi-Family Use as a permitted use, and the last sentence of the schedule provides that any use that is not specifically listed could be applied for as a Special Use Permit. Mr. Yates stated that the owner of the property, Mr. Larry Jacobs was present at the meeting.

Mr. Matt Fuqua, Vice President of Blazer owner and operator of the Heritage Apartments located at 325 Flagship Blvd, advised that they have an application to the State for an award of tax credits for their Multi-Family development Heritage Seniors Development, Phase 2. Mr. Fuqua said that this item is on the agenda for another tax credit applicant, Star of Texas Senior, Ltd., for Multi-Family Use within an Industrial Use area. Mr. Fuqua said that the request was made on behalf of the proposed developer of the property and not the property owner. Mr.



Fuqua said that there were several reasons that he believed that a Special Use Permit is not the appropriate way to change the proposed land use of a tract of land. Mr. Fuqua said that his development faced a similar issue when Heritage Apartments was under development and at that time their site was zoned commercial, but the Zoning Ordinance allowed their proposed Multi-Family Use because of cumulative zoning. Mr. Fuqua advised that the Zoning Ordinance was changed in 2014 to disallow Multi-Family in that zone, so they went through the rezoning process, rather than be a nonconforming use. Mr. Fuqua said that the rezoning process is a public process with notice to nearby property owners, which provides sufficient time and notice to enable public consideration of the impact to surrounding properties. Mr. Fuqua said that a Special Use Permit is a conditional waiver of the zoning that is typically used for a specific use and length of time. Mr. Fuqua stated that the Zoning Ordinance requires that a landowner request a Special Use Permit and that the Planning and Zoning Commission conduct a study and present a report to City Council concerning the effect of the proposed use, character and development of the neighborhood. Mr. Fuqua stated that it appears that the tax credit applicant submitted the request for a Special Use Permit, but the ordinance requires the property owner to make the request and additionally it appears that if a Special Use Permit were to be issued, that in the event of a casualty of more than 50 percent of the value, the site would have to be restored in conformity with the regulations in the district in which it is located. Mr. Fuqua said that for Heritage Apartments it was clear that the Multi-Family Use of their project was permanent, so they went through the rezoning process. Mr. Fuqua said that he believes that for the Star of Texas or the proposed permanent use of the future owner is to be nonconforming and rezoning is the proper way for Multi-Family Use to be permitted in a zoning district where it is otherwise not allowed. Mr. Fuqua said that his request was that City Council stay consistent with established policy by requiring the current property owner to request a change to the zoning of the property so the proposed permanent use is permitted as opposed to proceeding with a Special Use Permit.

Mr. Yates stated that as to the ownership, he failed to include with the package, but he had received an email from the property owner, Larry Jacobs, who has given the applicant his permission to speak on his behalf regarding his property.

Mr. Emanuel Glockzin, Jr., Developer, advised that they are here requesting a Special Use Permit for a Multi-Family senior housing development where the property is currently zoned

as Industrial Use and he is requesting that City Council schedule a public hearing for a Special Use Permit, which is allowed in the City ordinance.

Rebecca Huss asked Mr. Yates to give an overview of the difference between the two possibilities, Special Use Permit and rezoning, in terms of City policy and value on the long term. Mr. Yates said that he would say that the value for the long term would be a zoning amendment because the Zoning Ordinance has a specific description of the Multi-Family Use. Mr. Yates said that the only reason they were using the Special Use Permit was because of the sentence in the Zoning Ordinance that states that if there is no listing of a specific description of a scheduled use, the Special Use Permit could be requested. Mr. Yates said that the zoning amendment would be clearer. Dave McCorquodale said that the Multi-Family classification exists so why would they do a Special Use Permit for a zoning that they already have established. Mr. Yates said that they probably asked for it because he pointed out that section of the ordinance and he might have thought that it would be harder to get a true zoning change. Mr. Yates said that he thought that it would be harder to do a Special Use Permit, because it is essentially a negotiated development, whereas the zoning would be specific in the description and the details are already in the Zoning Ordinance, so they know what they would be getting with Multi-Family Zoning.

Rebecca Huss asked if it was possible to get things done for a Public Hearing on the same date, but for a different reason, Multi-Family Use instead of the Special Use Permit. Mr. Foerster said that you have to track the language of the Agenda item, so he is not sure that it is broad enough to consider rezoning tonight, it is specific to a Special Use Permit to allow Multi-Family development to be located on the property. Rebecca Huss asked if they would have to have four weeks to do all the proper notices. Mr. Foerster stated that City Council is going to have to have a Public Hearing for either rezoning or a Special Use Permit. Rebecca Huss asked if they could direct staff to move forward with the proper notifications and go in the official direction at the next City Council Meeting to set the Public Hearing for June 26, 2018. Mr. Yates said that they could not do that because what is in the notice is that the Public Hearing date and time, which is not known until City Council actually sets the date and time. Mr. Yates said that he could have the item on the agenda for the next meeting in June, which would cost them two weeks' time. Rebecca Huss said that she would rather go with something that is

better, and especially if it does not cost more and does not cost the developer more time, and it seems like it is a good solution for everyone.

Mr. Foerster said that one of the things to consider, as he understands the project, is that the Special Use Permit will be limiting the use to that particular project alone, if you rezone to a Multi-Family Residential project, that could in some time in the future be reconfigured as an apartment complex or some other duplex or triplex type of facility, that would still be within the scope and definition of Multi-Family Use. Mr. Foerster advised there would be more flexibility for the property owner in the future to change the definition of Multi-Family, but if you are targeting this a Special Use, they would know that is the only use that it can be used for and if some new property owner wants to change the use, such as a duplex or triplex, they would have to come back to City Council. Rebecca Huss said that the cumulative zoning was removed to protect the downtown area and some important corridors, but she did not think that anyone was thinking that apartment buildings in Industrial Use areas were what they were trying to cut out.

Dave McCorquodale asked Mr. Glockzin if his application to the State was for age or income restricted and asked if he could explain his project. Mr. Glockzin advised that this would be a restricted senior housing development, age 55 and older. Dave McCorquodale asked if that had to be recertified every year with the State. Mr. Glockzin said that they have to certify with the State every year for 30 years, and they have a compliance area for 15 years and after 15 years you can get a waiver. Dave McCorquodale asked if the Special Use Permit would be tied to that specific project and they lost their accreditation from the State, or they decided in 30 years that they want market rate apartments, then that would be the trigger for the Special Use Permit and it would basically no longer be allowed. Mr. Foerster said that the Special Use Permit is tied to that property and when that Special Use is no longer feasible because they lost their certification or whatever the reason might be, the next property owner would go back to the original use, Industrial Use, but if they want to do any other Multi-Family Use they would have to come back to the City. Rebecca Huss said that they already went through that with Blazer, in a currently more prominent area of the City, which has been a risk that the Planning and Zoning Commission and City Council has been willing to accept. Mr. Yates said that Montgomery County has a senior citizen housing place by the Lone Star Community Center.

John Champagne asked Mr. Fuqua why he would rather have a permanent rezoning as opposed to a Special Use Permit. Mr. Fuqua said that the reason he was here tonight was to state on record with the City the process that they went through from a zoning perspective. Mr. Fuqua said that the comment about a Special Use Permit, while the Special Use Permit would have a Public Hearing, he did not believe that the adjoining landowners are required to be notified. Mr. Yates advised that the adjoining property owners are required to be notified. Mr. Foerster said that whether it is the law or not, it has always been his recommendation to City staff that they notify any landowner, at least within 200 feet, about the affected property. John Champagne asked Mr. Fuqua why he would opt for a rezone as opposed to a Special Use Permit. Mr. Fuqua, speaking on behalf of Heritage Development, like Mr. Glockzin mentioned, as a developer and owner of the property, one of the benefits of this program is the long term ownership of the property. Mr. Fuqua said that every year you have to keep the property stable, through a Special Use Permit, if something were to happen to that property, as he mentioned if over 50 percent casualty to the building, based on the law of the ordinance, that property would revert back to Industrial. Mr. Fuqua said that the reason that they chose to rezone was because they have an obligation of long term ownership to investors and the State of Texas to receive an annual tax credit for a period of 10 years. Mr. Fuqua said the reason that they rezoned was a huge liability of having permanent control of the property.

Rebecca Huss asked Mr. Fuqua why he cared what Mr. Glockzin did, because that would be a risk that they are taking with their tax credit. Mr. Fuqua said that they are in the competitive process, as well, he has an application currently competing. Rebecca Huss asked if Mr. Fuqua thought that only one of them would receive the tax credits. Mr. Fuqua said that based on a report that has been published by the State, only one development will be funded.

Dave McCorquodale asked if the development behind the Lone Star Community Center, with the Senior Apartments, required rezoning, because presumably that would be in the same zone. Mr. Yates advised that property is zoned Multi-Family.

Rebecca Huss stated that she felt that rezoning the property to Multi-Family would be the best versus a Special Use Permit. John Champagne said that he agreed. Mr. Yates said that would require him to place an item on the next City Council Meeting Agenda.

Mr. Foerster said that he would suggest, since that is the feeling of the majority of City Council, that City Council decline to schedule the Public Hearing for the Special Use Permit.

Dave McCorquodale moved to decline to schedule the Public Hearing for the Special Use Permit. John Champagne seconded the motion.

Discussion: T.J. Wilkerson stated that at the next meeting they will have an agenda item listing it as scheduling a rezoning Public Hearing versus the Special Use Permit. Mr. Yates said that was the direction that he was getting from City Council to place on the agenda as a rezoning item.

The motion carried unanimously. (4-0)

9. Consideration and possible action regarding reappointment of Municipal Court Judge Robert Rosenquist and Associate Municipal Court Judge Gary Scott.

Mr. Yates advised that both of the Municipal Court Judges were in attendance. Judge Rosenquist requested that City Council reappoint both himself and Associate Judge Gary Scott. Mr. Foerster asked how long Judge Rosenquist has served as the Municipal Court Judge. Judge Rosenquist advised that he has served as Judge for the City of Montgomery for four years, and before that he was the Prosecutor.

John Champagne moved to reappoint Robert Rosenquist as Municipal Court Judge and Gary Scott as the Associate Municipal Court Judge. Dave McCorquodale seconded the motion, the motion carried unanimously. (4-0)

10. Consideration and possible action regarding appointment of a member of City Council to serve on the Montgomery Economic Development Corporation to fill the position held by past Mayor Kirk Jones, for the term expiring January 1, 2019.

T.J. Wilkerson moved to nominate Rebecca Huss to serve on the Montgomery Economic Development Corporation to fill the position held by past Mayor Kirk Jones, for the term

expiring January 1, 2019. John Champagne seconded the motion, the motion carried unanimously. (4-0)

Mayor Countryman congratulated Rebecca Huss on her appointment to the Montgomery Economic Development Corporation.

11. Report regarding backflow prevention assembly by City Engineer.

Mr. Roznovsky advised that he distributed packets this evening to City Council for their review. Mr. Roznovsky said that his goal is to introduce the topic to City Council and to have them review the information for discussion at the next City Council Meeting and potentially at a Workshop and then action to follow later.

Rebecca Huss asked if there was a possible way to make this affordable to home owners if they do adopt the ordinance. Rebecca Huss said that she has seen them before, and they are ridiculously expensive, so if they decide that it is something that they want to do it would be nice if it was not so expensive. Mr. Roznovsky advised that this applies to non-single family home owners. Mr. Roznovsky said that the main point of all this is that what the State defines as high health hazard has protection from backflow for potential contamination. Rebecca Huss asked if leaving a hose in her pool was not a big risk. Mr. Roznovsky stated that a hose in a swimming pool, typically has backflow preventers on the hose bibs and irrigation systems also do too. Mr. Roznovsky said this is intended for multi-family, commercial and industrial and those users that have a risk. Mr. Roznovsky said that it is common that municipalities have codes and rules like this. Mr. Roznovsky said that in recent years all new development has been required to install them, so it is not anything new, but the main difference is addressing existing development, which there is about 65 connections that do not have backflow prevention devices that could be considered a high health hazard.

Mr. Roznovsky said that the second part of this is not only the installation, but the annual testing certification and said that right now there is not a plan in place for testing and certification being performed on an annual basis. Mr. Roznovsky said that typically municipalities will put that on the property owner, either the City does it as part of their service and charges them similar to a grease trap inspection, or the property owner is required to submit

the testing records and the City keeps record of it. Mr. Roznovsky said that it is easier for the City if the City handles the process and puts the testing charge onto the customer based on the size and type of the pipe and is around \$80.

Mr. Roznovsky said that he has provided a summary memo describing the ordinance and a handout from TCEQ that is an excerpt from their rules regarding cross-connections and backflow prevention devices. Mr. Roznovsky said that the City already does cross-connections as part of the Building Code Inspections. Mr. Roznovsky said that the next tab is a sample information handout to provide to customers, and the last item is a draft ordinance for review. Mr. Roznovsky said that the customer's initial cost is going to be around \$1,000 to install a backflow prevention device and there is an annual cost of approximately \$80 for the inspection. Rebecca Huss asked if there was a list of names of people that are expected to have to install the backflow prevention device. Mr. Roznovsky said that most of the shops downtown do not have backflow prevention devices, but the antique stores and quilt shops are not on the list, it is the restaurants, auto repair and those types of businesses.

12. Buffalo Springs Bridge Report by City Engineer.

Mr. Roznovsky advised that the rain over the weekend was a big hindrance to the contractor, so on Friday when they had the last section of the wall formed up and ready for the Tuesday morning pour, as of this afternoon, only about eight inches of the top of the wall was showing and all the rest of the wall was under water. Mr. Roznovsky said that the contractor had pumps out there and they were trying to pump out the water.

Mr. Roznovsky said that overall, as they discussed at the last meeting, they are 37 impact days where the contractor was unable to work due to weather. Mr. Roznovsky said that some of those days are assumed and included, based on the time of year, but they are still looking at about 20 additional days that will be recommended to be added to the contract as a Change Order. Mr. Roznovsky said that at the last meeting they had discussed the bridge and the July 10<sup>th</sup> timeframe was when they had the striping and things going, which has most likely been moved back to the middle or end of July with the recent setback. Mr. Roznovsky said that they continually have conversations with the contractor and they are seeing if there are ways to get

the road opened for use, but not risk the quality of construction. Rebecca Huss said that she would rather have people upset because of the delay and have the bridge last for 50 years.

Mr. Roznovsky said that one question that they asked was if they could use stabilized fill to get the road up and running while the contractor is working around the road, but the stabilized fill costs \$85 more a yard and the amount is 1,600 yards, so they would be looking at \$100,000 for that option. Rebecca Huss said that seems like a lot of money. Mr. Roznovsky said that as of right now they are scheduled for Thursday morning, so hopefully they can get the water pumped out and the area dried.

**EXECUTIVE SESSION:**

The City Council reserves the right to discuss any of the items listed specifically under this heading or for any items listed above in executive closed session as permitted by law including if they meet the qualifications in Sections 551.071(consultation with attorney), 551.072 (deliberation regarding real property), 551.073 (deliberation regarding gifts), 551.074 (personnel matters), 551.076 (deliberation regarding security devices), and 551.087 (deliberation regarding economic development negotiations) of Chapter 551 of the Government Code of the State of Texas. (There are no items at this time.)

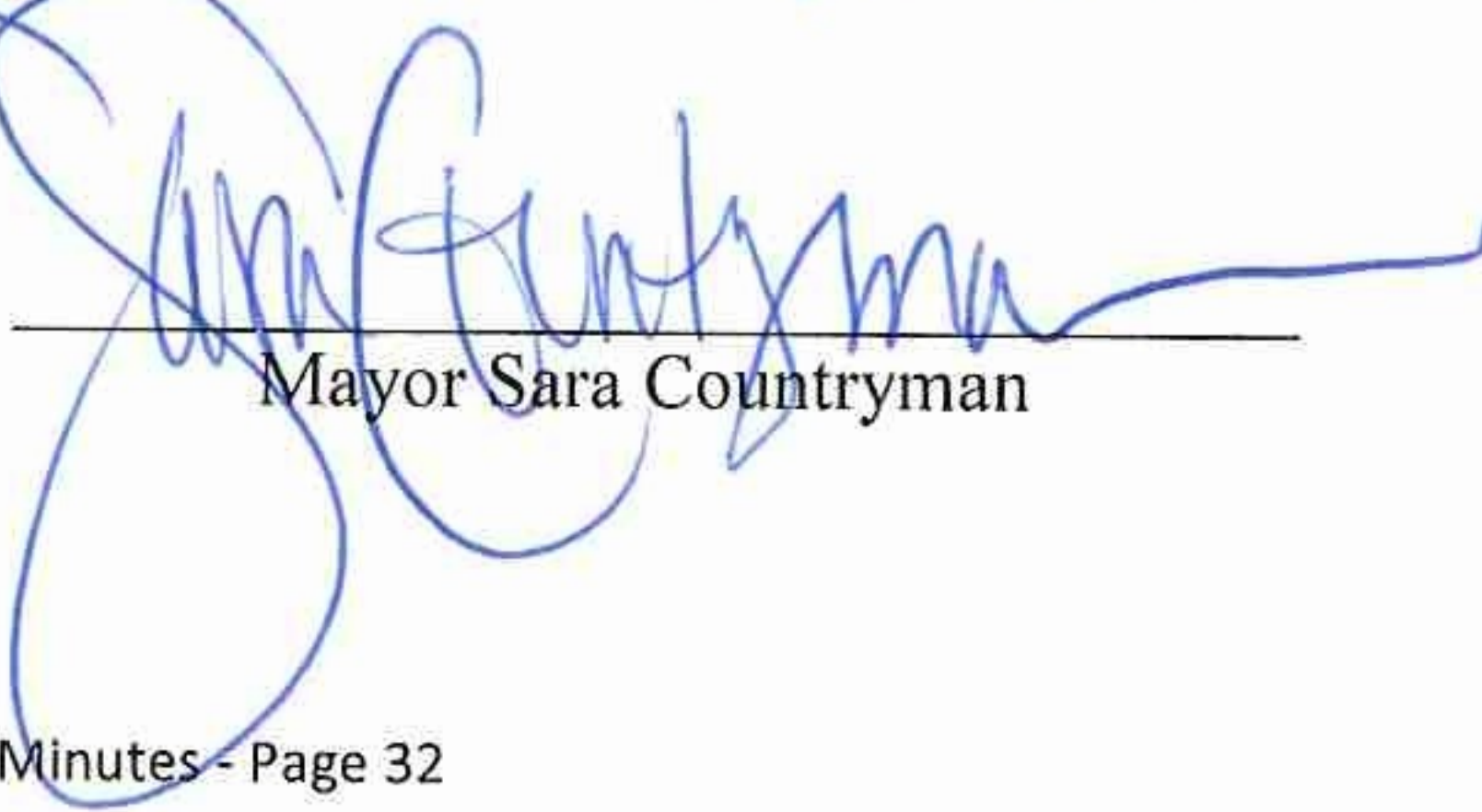
**COUNCIL INQUIRY:**

Pursuant to Texas Government Code Sect. 551.042 the Mayor and Council Members may inquire about a subject not specifically listed on this Agenda. Responses are limited to recitation of existing policy or a statement of specific factual information given in response to the inquiry. Any deliberation or decision shall be limited to a proposal to place on the agenda of a future meeting.

**ADJOURNMENT**

Dave McCorquodale moved to adjourn the meeting at 8:39 p.m. T.J. Wilkerson seconded the motion, the motion carried unanimously. (4-0)

Submitted by:  Date Approved: 06/12/18  
Susan Hensley, City Secretary

  
Mayor Sara Countryman

