

MINUTES OF REGULAR MEETING

May 8, 2018

MONTGOMERY CITY COUNCIL

CALL TO ORDER

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

Present: Kirk Jones Mayor
 Jon Bickford City Council Place # 1
 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:

Also Present: Jack Yates City Administrator
 Larry Foerster City Attorney
 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.

Mrs. Jenny Stewart addressed City Council regarding the construction of a house on College Street. Mrs. Stewart read a letter written by her husband, Mr. Stewart, stating his concerns about changing the

flow of the 500-year flood plain with the construction of the structure. Mr. Stewart wrote that he has observed the water flow on that stream during the big storm, and said that the FEMA maps are wrong. Mr. Stewart wrote that during the last two big rain events, the storm surge was well outside the stream channel, several feet deep over the road and over the entire lot. Mr. Stewart wrote that the water was well over College Street and Kings Lane, and was flowing so fast that he could not cross it with a four-wheel drive vehicle. Mr. Stewart wrote that the builder has constructed a pad that is approximately five feet tall on the margin of the channel, which will create a restriction of the flow and will force water to the lot and to the house to the west and back water up to the south. Mr. Stewart stated that by building this thick pad, they have changed the elevation by five or more feet, which could be a recipe for disaster. Mr. Stewart wrote that he has over 37 years as a professional geologist with one of his specialties in fluid flow and fluvial systems, and said that he can speak with confidence that the City is creating a significant issue by constricting the flow to the degree that they are. Mr. Stewart wrote that the flow in the stream has increased significantly over the past five years due to the increased runoff created by upstream construction. Mr. Stewart wrote that he was very concerned about the potential for flooding that this pad and house will create, but his bigger concern is that this new house and the house adjoining to the west will be at risk of being completely washed downstream, and if people are in the homes they could easily see fatalities. Mr. Stewart closed his letter by stating that he would be happy to meet with the City regarding College Street.

CONSENT AGENDA:

1. Matters related to the approval of minutes for the Public Hearing and Regular Meeting held on April 24, 2018.
2. Consideration and possible action regarding adoption of an Escrow Agreement by and between the City of Montgomery and Thomas Claire Investments, LLC, Development Number 1802 (Montgomery State Farm Tract).
3. Consideration and possible action regarding scheduling a Special City Council Meeting to be held on Tuesday, May 15, 2018 at 6 p.m. to canvass the May 5, 2018 City Election results and administer the Oath of Office for the Mayor and City Council Places 2 and 4.
4. Consideration and possible action regarding adoption of the following Resolution:
A RESOLUTION OF THE CITY OF MONTGOMERY, TEXAS, ESTABLISHING THE PLANNING AND ZONING COMMISSION TERMS AND POSITIONS FOR THE EXISTING MEMBERS OF THE PLANNING AND ZONING COMMISSION IN ACCORDANCE WITH CITY OF MONTGOMERY CODE OF ORDINANCES, DIVISION 2, SECTION 98-51, ENTITLED "TERMS OF OFFICE."

Dave McCorquodale moved to adopt the Consent Agenda as presented. Rebecca Huss seconded the motion, the motion carried unanimously. (5-0)

CONSIDERATION AND POSSIBLE ACTION:

5. Presentation of the development plans for Anchored Properties, for McGinnis Lane Tract as submitted by Blaine and Crystal Ward.

Mr. Yates advised that this is an informal presentation and stated that there have been no plans submitted to the City regarding this project. Mr. Yates advised that this is only a preliminary discussion, which was also presented to the Planning and Zoning Commission last week.

Mr. Blaine Ward advised that they had recently purchased a parcel of land at the dead end of McGinnis and they are looking at developing an RV Park with 40 sites. Mr. Ward advised that a considerable amount of the property is currently in the flood plain, and a small part is in the 500-year floodplain and a small part of the property is in the floodway, with the creek running behind the property. Mr. Ward said that their plan is to dig a large pond and to use the fill from the pond to build up the land high enough so that they can put in some RV pad sites and not worry about flooding. Mr. Ward said that they are trying to get some feedback on the concept before they put in any more money into getting an actual plan.

Dave McCorquodale asked the Wards' what type of business plan they were thinking of for the RV Park, and what type of customers were they thinking of attracting; what will draw them to their location and how long of a stay do they envision them staying, long term or short term. Mr. Ward advised that would depend on the person and said that they would not be opposed to them staying long term. Dave McCorquodale asked if this would be inside the City limits. Mr. Ward advised that $\frac{3}{4}$ of the property was inside the City limits, and he has spoken to Mr. Yates regarding annexing the rest of the property. Mr. Ward stated that the plan right now is to tap into the City's sewer system. Dave McCorquodale said that he did not know if there were codes related to RV Parks.

Jon Bickford asked if this was an RV Park or a Mobile Home Park. Mr. Ward said that it would be an RV Park, and said that more and more people are staying in RV's long term. Jon

Bickford asked what the difference was between a Mobile Home Park and an RV Park. Mr. Ward said that they can easily move an RV out. Mr. Yates said that City Council would approve this type of development as a Special Use Permit and they would approve the layout of the RV Park.

Dave McCorquodale said that one of the things that happens in the RV world is where people like to domicile, and said that it was advantageous for a lot of people to stay here from November to May and then they move on to cooler climates. Dave McCorquodale said that there will be a lot of infrastructure and site improvements.

John Champagne asked Mr. Foerster, in regards to the City and its involvement in a private enterprise, an entrepreneurial effort, the City's ability to have influence, other than providing what the City provides typically, utilities and police protection, this couple can pretty much do what they want. Mr. Foerster advised that he could not recall if the City has any regulations for RV Parks. Rebecca Huss said that Mr. Yates advised that they would have to have a Special Use Permit for the land use. John Champagne said that he was not concerned about the business model and potential for profit, he wanted to know if the City's mandate to bring about the utilities that they expect and as mandated by the Code to provide and the Special Use Permit, other than that, he wanted to know what would be the City's involvement. Mr. Foerster said that the only involvement of the City would be to make sure that the development complies with the Building Codes, Subdivision Regulations and the health, safety and welfare of the City. Mr. Foerster said that in terms of getting involved in their business model, he did not know that the City would have any impact. Mr. Foerster said that there are a number of very popular RV Parks that are developing around the State, and said that Willis has two, one of which is extremely popular and very nice. Mr. Foerster said that, depending on how they go about developing and marketing the project, it might be a great model. Mr. Foerster said that the City is just obligated to take care of the infrastructure.

Rebecca Huss said that she thinks that the City also has to acknowledge the fact that it can go the other way, and that it affects them more than providing utilities. Rebecca Huss said that RV's deteriorate faster than mobile homes, so the annual recertification would be something that they would be looking at and also the impact to the residents that already live on McGinnis

and in that area. John Champagne said that he totally agreed with that statement by Rebecca Huss.

Dave McCorquodale said that he had asked about their business model because of interest, and said that the Wards' may be here for some guidance on how the City would feel about a Special Use Permit and maybe some of the inclusions to Rebecca Huss' point about the rules regarding the age of the RV. Rebecca Huss said that McGinnis is not a road that is in great shape, so is the City paying to upgrade the road and MLK, as well, in order to serve traffic that may or may not appear; that is another consideration that she thought they would have to acknowledge.

Jon Bickford asked how that property is currently zoned. Mr. Roznovsky said that the portion of the property that is inside the City is single family use. Mr. Roznovsky said that the reason the Wards' are coming to City Council is because an RV Park is not a normal use. Mr. Roznovsky said that their property would require annexation and rezoning with a Special Use Permit, drainage improvements and road improvements on McGinnis, because with the amount of traffic that is something that would have to be considered. Mr. Roznovsky said that the main point today is whether or not this project is something that the City would be interested in.

Rebecca Huss said that she was much more comfortable with having it as a single family development, but that is just her personal feeling. Jon Bickford said that there is risk because if they have to rezone it, they will have to have a public hearing, and people in the neighborhood could say they were against it, and 40 spots is 40 vehicles on a street that currently has about 10 vehicles. Jon Bickford said that in his mind it is going to be a rough road to hoe, only because they have to get sewer and water out there and the road has to be fixed, and asked how the neighbors feel about having the property become an RV Park. Mayor Jones asked if the Wards' have spoken to any of the neighbors. Mr. Ward advised that they have not addressed the intended purpose of the property, but they have spoken to some of the neighbors.

Mr. Foerster said that when Mr. Ward said that he would be building in the floodplain, he advised that there are FEMA floodplain regulations that they have to adhere to. Mr. Foerster

said that building or moving dirt in a floodplain can affect the dynamics of the flow of water, so they need to make sure that their engineer is aware of that and they work very carefully with them. Mrs. Ward said that was one of their largest concerns and part of the reason that they wanted to do an RV Park, so that they are elevated off of the ground. Mrs. Ward said that there is a lot of water that is shed on the property, which they are aware of because they have walked the property numerous times and have spoken to the neighbors. Mrs. Ward said that they would be willing to work with the City to do everything possible to do the project right, so that the property not only drains right, but better, benefits the neighbors uphill and does not complicate anything downstream.

T. J. Wilkerson asked if the Wards' would clear cut their property or leave some of the trees. Mr. Ward said that they would leave as many of the hardwood trees as possible. T.J. Wilkerson asked if they would have just one road in and out of the property, or would they develop another way in and out. Mr. Ward said that they only have one way in and out. T. J. Wilkerson asked if there would be a fence on the property or an entry way. Mrs. Ward said they have briefly discussed a gate for the property, but they have not decided.

Mayor Jones asked if they were close to Community Center Drive, where a second short road might be feasible. Mr. Ward said they have talked to the neighbor on the other side of the creek who is on Community Road about possibly having an access, by either getting an easement or purchasing a small portion of their property. Mr. Ward said that then they would build a bridge over the creek, and they would have a second entry access point. T.J. Wilkerson said that the creek is one of the things that floods and comes down FM 149.

Dave McCorquodale said that for him to give direction, he feels if the Wards' should demonstrate that they have a plan to make a nice development, improve the City, and show how they are going to interface with the local neighborhood and surrounding properties, and what they are going to do. Dave McCorquodale said that he was not opposed to the idea, he thinks that there are a lot of things that will need to accompany this for him to be in favor of the development, but at this point he was not opposed to the project.

T.J. Wilkerson asked how long the pad sites would be. Mr. Ward advised that they would be approximately 40 feet in length. Mayor Jones asked if there would be a concrete pad for each site. Mr. Ward advised that they would probably be gravel pad sites, with an asphalt driveway.

Rebecca Huss said that she was skeptical of the project. T.J. Wilkerson asked if there would be a main office where people would do laundry and a playground. Mr. Ward said that he had provided a rough draft of the project, and said that they would have a laundry facility, a small office and a park, and they are looking at doing a Texas shaped lake on the property.

John Champagne said that the demographics are pretty good for this project because older and younger people seem to be living in RV's, and because of technology they are not tied to one place, so they travel around.

Jon Bickford said he felt the biggest concerns were the FEMA and floodplain issue, and said that he was very concerned about the citizens close to that location and whether they would support going from a single family residential area to something that is significantly going to increase the traffic around their homes. Jon Bickford said that it would be a lot of people in a small place. Mrs. Ward said that given the area, they feel that the single family homes actually might be a bit of what the surrounding area is, and they would devalue as soon as they build.

Mayor Jones said that City Council has given the Wards' some homework and asked that they talk to the neighbors and definitely stay in touch with Mr. Yates and Mr. Roznovsky regarding the drainage and road issues, and at some point it will come back to City Council for a Special Use Permit. Mr. Ward said that if they do present something that is a top notch RV Park and they get info from the citizens around the property, and they do not have any objections regarding the type of development, would City Council allow this type of development.

Dave McCorquodale said if the Wards' do what they say they are going to do, he did not think that he would be opposed to the idea and would be open to the idea, but he would not vote yes without seeing something.

John Champagne said that he agreed with Dave McCorquodale regarding the information. Jon Bickford said that there would have to be public hearings for the Special Use Permit and if the citizens come in and say that they do not want this development, there is risk.

Rebecca Huss said that she was highly skeptical of the project, and she is very concerned; also the comment about building single family homes would devalue the property and not make money, because it is not the City's job to rezone land so that people can make money on the land. Rebecca Huss said their job was to do what is best for the City.

T.J. Wilkerson said that if they don't build the RV Park, they should build single family residences because they need them. T.J. Wilkerson said that the RV Park would go over better if they had more ways in than just McGinnis Road, because there are a lot of kids playing at the corner. T.J. Wilkerson said if they can do something about the water that is coming down the road, they probably would not have a problem, but if they get in there and they have the same or more problem with the water then they will have a problem. Mr. Ward said that they definitely plan on helping, because they have a lot of drainage issue on McGinnis.

Mayor Jones wished the Wards' luck on their endeavor.

6. Consideration and possible action regarding use of Fernland Park as a movie site.

Mr. Yates presented the information advising that the Fernland Board received a request from Molly Vernon and a film instructor at the Art Institute of Houston to use the cabin in Fernland Park for a movie that is being made by the Art Institute.

Mr. Yates advised that the Fernland Board drafted a proposed response to the filming question, which proposes that 1) they reimburse the City for out-of-pocket costs for a docent and a police officer, based on compensation for two employees; and 2) make a \$1,000 one-time donation to the City of Montgomery to be used specifically to preserve/maintain/improve Fernland Historic Park, and 3) the film project manager shall provide proof of liability insurance coverage for the project.

Rebecca Huss asked if the entire Park would be closed while they film for the two days. Mr. Yates said no, they would just close the part of the Park that they will be using for filming.

Jon Bickford asked, as a matter of policy, since the Park is owned by the City, so he is trying to understand how the Fernland Board fits into the decision on what the City does with the Park, and why would the request go to Fernland and not to the City. Mr. Yates said that he felt that it was a philosophical point about the use of the Park, rather than operations. Jon Bickford said that the City has taken responsibility for the Park, and if people want to use the Park, they should come to the City to request to use the Park. Jon Bickford said that if it is a philosophical issue, he has no problem with getting the Fernland Board's input on the matter. Jon Bickford said that one of the challenges of assessing costs, is when they say that the docents are \$10 per hour and a police officer is \$20 per hour, there are other costs such as the cost of the patrol car, etc. Mr. Yates said that they would hire an off duty police officer to work the event. Jon Bickford said that he wanted to make sure that these items are getting directed to the City for approval. Jon Bickford said that he feels like it is a great idea, and if the Fernland Board is good with the idea, they could get some good advertisement for the City. Jon Bickford asked about the \$1,000 and whether that was a reasonable request, and is the City requesting that if someone uses the Park across the street. Mr. Yates said that they do not rent the entire Park, but the Community Center is \$350 per day, so the \$1,000 is for two days. Jon Bickford said that he felt those funds should be kept by the City.

John Champagne said that he did not know how many soldiers they will have at the Park, but if in fact, there is any damage, who would be responsible for the repairs. Mr. Yates said that there would be a docent there to watch over the event. Jon Bickford said that in the response to the Board, he felt that they should state the people making the film will be responsible for any damages caused by them and their crew, support staff, etc. Rebecca Huss said that she would go further and state specifically that they are not to modify, alter or do anything to the appearance of any of the buildings or surroundings without the specific approval of the Fernland Board or a Board Member, because they are the ones that take care of the buildings.

John Champagne moved to approve the recommendation with all the caveats that have been discussed and allow the filming to occur, based on all the restrictions discussed. Jon Bickford seconded the motion.

Discussion: Mr. Mike Newman, Fernland Park Board member, stated that they have had discussions and advised that the Board did not want to act as a filter on the movies that come up. Mr. Newman said that the Board had a lot of discussions about what they are going to do on the property, whether they are going to have a lot of shooting guns and things like that. Mr. Newman stated that the land was donated by Phillip and Holly LeFevre, and Mrs. LeFevre is the one that is clearly opposed to firearms being used and killing folks, which is her concern. John Champagne asked if Mr. Newman meant someone being pretend killed in the movie or someone actually getting shot and killed. Mr. Newman said that she has a problem with enactments. Mr. Newman said that the City had researched this in the past and found that there was nothing legal in Mrs. LeFevre's argument. Mr. Yates said that he contacted Mr. LeFevre and told him about this and he said that he would not oppose it. Jon Bickford and John Champagne both stated that it was not Mr. LeFevre's park anymore, but understood that this was a courtesy. Mr. Newman said that the Board's involvement was that they are responsible for the 501(3)(c) and the gifts that are given. Mr. Newman said that the Board would like to stay in the picture, as far as determining what is going to impact the Park, and said that they will have someone there. Mr. Newman advised that it will be on a Monday when the Park is generally closed.

Mr. Newman said that he did not know if there would be a firearm discharged on the property, but said that his concern was that they have a library and a day care center next to them. Mr. Newman said that they had firearms discharged for a previous movie that they did not know was going to take place, which involved a gun battle. Mr. Newman said that if the library would have heard gunfire, they would have had a lockdown and called 9-1-1, which is why they want to stay involved. Jon Bickford said that if the surrounding area was made aware that the movie was going to occur and shots were going to be fired, there would be no problem. Jon Bickford said that if he heard a gun going off at his house and they did not know what was going on, they too would go into lockdown mode, and he thought that could be solved. Jon Bickford said that he was supportive of the Board making sure that the relics in the home are watched and the homes are taken care of, and he wanted to make sure that the requests for usage and the requests for funds go through the City. Mr. Newman said that he needs to improve the speed of the requests. Jon Bickford said that he knew the request went out to a few places, and in order to help with the process, he felt that there needs to be one voice that

says if you have a question about the use of the Park, you ask a designee of the City; then the City should go to the Board and advise them of the request. Mr. Yates said that is essentially what was done. Jon Bickford said that was sort of what happened because Mr. Foerster responded and so did several others. Mr. Newman said that the Board would just like to review the information and how it will affect the Park, and get a quick answer to the City on what they want. John Champagne said that he felt the Fernland Park Board was the primary advisory Board. Mr. Newman said that they did not want to delay anyone. Rebecca Huss said that she did not think that it should actually come to City Council if the Fernland Board feels it is bad for the Park. Jon Bickford said that it was not the Fernland Board's Park, and we need to understand that before City Council gives carte blanche permission for someone that does not own the Park to make a decision as to whether something goes on at the Park. John Champagne said that he would gladly give the Board that opportunity to make that call if they owned the Park, and he was ready for somebody to own the Park.

Mr. Newman said that when they make movies, a lot of the equipment is heavy and they have torn some things up in the past, so if the \$1,000 helps cover those repairs that will be good. Jon Bickford said that he was not agreeing to that, but what he was saying is they pay \$1,000 for the use of the Park, but if they damage anything that is in addition to that \$1,000. Mr. Newman advised that they have a \$1 million dollar policy.

John Champagne moved to approve the recommendation and allow the filming to occur. Jon Bickford seconded the motion.

Mayor Jones advised that there was already a motion on the floor.

The motion carried unanimously. (5-0)

Mayor Jones then called for a vote on the second motion, which carried unanimously. (5-0)

7. Consideration and possible action regarding setting a Public Hearing for amending the City of Montgomery 2017-2018 General Fund Budget.

Mr. Yates advised that this is primarily to allow for the Kroger 380 Agreement rebate that the funds need to be set aside from the 2017-2018 Operating budget, and because they are amending the budget it requires a Public Hearing to be held. Mr. Yates said that he is recommending that the Public Hearing be held on June 12, 2018, which would allow him to get as accurate as possible on the budget amendment.

Rebecca Huss asked if anything else needed to be amended besides the Kroger 380 Agreement. Mr. Yates said that he would be reviewing that information. Rebecca Huss stated that the reason that they have to amend the budget is because they did not include costs of the funds that they are rebating back to Kroger in the budget this year. John Champagne asked if this would be a line item in the budget. Mayor Jones said that was correct, it would be a new line item.

Rebecca Huss moved to schedule the Public Hearing for amending the City of Montgomery 2017-2018 General Fund Budget to be held on June 12, 2018 at 6:00 p.m. at City Hall. Jon Bickford seconded the motion, the motion carried unanimously. (5-0)

8. Consideration and possible action regarding selection of Engineer for Atkins Creek Project as required by FEMA.

Mr. Yates advised that Atkins Creek is located adjacent to the Terra Vista subdivision and experienced severe erosion during the Hurricane Harvey event. Mr. Yates advised that the severe erosion caused the water line and sanitary sewer line serving Terra Vista to get washed away and broke the pipes. Mr. Yates said the sanitary sewer line is flowing to a manhole that is being pumped out once or twice per week, and the sewage is being taken to a nearby lift station at little expense, which is 90% covered by FEMA.

Mr. Yates advised that in order to restore the sanitary sewer service to the neighborhood and to prevent future issues, the City is looking to construct an area crossing of both the water and sanitary sewer lines across the canal. Mr. Yates said that before that repair project can be approved by FEMA, a design needs to happen by an engineer. Mr. Yates stated that for each FEMA disaster, the City is required to go through a separate solicitation and hiring process for the engineer.

Mr. Yates advised that approximately one year ago City Council appointed the Grant Review Committee (Council Members Huss and Wilkerson, City Secretary Susan Hensley and himself), who met on May 2nd and interviewed the three engineers who submitted RFP's. Mr. Yates advised that the three firms that submitted the RFP's were: Jones and Carter, Goodwin Lassiter and Strong (GLS), and the TGB Group. Mr. Yates said that following the interviews the Committee recommends Jones and Carter, mostly due to their previous work regarding hydrology studies that the City knows will be required by FEMA, their involvement from the beginning of this project to now, and their depth of knowledge regarding the project itself. Mr. Yates said that Committee also discussed the possibility of hiring GLS for the Plez Morgan repaving project, but they will have to go out for a separate RFP for that project. Mr. Yates advised that the Plez Morgan Road project was added by FEMA after the Buffalo Springs Bridge was approved since it was used as the alternate route due to the bridge being out. Mr. Yates said that FEMA has agreed to pay for 75% of the Plez Morgan Repaving Project.

Mayor Jones advised that Mrs. Sarah Mabry asked to speak regarding this agenda item.

Mrs. Mabry asked to defer and listen to what Jones and Carter has to say because she may alter what she has to say.

Rebecca Huss said that during the process, the Committee went in with the idea that they did in fact want to look at other options. Rebecca Huss said that, as with the Buffalo Springs Bridge, the amount of drama and paperwork that FEMA requires, it takes an expert, and the only people that have done it before that applied are Jones and Carter. Rebecca Huss said that the other applicants said that they thought they could learn the paperwork. Rebecca Huss said that it seemed to her that such a large portion of the project hinged on paperwork, so it did not seem like the right project to branch out. Jon Bickford asked if the Committee actually spoke to the other firms. Rebecca Huss said that they all came in and presented their information.

John Champagne said that he reviewed the three proposals, and asked if cost to do the work was part of the criteria or was a metric used to evaluate these people. Jon Bickford said that can't be done. John Champagne asked to confirm that this review was based on what our

interpretation of their expertise and ability to get the job done. John Champagne said that a subjective number was put next to each one of those matrix, with Jones and Carter at 98 and the nearest other one was 90. John Champagne asked how much those eight points are worth in dollars. Rebecca Huss said that part of the problem is that they do not have a design completed yet. John Champagne said that, to him, it was counterintuitive to pick a contractor without knowing the cost. Mayor Jones said that is how they have to select them. John Champagne said that if he is an engineer, and he scores high enough, he has no competing factions. Mr. Yates said that they are billed per hour. Rebecca Huss said that on the flip side, if they go with the firm that they know can get the FEMA grant accomplished, versus firm B who has never done this process. Jon Bickford said that he addressed this issue years ago and the law does not allow them to do any different.

Mr. Foerster advised that the Texas Government Code provides that City Council selects their professionals, which would include accountants, auditors, engineers, lawyers and any other architects that fall in that category, based on their qualifications, and not based on the type that they are the lowest bidder. John Champagne said that he was not looking for the lowest bidder, he was looking for a competitive bid. Mr. Foerster said that they look at the first firm that you feel is the best qualified and see if you can negotiate something that is acceptable to the City, and if it is not acceptable, then you move to the second firm. John Champagne asked if they could ever go back to the first firm. Mr. Foerster said that if they had not approved anyone yet, yes they could then go back to the first firm. Mr. Foerster said that these are always subject to negotiation, and he did not think that the law prohibits that, but the law wants to make sure that City Council is not bound by picking the lowest bidder out of professionals. John Champagne said that anytime cost is not used as a factor as to what value is being brought by a contract or anything else, it is ridiculous.

Mr. Yates said that he felt that the Review Committee thought all that without verbalizing it, because of the discussion that they had about how far ahead Jones and Carter were in the process, and how much more it would cost if they went with other firms.

Mayor Jones said that Jones and Carter and Mr. Foerster were chosen by this same process. Mayor Jones said that they were not chosen by price, they were chosen by their qualifications. Mr. Yates said that he would say that the cost was considered, because they considered the

basic ability to do the job and that the other people could get up to speed, but it would take time. John Champagne asked if Mr. Yates could tangibly put a cost value to that decision. Mr. Yates said that what he thought was it would easily be 25% of the cost of the project. John Champagne said that if a citizen came up to him and they asked why City Council selected that firm and were they more cost effective, then we would be able to present to them a quantitative, tangible number. Mr. Yates said that he believed that to be so. Rebecca Huss said the Committee went into this with the intention of picking somebody else, but as they spoke about it and got the details, they felt that this was not the project to do that because there are so many risks and extra costs that the City would bear in doing that, it would not serve the City in this instance. John Champagne said that this is not an aspersion on what the Review Committee did in making the decision, and it is certainly not a negative thrown at Jones and Carter.

Mayor Jones asked Mrs. Mabry if she wanted to comment at this time.

Mrs. Mabry said that, she believed that Mayor Fox was here when she came to City Council in 2015 regarding her property, which is not adjacent to Atkins Creek, but contiguous. Mrs. Mabry said that she had really been on top of this, and wanted to thank City Council again, because as they all know Atkins Creek today is not what it was 10-20 years ago. Mrs. Mabry said that she thought what they have here is a problem that could explode. Mrs. Mabry said that the last time that she looked at Atkins Creek, it was washing away and eroding. Mrs. Mabry said that when the architect redesigned and reconfigured Atkins Creek from its natural flow, they consequently have a lot of other problems. Mrs. Mabry said that she really appreciates that the City is jumping on this matter. Mrs. Mabry stated that what she is personally concerned about is the Creek creeping toward her southwest corner of her 80-acre tract. Mrs. Mabry said that they all know the history of this situation, when the developer put in Terra Vista and covered up a natural flow of water, and then the City was kind enough to step up and make the correction. Mrs. Mabry said that she did not believe that Jones and Carter was the City Engineer at that time. John Champagne said that they were not the City Engineer at the time. Mrs. Mabry stated that was a mistake by the developer and then City Council realized that they probably did not watch over it as closely as they should have, at the time.

Rebecca Huss said that it has been mentioned several times that Atkins Creek is threatening FM 1097, so it is not just the City's business or private landowner's business, it means something to commerce for the City.

Mrs. Mabry asked Mr. Foerster where the liability lies if Atkins Creek does erode and some of the homes in Waterstone fall off into Atkins Creek. Mr. Foerster stated that he did not have all the facts, but he would generally advise Mrs. Mabry that it would not be the City's responsibility, it would lie with whoever the developer was that created the problem. Mrs. Mabry said that was what she thought.

Rebecca Huss said that at some point one of the engineers that was developing said that they had done their studies and once they put their stamp on the plans, their professional insurance covers any mistakes that they made, but presumably nobody made any mistakes if there are named storms, 500-year floods, that type of thing. Rebecca Huss said that since we have been through all that in the last few years, would that wipe everyone's responsibility away. Mr. Foerster said that it was difficult to give a yes or no answer, and said that if there is a reasonable expectation that there could be large storms, and we have had a lot of them in the last few years. Mr. Foerster said that information might need to be factored into what an engineer designs, but it is difficult to make a determination right now as to whether that would have played a part. Mr. Foerster said that he is not an engineer, and it is so difficult to factor in every possibly scenario that could affect upstream and downstream flow, and it is difficult for an engineer to over design something. Dave McCorquodale said that just walking around the City there are lots of opportunities, this one included, and he would hope that any solution that they would look outside of liability, and maybe more into the design of the project. Dave McCorquodale said that he is going to an urban stream revitalization and community design meeting and said that it would be nice to look at these projects, and they have heard a lot about the way the Creek used to be, but he would hope that any opportunities that are there to return the proper stream of the channel, and vegetation, because all of that works. Dave McCorquodale said that one of the things that he always hears with new development is that no detention is required on almost everything, and said it is because of our location next to the Lake, which he understands. Dave McCorquodale said that from a local standpoint, and he knows that you cannot plan for all these storms, but what you can do is create spaces that

are able to solve flooding, but do so in a manner that will improve the community, quality of life, and makes it a great place to live.

Mrs. Mabry said that the Corp of Engineers can go back to the 1930's and they can pull up the information on Atkins Creek, as it was in 1930, so you do not have to base it on her memory. Mrs. Mabry said that there is no vegetation, so she wanted to know if the work that the City is going to do with an engineer and FEMA, will it include restoration of Atkins Creek. Rebecca Huss said that it is just crossing over Atkins Creek with the pipeline.

Mr. Roznovsky said that this is a very similar situation to the Buffalo Springs Bridge, where the City has a right-of-way, and in this case a 26-foot wide easement, which is the only space that the government will provide funding for City work. Mr. Roznovsky said that upstream and downstream that waterline is on private property, so the only work that is included, which FEMA will approve, is work that is within the City's responsibility, which is the water and sewer line. Mayor Jones said that by the same token, the City does not have the right to correct Atkins Creek. Mr. Roznovsky said that was correct.

Mrs. Mabry said that she appreciated the City answering her questions, and said that they all know that it was a great mistake, which the City can't let happen again. Rebecca Huss said that one of the big lessons from the last couple of years and developing prior to that, is the vegetation is what holds everything down, and if you lose that you lose everything, and there is no natural stopping point.

Jon Bickford moved to approve Jones and Carter for the Atkins Creek Project. Dave McCorquodale seconded the motion, the motion carried unanimously. (5-0)

9. Consideration and possible action regarding adoption of the following Resolution:

A RESOLUTION OF THE CITY OF MONTGOMERY, TEXAS CITY COUNCIL IDENTIFYING THE INTERSECTION OF STATE HIGHWAY 105 AND FM 149 AS A SERIOUS DETRIMENT TO COMMERCE; CONVEYANCE OF CITY ACQUIRED LAND TO THE TEXAS DEPARTMENT OF TRANSPORTATION; REDESIGN OF STATE HIGHWAY 105 AND FM 149 INTERSECTION; AND A REQUEST FOR AN

UPGRADED PROGRAMMABLE TRAFFIC SIGNAL FOR STATE HIGHWAY 105 AND FM 149.

Mr. Yates advised that this was a request to TxDOT to, as soon as possible, place the right hand turn lanes on FM 149 on the north and south approaches to SH 105. Mr. Yates said that the key elements of the resolution are in Sections One and Four, Section One asks for the placement of turn lanes as soon as possible, even before the northern part of FM 149 project occurs; Section Four asks for improved traffic signalization of the SH 105 / FM 149 intersection as soon as possible.

Rebecca Huss stated that this was requested partially because it is her understanding from speaking to people that the TxDOT plans still look the same as they have always looked, and this is a much more positive way to get TxDOT moving on where they need to focus and it will make everyone in the City happy and hopefully fix the traffic problems. Rebecca Huss said that this will advise TxDOT of what the City is doing to solve their own problems and that we are asking TxDOT to get moving on it regardless of what happens on the northern section, so that it is not dependent on anything else.

Rebecca Huss said that the only question that she has was the resolution only includes right hand turn lanes, and asked if they wanted to include left hand turn lanes too, and asked if they had the space for them. Mr. Yates said that they had the space and he could revise the Resolution to include the left hand turn lanes.

Rebecca Huss moved to approve the Resolution with the addition of left hand turn lane information. Dave McCorquodale seconded the motion.

Discussion: Mayor Jones said that he would suggest, in the title of the Resolution it uses the words “serious detriment to commerce” and although he thinks that is important, those seem to be pretty harsh words. Rebecca Huss said that it is a failing intersection as determined by the City’s own traffic study. John Champagne asked if this Resolution has any weight to it. Mr. Foerster said that he thought it was important for TxDOT to have these kinds of resolutions on file. Mr. Yates said that they have asked for such resolutions when it came to signalization. Jon Bickford said that was good. Mr. Foerster said that TxDOT in turn reports

to the Houston District, so it goes up the chain all the way to Austin, and having this Resolution supports TxDOT's recommendations for these kinds of lanes. John Champagne asked if Mr. Foerster saw the title of the Resolution as being a detriment to the City getting what they want. Mr. Foerster said that in terms of it being a serious detriment, he understands that it is a strong statement, but he did not think that it would be offensive and it underscores the City's concern.

The motion carried unanimously. (5-0)

10. Consideration and possible action regarding adoption of the following Ordinance:

AN ORDINANCE BY THE CITY OF MONTGOMERY, TEXAS, AMENDING SECTIONS 66 – 1.66 –2 (a) (11) AND ADDING 66 –53 (s) OF THE CITY CODE OF ORDINANCES REGARDING ELECTRONIC MESSAGE DISPLAY SIGNS IN THE CITY; PROVIDING DEFINITIONS, PROVIDING REGULATIONS OF ELECTRONIC MESSAGE DISPLAY SIGNS; PROVIDING SAVINGS AND REPEALING CLAUSES; PROVIDING A TEXAS OPEN MEETINGS ACT CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

Dave McCorquodale said that since most people still think in terms of Watts instead of Lux when measuring light, and said that when measuring these electronic signs, some are unreasonably bright, and asked what 700 Lux translates to somebody driving. Mr. Yates said that he believed it was comparable to 500 Watts.

Rebecca Huss said that Mr. Yates had said that the Pizza Shack sign is 690 Lux. Dave McCorquodale said that gives him a scale. Jon Bickford said that Lux and Lumens are the new measurement for LED's because the power consumption which is Watts is a meaningless measurement.

John Champagne asked about the limit to the size of the sign. Mr. Yates said that the sign can be 120 square feet maximum. John Champagne asked about the elevation. Mr. Yates said that the maximum height of the sign can be no higher than 10 feet and no more than 12 feet wide.

Mr. Yates said that the Planning and Zoning Commission has reviewed and voted unanimously to recommend to City Council the approval of this ordinance.

After discussion, John Champagne moved to adopt the Electronic Message Display Sign Ordinance as presented. Dave McCorquodale seconded the motion, the motion carried unanimously. (5-0)

11. Consideration and possible action regarding adoption of the following Ordinance:

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF MONTGOMERY, TEXAS, PROVIDING FOR THE INITIAL ZONING OF NEWLY ANNEXED PROPERTY AS PROVIDED IN CHAPTER 98 OF THE CODE OF ORDINANCES OF THE CITY OF MONTGOMERY, TEXAS; PROVIDING FOR THE CLASSIFICATION AND INCLUSION OF A CERTAIN TRACT OF LAND OF APPROXIMATELY 3.22 ACRES WITHIN A ZONING DISTRICT AS DESCRIBED AND DEPICTED ON THE MAP OR PLAT OF SAME ATTACHED TO THIS ORDINANCE AS EXHIBIT "A"; PROVIDING FOR THE AMENDMENT OF THE OFFICIAL ZONING DISTRICT MAP OF THE CITY TO REFLECT THE ZONING CLASSIFICATION OF THE TRACT AS HEREIN PROVIDED; MAKING CERTAIN FINDINGS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; PROVIDING A TEXAS OPEN MEETINGS ACT CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE AFTER PUBLICATION.

Mr. Yates advised there have been several public hearings on this item and the Planning and Zoning Commission has recommended approval of the zoning.

Rebecca Huss moved to zone this property as Zoning Classification B - Commercial and adopt the ordinance as presented. Dave McCorquodale seconded the motion, the motion carried unanimously. (5-0)

12. Buffalo Springs Bridge Report by the City Engineer.

Mr. Roznovsky advised that since the contract has been in place, they have had 35 rain or weather delays with the normal being approximately 15 days, which is about 20 unplanned impact days. Mr. Roznovsky said that based on the contractor's latest schedule they still have the final completion date as July 10, 2018. Mr. Roznovsky said they will begin the stripping on June 29, 2018. Mr. Roznovsky said they are still in the same time frame even with the impact dates.

Mr. Roznovsky said that the storm sewer work is expected to start on Thursday on the north side of the Bridge. Mr. Roznovsky advised that will be pouring another footing tomorrow for the wall, which will be the last one on the north side, and then they will move to the south side on Monday, with additional crews coming in to do that work.

Mr. Roznovsky said that there will be a Change Order that will be coming for extra fill that has to be brought in, but they do not have the information ready yet. Mr. Roznovsky said that the original quantities and survey were done in May of 2017, and they had to wait for FEMA, so from May to January of this year there was additional erosion that occurred. Mr. Roznovsky said that in the original photos there was soil under the road and today there is actually a void underneath the paving.

Mayor Jones asked about the Change Order, and asked if there are contingencies built into the contract for them, or do they have to go back to FEMA for more money. Mr. Roznovsky said that even with the Change Order they will be well within the scope of FEMA. Mr. Roznovsky said that with it being a TDA Project, related to the DR Grant, it will be a process and there is a limit on the percentage that you can go over on specific items, which is what they are not sure of yet.

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.

13. Convene into Closed Executive Session as authorized by the Texas Open Meetings Act, Chapter 551 of the Government Code, in accordance with the authority contained in the following:

- a) 551.071 (confidential consultation with the City Attorney); and
- b) 551.072 (deliberation regarding real property).

Mayor Jones convened into Closed Executive Session at 7:37 p.m.

14. Convene into Open Session.

Mayor Jones reconvened the Regular Meeting at 7:48 p.m.

POSSIBLE ACTION FROM EXECUTIVE SESSION:

15. Consideration and possible action regarding real property located at 21049 Eva Street, Montgomery, Texas.

No action was taken on this item.

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.

There were no inquiries.

ADJOURNMENT

John Champagne moved to adjourn the meeting at 7:49 p.m. Jon Bickford seconded the motion, the motion carried unanimously. (5-0)

Submitted by:


Susan Hensley, City Secretary

Date Approved:

05/22/18




Mayor Sara Countryman