

# MINUTES OF REGULAR MEETING

March 27, 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

Absent:	Dave McCorquodale	City Council Place # 5
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Also Present:	Jack Yates	City Administrator
	Larry Foerster	City Attorney
	Susan Hensley	City Secretary
	Ed Shackelford	City Engineer
	Chris Roznovsky	City Engineer

### INVOCATION

John Champagne 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 Jones recognized John Tannin, with the Boy Scouts who was present at the meeting. Mr. Tannin advised that he was with Boy Scout Troop 491 and was attending the meeting as part of his requirement in earning his Citizen and Community Badge.

Mrs. Cheryl Fox advised that she wanted to speak during an item on the agenda.

Mr. Phillip LeFevre addressed City Council and advised that he had a couple of points that he wanted to make. Mr. LeFevre stated that nothing against Jones and Carter but, in principal, he wanted to speak about how the City changed the rules from being a City where the City Engineer reviewed plans, put out RFP's and stayed neutral versus this City Council that changed it, allowing the City Engineer to basically design and do their own proposals without essentially going out to other parties. Mr. LeFevre stated that he along with a lot of people have felt that the sheet piling was cheaper and quicker, because if they get a big storm it does not wash out and they have to restart. Mr. LeFevre said that because of the system that they have, he does not think that the City went out for proposals to the bridge companies, and companies that are used by the Corp of Engineers, so they got one thing, and he felt that it was a very expensive and cumbersome way to go.

Mr. LeFevre also spoke about the Bois D'Arc Bend extension, where they have the City Engineer reviewing the City's plans, and the same engineering company reviewing the County's plans. Mr. LeFevre said that the road came to a complete halt because one part of the same company did not deal properly with the other part. Mr. LeFevre said that it was not until Rebecca Huss met with Mr. John Holzworth, consultant engineer for the County, and the property owner, after which Mr. Holzworth got the project going. Mr. LeFevre said that the City should revert to having a City Engineer that is completely independent, puts out bids, RFP's and reviews what other people do, otherwise there is a conflict of interest and it does not work.

Mr. LeFevre said that his second point was dealing with annexations. Mr. LeFevre said that they have property owners that are in the City who own commercial properties that have paid taxes for years and now the City consistently starts annexing other properties. Mr. LeFevre said that he was shocked at the recent annexation with the one percent tax, because the City already gets two percent tax. Mr. LeFevre said that every business that goes in with the one percent tax, any business that it takes from the City is essentially taking two percent income into the City and reducing it to one percent. Mr. LeFevre gave an example of a larger business coming in at the lower rate resulting in the City getting

less revenue, and the larger business could potentially take business away from the existing smaller businesses in the City, and everything that they take away from the smaller business is hurting the City. Mr. LeFevre said that he felt that if the City was going to annex, they should annex on the level income basis.

**CONSENT AGENDA:**

1. Matters related to the approval of minutes for the Regular Meeting held on March 13, 2018.
2. Consideration and possible action regarding completion of a one-year warranty period and release of maintenance bond for Hills of Town Creek Section 2.

John Champagne asked for information on Item 2 on the Consent Agenda. Mr. Roznovsky advised that all the punch list items were addressed, so it is ready to be accepted.

John Champagne moved to accept the consent agenda as presented. T.J. Wilkerson seconded the motion, the motion carried unanimously. (4-0)

**CONSIDERATION AND POSSIBLE ACTION:**

3. Consideration and possible action to receive the Annual Audit for the year ending September 30, 2017 as prepared by Belt Harris Pechacek, LLLP.

Mrs. Darla Dear, with Belt Harris Pechacek, LLLP, presented the Annual Financial Report. Mrs. Dear thanked Ms. Hensley for being able to come through with the requests for information and making it a smooth transition from prior year auditors. Mrs. Dear stated that first year clients are usually a little harder, but they made it through the process and next year should be very smooth.

Mrs. Dear advised that the opinion page is what they consider to be the most important out of the audit. Mrs. Dear stated that the City received an unmodified opinion that is the highest level of assurance that you can receive that there are no material misstatements and all the disclosures have made it into the report.

Mrs. Dear reviewed the revenues and expenditures page, which is on page 22, and she focused on the General Fund Account. Mrs. Dear stated that the total revenues for the year were

\$2,850,477, and the total expenditures were \$2,810,325, with a transfer in and with those changes, left a net change in fund balance of \$43,552 and an ending fund balance of \$1,256,463. Mrs. Dear stated that was a great job on the positive change to the fund balance.

Mrs. Dear then reviewed the budget to actual report, on page 59, where they are comparing the actual expenditures to what was budgeted. Mrs. Dear advised that there were two areas that were flagged as the areas that were over budget, which included Municipal Court and Public Works. Mrs. Dear stated that if you go to the final line of the budget, it will show that the City is way under budget by \$162,245. Jon Bickford stated that their budget was to expend \$2,972,000 and they spent \$2,800,000, so they under spent their budget by \$162,245. Jon Bickford said that they overspent in Municipal Court by \$8,000, and in Public Works they overspent \$191,000.

Mrs. Dear said that where most cities are recording net pension liabilities, this City has the net pension asset, which you are still recording and is shown on page 14. Jon Bickford stated that the City starting that six or seven years ago, so that when people retire they will have the funds.

John Champagne asked if the Audit will be on the web site. Mr. Yates advised that it would be posted on the City's web site.

Mayor Jones thanked Mrs. Dear for completing the Audit in a timely manner and for the report. Mrs. Dear stated that she expected the report to be even better next year. Rebecca Huss said that an issue that she had last year and she still has this year, is that it has the net position for the general account as negative. Rebecca Huss said that on page 14 they are basically imputing all of the liabilities to the General Account, whereas most of the assets that the City holds are from the Water and Sewer Fund, i.e., the water wells, sewage plant, etc., so it is a mismatch on where the assets are held and where the liabilities are shown. Mrs. Dear said that this is the net position page where compared to the fund balance, that is where they are taking all the capital assets and bringing them up to that net position page, so it is not real cash, if you are looking at the real cash of the City then you are looking at the fund balance page. Rebecca Huss asked why it had the debt under governmental activities but the asset under business type of activities instead of having the debt under business type activities. Mrs. Dear said that whenever the City

went out for the bond that was the way that it was sourced out for pay, from the general fund, which is how they have to classify it.

Mr. Yates said that he would like to point out on page 31, the depreciation in the water and sewer funds was \$345,190, which is an item that they have been trying to cover each year in the water and sewer fund in revenues versus expenses. Rebecca Huss said that she thought that this was the first year that they have achieved that goal and had it in the budget.

Rebecca Huss moved to accept the Annual Audit for the year ending September 30, 2017. Jon Bickford seconded the motion, the motion carried unanimously. (4-0)

4. Consideration and possible action on Department Reports.

- A. Administrator's Report – Mr. Yates presented his report to City Council. Mr. Yates reported that the City had made their first application for funds for the bridge project. Mr. Yates said that he had worked with the Building Inspector/Code Officer regarding dilapidated housing found unfit for habitation.

Mr. Yates said that he prepared the HOME grant information for the open application period that started on March 20, 2018 and will go through April 19, 2018. Mr. Yates said that there really won't be a deadline on the HOME grant because it will go until they have 11 people qualify for homes. Rebecca Huss asked if that was solely for City residents. Mr. Yates said that was correct.

Mr. Yates said that he worked with Cathy Branco to process the first Buffalo Springs Bridge pay request. Mr. Yates reminded City Council that they were going to make the payments themselves, up to \$400,000, so now that they have paid that amount, they are applying for the funds through the State.

Mr. Yates announced that for the May 22, 2018 City Council Meeting, the County Elections will be conducting the Runoff Election at City Hall, so the meeting will be moved to the Community Center. Mr. Yates said that the estimated cost for the City's General Election has come in at \$8,192, and the City has budgeted \$16,000. Mr. Yates

said that the cost depends on how many elections are held in the County, because the cost is divided between all the entities.

Mr. Yates stated that the City's interest rate at TexPool went up to 1.54% and last year it was .4%.

Rebecca Huss said that some months ago they had talked about transportation information that they were going to seek out partnering with the County or other counties, and asked if Mr. Yates had any update on those meetings. Rebecca Huss said that they were supposed to provide them with money to participate and the City declined to do so. Mr. Yates said that he has not heard anything more, plus he has checked with the other City Administrators at his monthly meetings and no one has heard anything more.

- B. Public Works Report – Mr. Mike Muckleroy, Director of Public Works presented his report. Mr. Muckleroy advised that they had assisted Gulf Utility with pulling the lift pump at Lift Station #1 for repairs. Mr. Muckleroy stated that they have continued with the fire hydrant tagging project. Mr. Muckleroy advised that for the month they had six water leaks, four water taps, four sewer taps and one sewer stoppage. Mr. Muckleroy stated that Fernland Park had 410 visitors for the month and they provided 28 tours.

Mr. Muckleroy advised that when they assisted Gulf Utility with the pumps, they were unable to get the crane truck down the muddy road so they were able to use the mini excavator to pull the pump and get Lift Station #1 up and going. Mr. Yates said that they are using that piece of equipment two - three times a week.

- C. Police Department Report – In the absence of Chief Napolitano, Lt. Joe Belmares presented the report. Mayor Jones said that it seems tickets are way down and asked why. Lt. Belmares said that they are having a lot of calls for service, and he knew that just on his shift they had 103 calls for service, including arrest reports and vacation watches, which meant getting called away for a call instead of traffic duty. John Champagne said that they are putting units in other places to monitor speeding. Lt.

Belmares said that was correct, they have been on Old Plantersville. Lt. Belmares said that he believed that there was a meeting with Mr. Yates and Dr. Rees, MISD Superintendent, and he thought that there was some positive outcome from that meeting. John Champagne said that they could camp out on SH 105 and write tickets every five minutes. Mayor Jones said that he knew that Officer Hernandez was out for a while and asked if that was also a contributing factor to the low number of tickets. Lt. Belmares said that was correct, and said that they are hoping to have Officer Hernandez back out on the streets mid to late April.

Rebecca Huss said that in times past they were not really that far off in terms of the number of arrests per month, and asked if something has changed in the amount of paperwork or the time that it takes to book someone. Lt. Belmares said no it has not changed, but said that he knew that they have changed the jail procedures, and he is not sure if it is taking the officers longer or if it is just busy at the jail. Lt. Belmares said if they take a prisoner to the jail that is a Class B or above they have to meet with the District Attorney, and they will type up the details of the case and then once the bond is issued, they will have to go through the property and once that is done the officer is free to go. Rebecca Huss said that she was just curious, because it did not seem like the volume on that side has changed and she was wondering if there was something else. Lt. Belmares said that the number of calls for service is picking up. Mayor Jones asked about the nature of the calls for service. Lt. Belmares said that it could be a disturbance, earlier in the week they had a discharge of fire arms where they recovered two pistols, and today they had a suspicious package in Waterstone that turned out to be nothing of concern. Lt. Belmares said they get a lot of be on the lookout calls for reckless driving and DWI drivers that are coming into the City, so as soon as they get those calls stating that they are outside the City, they have a policy that they will respond due to the nature that it is possibly a DWI. Lt. Belmares said that since we are the number one County for DWI fatalities they want the officers on the ball. John Champagne asked if that was for the entire State. Lt. Belmares said that was correct. Mayor Jones said that as they put more bodies in the City, there is more potential for more mischief. Lt. Belmares said that they prefer two officers respond to disturbances. Rebecca Huss said that they have not had Officer Bracht's amazing

spreadsheet for a couple months and asked if that was in the works. Lt. Belmares said that he would find out about the spreadsheet tomorrow when Officer Bracht comes in.

- D. Court Department Report – Mrs. Kimberly Duckett, Interim Court Administrator, presented her report. Mrs. Duckett stated that even though the tickets are down, the Court numbers are up approximately \$5,000. Mrs. Duckett said that they had a great Court docket this past week, with about 80% attendance. Mrs. Duckett said that they are looking for new ways to stream line their Court process to make it more efficient and effective for the defendants. Mrs. Duckett advised that she had worked with the Judge to add more Court dates, and in June they will have Court every week, which is going to help with their juvenile cases, show cause, jury trials and bench trials, which they will do twice a month.

Rebecca Huss asked about Officer Bauer going more from the Court side to back out on the street, and whether that was going to change the warrant numbers that they have been seeing. Mrs. Duckett said that it does fluctuate a bit, but they have started not just issuing warrants, they have a better FTA process so when someone misses their initial Court appearance date, they will call and send letter as reminders.

Jon Bickford said that he was looking at the total cases filed and they are trending down, but the revenue is trending up, and asked if there was a connection. Mrs. Duckett said they were working a lot of the older cases. Mrs. Duckett said that they just signed up for a new TLO System, which is a skip-tracing system that will help them and the collections department find people that have moved. Jon Bickford asked if the case numbers keep going down, will the Court revenue start going down. Mrs. Duckett said that they were going to have that resolved another way by working the warrants. John Champagne said that Mrs. Duckett was doing a great job, and said that since Officer Bauer is out more on the road do they have someone making phone calls for warrants when there is free time. Mrs. Duckett said that they do not have anyone making phone calls, but they are going to start making calls when they have time. John Champagne asked if a script could be put in place for someone to make calls. Mrs. Duckett said that if someone goes to renew their driver's license and it is on hold because of a warrant,



they will automatically contact the Court, so there are different ways that they can pick up in Officer Bauer's absence.

Mr. Foerster advised that he had spoken to the Municipal Judge, Robert Rosenquist, the other day and he volunteered that Mrs. Duckett and the staff are doing a great job and he is very pleased with the transition. Rebecca Huss said that it was really an important point for us to do an efficient job because it does have a huge impact on people's lives; if they make a mistake, it could affect them getting a job or keeping their kids; it is really great that they are doing so well. Mayor Jones said that they are getting it done with less people.

- E. Utility/Development Report – Mr. Yates reported that last month they took in \$132,326 in utilities, \$22,762 collected for 46 permits, and \$1,805 collected for use of the Community Building. Mr. Yates said that there are 634 active water accounts, up about seven from last month. Mr. Yates said that water consumption for the City accounts was very low, with Memory Park at 34,000 gallons. Mr. Yates said that the Technical Operations Review Committee, Mike Muckleroy and the City Engineer are working on how to use the pond water at Memory Park for irrigation eight months out of the year. John Champagne said that was a good idea.

Rebecca Huss asked if this included the billing cycle where they did not use the door hanger. Mr. Yates said that they put the notice in this past newsletter that they will be stopping the use of the door hangers in April.

- F. Water Report – Mr. Michael Williams, with Gulf Utility Service, Inc., presented his report. Mr. Williams advised that they only had one district alert due to a lift station issue. Mr. Williams said that this was possibly due to a power surge in the area.

Mr. Williams said the daily effluent trend for both January and February was 3.979 million gallons, and the daily peak flow was January 28, 2018 at 202,000 gallons, which is 51% of the permitted value and the daily average flow was 133,000 gallons, which is 33% of the permitted value. Mr. Williams said that the effluent monitor report showed that everything was in compliance for the month of February with three and

one-half inches of rain. Mr. Williams reported that the City sourced a total of 6.299 million gallons, with 185,000 gallons for flushing, and they sold 5.791 million gallons totaling 95% accountability. Mr. Williams said that they still have about five percent loss, but the numbers have come up significantly from when they fixed the cooling tower.

Rebecca Huss said that Mr. Muckleroy had mentioned that the meter on the cooling tower had caught another leak and asked if there were other places in the City where they should be installing meters. Mr. Williams said that the cooling tower was the only place that they have that is a water user as far as facilities are concerned. Mr. Williams said that he did not see a particular value to a City in putting a meter on the main line due to the sheer cost of the meter and being able to see where the water is going.

Mr. Williams said that they were on track with Well #4, and they have used more percentage of the permit on Well #4 than combined Wells #2 and #3. Mr. Williams advised that this month they had a 69% return to the sewer plant from water sold. Rebecca Huss said that the treated water says that it is almost 4 million gallons, but on page 4 it stated that they had only treated 2.1 million gallons. Mr. Williams said that there was a revised report sent out, and that error had been corrected. Mr. Williams said that the corrected figure was 3.97 million.

John Champagne asked if they could get the report more current. Mr. Williams said that due to some of the items that they have to bring to City Council, as far as the lab numbers, they want to provide a complete picture. Mr. Williams said that the reports are typically one month behind. Rebecca Huss said that everyone was more interested in the pumping and the efficiency, so she agreed that something timelier would be better. Mr. Williams said that the lab numbers were just one thing, another item is the water with all the meters that are read, these are the most current numbers that they have. Mr. Williams said that they won't get the next set of numbers until the first of the month because it is based on the billing cycle. John Champagne asked how many meters they have going into Fernland. Mr. Muckleroy advised there was only one meter. John Champagne said that he saw three, two in front. Mr. Muckleroy advised those were probably meter boxes with a valve in it, the meter is outside the fence.

- G. Engineer's Report – Mr. Roznovsky presented his report. Mr. Roznovsky advised that he wanted to mention that the bridge project is progressing and on schedule, and said that the contractor, Craig Karonka with Fugua Contractors, was present and wanted to attend the meeting to answer any questions that City Council might have. Mayor Jones asked if they experienced heavy rains this evening will the bridge be all right. Mr. Roznovsky advised that it should be okay and the contractor has been prepping for the weather for the last couple of days.

John Champagne asked if the Baja Project was on schedule. Mr. Roznovsky advised that it was on schedule.

Mr. Roznovsky announced that the asphalt work on Houston Street was complete and the final punch list items will be done. Rebecca Huss commented on the striping down the middle and asked if Public Works has done the work. Rebecca Huss said that if you are going north on Houston Street it looks a little off. Mr. Muckleroy advised that the line follows the contour of the road and one portion of the road is wider and then it narrows down, and the road is wider at the curve in the road. Rebecca Huss said that Mr. Muckleroy should go and look at the road. Mr. Muckleroy said that they took measurements and went to the centerline. John Champagne said that he watched them stripe the road and said that it was done very professionally.

Mr. Roznovsky advised that the Baja Road water and drainage project is under way; the survey has been completed and they expect the design to be completed today. Mr. Roznovsky stated that they are continuing to coordinate with TxDOT on the FM 149 Project, and they had meetings with the commercial properties and tenants a couple of weeks ago to go over the plans and updates and where their driveways would be located, which is an ongoing process. Rebecca Huss asked what “ongoing process” meant. Mr. Roznovsky said that TxDOT made numerous revisions; those revisions were then taken to be discussed with the property owners and the next step is meeting with the single family property owners, north of downtown and FM 1097, which is scheduled for the first part of April 2018. Mr. Roznovsky said that following that meeting TxDOT will make a final set of plan revisions based on the comments they

received at their meetings and then submit them to the City. Mayor Jones asked about the deadline; what were they looking at as far as getting the FM 149 Project back on schedule. Mr. Yates said that they are expecting to get the TxDOT plans in a week or two, and he was thinking that they could have a meeting with the people north of Clepper Street on April 5<sup>th</sup> and before City Council at their meeting on April 10<sup>th</sup>. Rebecca Huss asked if City Council was going to weigh in at any point about the maintenance responsibility that is implied in this project, because from what she read in one of the meeting notes is that the scope of the project and the type of work being done, the City of Montgomery would be responsible for the maintenance of the pavers, planters, etc., that are still in the Project. Mr. Yates said that could be discussed at the meeting. Rebecca Huss said that the City has a number of their own roads that have not been maintained, and taking on a large project that did not have a large buy in without discussion is premature. Mr. Roznovsky said that the next round of revisions that the City will receive from TxDOT will hopefully provide what the scope is so that they can have a better discussion.

T.J. Wilkerson asked about the Baja Project, and asked if they would start work in August. Mr. Roznovsky said that was correct, the project design will be complete in May and then it will go through approvals, bidding and contracts, which would put the project starting in August. Mr. Roznovsky said that would be the first phase of the Baja area; there would be a second round with the General Land Office (GLO) funds, and that application has been submitted to the State by Grantworks. Mr. Roznovsky said that once the GLO funds become available, the sanitary permits, road improvements and drainage permits will be obtained for that area. T.J. Wilkerson asked if they were looking at how the water drains down toward that area. Mr. Roznovsky said that the first phase is mainly water and roadside ditch improvements, and the second phase is more large scale drainage improvements. T.J. Wilkerson asked if they were going to dig the ditches out or put pipe in. Mr. Roznovsky said that right now it is to improve the ditches, not put in storm sewers, which was not in the grant budget.

Rebecca Huss asked if there were going to be GLO funds related to Harvey, as well. Mr. Yates said yes, there would be. T. J. Wilkerson asked if they looked at any drainage

improvements on FM 149 and MLK. Mr. Roznovsky said that the biggest part of what was looked at was improving the culvert under FM 149, which is what they have been discussing with TxDOT to see if they can get that put into their project. Mr. Roznovsky said that they have gone back and forth; TxDOT's original answer was no, but there is a potential that they can do a larger drainage study and be able to improve that culvert, but right now it would be improvements from FM 149 and north, and creating some additional volume within the canal, and to clean out the canal to improve drainage. T.J. Wilkerson asked if the canal goes back to the Buffalo Springs Bridge. Mr. Roznovsky said yes it does, and it crosses FM 149 and Plez Morgan. T.J. Wilkerson said they have to address that part, otherwise that bridge might get washed out again. Mr. Roznovsky said that he did not think the bridge would wash out again, but the silt will continue.

John Champagne said that it seems like they have been talking about Baja for years, and said that there is no shoulder on a lot of that road, so he was under the impression that they were going to put a culvert in. Mr. Roznovsky said that was not within the scope of this project. John Champagne said that the drop is abrupt. Rebecca Huss said that was the problem with Montgomery County's work; once they were done, the ditch was a hazard, especially approaching the intersection. Mayor Jones asked if the large hole at the corner of MLK and Baja was going to go away. Mr. Roznovsky said that they would see what they can find out. John Champagne said that before they leave that location like that, they need to consider where the funds might be to cover that location up because it is unacceptable and ridiculous, and was ridiculous three years ago. Mr. Yates said that he thought that some of the GLO funds could go toward a storm sewer for that location. Mayor Jones said even if they only cover the corner. Mr. Roznovsky said that they would check on it. Rebecca Huss said that if there is GLO funds to follow, there is a possibility of combining projects and then to get the job done properly, even if they are spending more and putting other projects on the back burner until the second or third round. T.J. Wilkerson asked if when they build out those houses in that area, are they going to come back and redo them. Mr. Roznovsky said the current plan for the houses at the end of Baja is they are not going to be putting in any public infrastructure; it is just going to be three lots that they are subdividing, so there won't be any public utility extensions or roads. Mr. Roznovsky

said that there is no easement there for them, so he advised the developer that they could obtain an easement to the south to get out toward Lone Star Parkway, but now that they are not putting in public streets, the only process that they will go through is to subdivide the parcels. Mr. Roznovsky said that their drainage will go to the roadside ditch and run east. Mayor Jones said that Baja should be able to handle it if they fix the road. T.J. Wilkerson asked if the natural flow was toward the Creek. Mr. Roznovsky said that on the back of those properties there was some fall to the east, but the front of the properties was going toward MLK and then Baja.

- H. Financial Report - Mr. Yates advised that the General Fund is doing quite well and is \$188,000 over the expected revenues for the first five months of the year. Mr. Yates said that the General Fund Surplus of revenues versus expenditures is \$273,105. Mr. Yates said that the Utility Fund has a negative balance this month, but that is because of a one-time \$205,000 transfer from the GRP and the Utility Projects and the Maintenance Fund. Rebecca Huss asked if by the GRP transfer, she assumed that Mr. Yates was referring to the fact that the City is collecting GRP funds so they are moving it to a separate account so that it will only be used for GRP Projects. Mr. Yates said that was correct, and advised that fund was the Capital Projects Fund. Mr. Yates said that as far as the departments themselves, virtually every function in the General Fund and Utility Fund are under budget.

Mayor Jones asked about the revenue on Franchise Tax. Mr. Yates said that they collect almost all of the franchise tax by September in the later part of the fiscal year, which is why there is not much in there.

Rebecca Huss asked about the sales tax, stating that she did not see an offsetting greater amount for the City to account for what we owe to our Kroger obligations. Mr. Yates said that he still needed to figure out what that amount will be. Rebecca Huss said that they should not be too excited about being above expectations with the budget when they might owe quite a bit of that amount.

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

5. Consideration and possible action regarding an Encroachment and Maintenance Agreement by and between the City of Montgomery and Montgomery SH 105 Associates, LLC regarding a storm sewer line easement located at FM 2854 and SH 105.

Mr. Yates advised that this is the third meeting that this item has been on the agenda. Mr. Yates said that since the March 13, 2018 Meeting, CVS has again stated that they will not place a store in the City unless the City is responsible for the pavement repair. Mr. Yates said that just as the last meeting, there appears to be three options: 1) require the water and sewer lines to be put in the property and paving and replacement borne totally by CVS; 2) require the water and sewer to be placed within the property and the City's offer at the last meeting was to split the pavement replacement costs 50/50 by the City and CVS; and 3) move the water and sewer facilities into the right-of-way of FM 2854, which exposes the City to relocation costs should FM 2854 be expanded, and that cost could easily be \$175,000 to \$200,000. Mr. Yates said that he thought that the initial statement of \$50,000 to \$75,000 estimate from the City Engineers was considerably higher than he expected it would cost. Mr. Yates said that he would remind City Council that this is a part of a larger 26-acre development, in which they have a 380 Agreement that involves the payment of \$200,000 to the City toward the replacement of Lift Station No. 1 and also includes the transfer of some property for the sewer plant. Mr. Yates said the likelihood of repair is unlikely for at least 10 to 15 years. Mr. Yates said that the repairs could involve two parking spaces if it was a particular leak, and they would not have to tear up the entire parking lot. Mr. Yates said that what he would ask City Council to consider is just the grand total of the 380 Agreement and what all is at stake.

Rebecca Huss said that she would like to make some factual adjustments to a couple of his statements, as follows:

- 1) the 380 Agreement has already been signed, which means that the City did the land swap and the Agreement specifically states that the land swap is permanent and there is no going back, regardless of whether the rest of the 380 Agreement falls apart because CVS does not open;
- 2) the comment on how much money is at stake, and said that Mr. Yates needed to adjust that amount downward significantly, because he had added \$100,000 to \$120,000 in sales tax. Mr. Yates said that amount of sales tax was for the entirety

of the 26 acres, not just CVS. Rebecca Huss said that CVS, in particular, has a number of nontaxable items that run through it. Rebecca Huss said that she was curious why the City has the entire burden of the repairs; and

- 3) Exhibit "C" summary of assets makes it look like the City is getting \$860,000 and only contributing \$533,000, but yet the relocation of Lift Station No. 1, Texas Water Development Board funds is being borrowed by the taxpayers to pay back the money for the Lift Station that they are moving.

Rebecca Huss said that the economics of this are not quite as rosy as might have been previously anticipated. Rebecca Huss said that, having said that, she agreed that the likelihood of the repairs is low and the amount of money is low.

John Champagne said that Rebecca Huss made some good points, and commented that Mr. Yates had indicated three options, but he felt that there were only two per the information from Mr. Jonathan White. John Champagne said that some exchange might be appropriate at this point.

Mr. Jonathan Bellock, with First Hartford, said that the big issue is the sewer line, which CVS does not benefit from, so the City is driving it through their property and asking them to repair their own property for damage to a line that they are not using, which in their opinion is an unreasonable position. Mr. Bellock said that CVS will not purchase the property unless they agree to some restorative measure, or relocating the utilities outside of the parking lot. Mr. Bellock said that the City has already imposed a 150 foot channel easement on their western boundary, and they have utilities on the northern boundary already, so now the City has wedged them into a space that they can't fit. Mr. Bellock said that they are here to say that they are okay with accepting the utility easement, if the City restores it if they have to tear up the parking lot. Jon Bickford asked if the City wedged them into that spot or did the developer say that was their space. Mr. Bellock said that he was the developer. Jon Bickford asked if Mr. Bellock wedged CVS into that spot. Mr. Bellock said no, they accepted the channel easement that the City asked for. Jon Bickford asked if there was more property available that CVS could have. Mr. Bellock said no, there is a Creek on the west side, and they are bordered on the east by FM 2854. Mayor Jones said that he assumed that CVS has insisted on that corner lot for a reason. Mr. Bellock said that was correct. John Champagne asked Mr.



Bellock if he platted the property to the west, and said that it is not centered in the plat. Mr. Roznovsky said that the drainage easement has been shifted over so it is not centered on the existing channel, it was requested to shift it more over to the east for the purpose of development. Mr. Bellock advised that the utility easement was shifted to make the land west of the Creek more usable because one of the curb cuts has to be in a certain area.

Mayor Jones said that at the last meeting City Council made an offer of a 50/50 split and obviously CVS has rejected that. Mr. Bellock said that they are not asking for a variance, and said that there is nothing that states they have to accept that utility easement on their property, so they are here in response to a staff comment that asked them to accept that. Mr. Roznovsky said that he believed that there is a City Ordinance that states that upon review by the Planning and Zoning Commission, it can be required that an easement be placed for the placement of utilities; there is also a section that states that developers have to extend utilities to the furthest boundary for future development. Mr. Roznovsky said the idea of having utilities within an easement is not something that is unheard of, because the entire north and south side of SH 105 are within a 26 foot utility easement, and FM 2854 is just now starting to get developed.

Mayor Jones said that CVS does not want any potential liability as far as potential repairs. Rebecca Huss said that CVS does not have to pay for the line, because that is the City's responsibility. Mr. Bellock said that, as the Encroachment Agreement states, the City has the right to go on the property at any time and tear up whatever the City needs to do repairs, which could potentially severely impact CVS. Jon Bickford stated that if they had to dig up the waterline, CVS is using the waterline, just not the sewer line. Mr. Levi Love, Engineer with L Squared, said that at this time those lines are just for future extensions for development that have been extended to the south with oversized 12-inch lines, so the City should not have to repair, remove or replace that line at any time in the near future. Mr. Love said that the sewer line was a 10-inch line and CVS does not connect to that line. Mr. Love advised that the developer has honored everything, and said that if you look around the City and even in front of this tract, the waterline that was done with the former company is out in the right-of-way, and it is not unheard of for them to use the TxDOT right-of-way for City improvements; in fact the City has been doing that instead of acquiring easements. Mr. Love said that they are saying that they can't find anything in the Code that would prohibit them from using public right-of-way or TxDOT right-of-way for utility. Mr. Love said that they do not have any

problem acquiring a utility easement; their issue is about removing the concrete and putting it back. Mr. Love said that what would solve everything would be to let them put the utilities in the TxDOT right-of-way. Rebecca Huss said that was not happening, just because they have done bad things in the past does not give them the confidence to do that in the future.

Mr. Wade Nelson, developer of the property, said that the big difference is being public versus private, and said that in most instances you are not asking a resident of the house to be responsible for the utilities out in front of their home, and to him there is no difference with CVS because they are a public extension and it is the City's responsibility, should it need to be repaired or maintained.

Jon Bickford asked where Kroger's utility lines were located. Mr. Roznovsky said that they were along the front of the property within an easement, with most of their parking lot not over that area, just the driveway. Jon Bickford asked if the City had to break into that driveway to make repairs who would replace that driveway. Mr. Roznovsky said that right now there is not an agreement in place that says that it is supposed to encroach into an easement, so it could be put on the developer. Jon Bickford said that he would like to understand that matter and to be consistent. Mr. Foerster said that the City's ordinance states what is required for a public utility easement across a property owner's property, and in most instances, aside from this kind of circumstance, if a City acquires an easement they have an obligation to return the property to the condition that it was in before, so this is not unheard of. Mr. Foerster said that he does easements all the time for a lot of different cities, and probably he has done some for the City of Montgomery, but if the standard language is if they put an easement in somebody's property and we disturb the property, we are responsible for bringing it back to the reasonable condition that it was in before they had to perform the repairs. Mayor Jones said that is an assumption that he would normally make for any situation like that, but from the beginning the City changed that with this agreement, so here we are for the third time. Mr. Nelson said that it was truly a marriage between the parties involved to try and make this work, CVS and the City are bringing value to the property and it is something that they have worked on pretty well to this point. Mr. Nelson said that now they are asking CVS to bear costs that they would never have expected.

Rebecca Huss said that she would like to point out that the 380 Agreement that the City entered into was primarily driven by the City's interest in right sizing the land, because they felt that there was an economic interest in having all of the water and sewer activities concentrated at the existing sewage treatment plant, to increase the size of the sewage treatment plant to accommodate future growth, which would also increase the value of the plot itself because it did not have the easements covering a third of the property because it did not have a lift station in the middle of the property. Rebecca Huss said that what they are talking about, to her, seems like a logical extension, and the sewer line is planning for the City's growth, and she does not necessarily think that CVS should bear the burden of it, depending on how they work things out with the main developer. Rebecca Huss said that she also did not think that the City should bear the burden of it either, because she thought that they had covered everything that the City was going to give in the 380 Agreement.

Jon Bickford said that he believed the only issue here is that the City is going to have the developer put the pipes in the easement, where it needs to be so that the City does not have to move the pipes later because of TxDOT and start over again. Jon Bickford said that the issue is once you put the pipes in there and something happens and the City has to dig up the parking lot, CVS wants the concrete replaced. Jon Bickford said that his question was, is the City under the same obligation to Kroger, and it sounds like they are lacking an agreement with Kroger. Rebecca Huss said that they have the changed language in the agreement, in the new paragraph. Mayor Jones advised Rebecca Huss that she put the paragraph with her motion, and said that this would not be discussed if it was not for that motion stating that CVS would take care of any restoration. Rebecca Huss said that they said that they would have the agreement the way it is with all the other ones. Mayor Jones said that was not the way that the motion was stated, which is why they are here. Mr. Nelson said to Rebecca Huss that the sewer treatment plant did not increase the value of the property, so they are having to work around that and there was a lot of give and take on both sides. Rebecca Huss said that having access to 1/3 of the property that was previously covered by an easement that would not have allowed any building on it at all, certainly increases the value of the property. Mr. Nelson said that it did increase the value to a degree, but it is not exponential; they are still dealing with the sewer treatment plant.

Mr. Yates said that for minor clarification, the only access easement that has been vacated so far is the CVS portion and not the entirety. Mr. Nelson said that CVS might not increase a lot in tax value for sales tax, but CVS is a huge driver for other users. Mr. Nelson said that they are in jeopardy of losing their other end-users, which they are working on some fairly unique concepts, and that is a huge driver. Mayor Jones said that if CVS does not get their way what will they do. Mr. Bellock said that they will not buy this tract. Mr. Nelson said that they will move on to another track, which will probably be outside the City. Mayor Jones asked if CVS does not go into the property would it change the way it will be developed. Mr. Nelson said that it would absolutely change the way that they would develop the property. Mr. Bellock said that they were here to represent CVS. T.J. Wilkerson asked if the pipes that are underground had casings. Mr. Nelson advised that they did not. Mr. Love said that the pipe meets all the standards, and it would take a lot for the pipe to have any problem and said that all the modern methods are being used so, generally, they do not have a lot of issues with these pipes.

Jon Bickford asked if there was any development along SH 105 that they are aware of that the property owner has an obligation to repair the cement if the City has to dig it up for utility repairs. Mr. Roznovsky said that most of the locations are driveways and this is a parking lot. Mayor Jones said that a wide driveway could withstand the same type of restoration possibilities as a parking lot. Jon Bickford said that he wanted to know for consistency, is there any other property where they expect the owner of the property to repair the concrete after the City has made repairs. Mr. Foerster said that he was not aware of any. John Champagne said that for the City to put the utilities in a right-of-way, the exposure is just too much.

John Champagne moved that the City's Agreement is that the City replaces the line and repairs the parking lot, if in fact, and when damage should result to that water or sewer line. Mr. Yates said that he would just state that the agreement be approved as presented.

John Champagne changed his motion to approve the agreement as presented. Rebecca Huss seconded the motion.

Discussion: Mayor Jones asked for confirmation of what the motion covers, by stating that the agreement as presented. Mr. Yates said that it includes the paragraph. Mayor Jones said that the City will pay to install the pipe, and asked who will fix the concrete after the repairs are done. Mr. Yates said that in the agreement, as presented, the City pays for the repairs to the concrete.

John Champagne moved that the line that is accepted by CVS, the City runs the water and sewer line on their property, and if any damage occurs to the water or sewer line, and as a result of that damage to their parking lot, the City will remediate and make the parking lot whole, and the City will be responsible. Rebecca Huss seconded the motion.

Discussion: Mayor Jones said that it was City Council that changed the original agreement. Mr. Roznovsky said that to be clear, the wording of the agreement in the agenda packet is worded slightly different because there were a lot of versions that changed the responsibilities to other entities, but John Champagne's motion is that regardless of what the agreement states, the pavement within the easement as a result of a repair by the City is the same responsibility. Mayor Jones said that was why he wanted to clarify that the City would be the one responsible, because there was action at the first and second meeting. Rebecca Huss said that the previous agreements, which is what she was originally under the impression that they were going to stick to, left the City in the exact same position that they are in right now, i.e. responsible, then there is no difference between the way that they looked at it four weeks ago and today. John Champagne said that he agreed with that.

The motion carried unanimously. (4-0)

6. Consideration and possible action regarding an Encroachment and Maintenance Agreement by and between the City of Montgomery and BW Montgomery Investment, LLC regarding the encroachment of a proposed private storm sewer within a public utility easement located at SH 105 and Gardner Drive.

Mr. Roznovsky said that they are requesting to table this item because the developer did not return the signed agreement.

Rebecca Huss moved to table this item. T.J. Wilkerson seconded the motion, the motion carried unanimously. (4-0)

7. Consideration and possible action regarding Samdana Investments, LP request for variance from 35 feet to 25 feet along SH 105 and from 15 feet to 10 feet along John A. Butler Street all within the property bounded by John A. Butler Street to the north, SH 105 to the south, and Prairie Street to the east.

Mr. Yates said that the Planning and Zoning Commission has met and recommended approval of the variance request. Mr. Yates said that since the March 13, 2018 City Council Meeting he has met with the owner, Mr. Chen. Mr. Yates said that they went to the site and measured cars going in and out of the existing driveway entrance off SH 105, and have also driven cars into and out of the proposed driveway on the subject property. Mr. Yates said that the driveway that is 40 feet wide, and in his opinion, makes the variance very feasible and practical. Mr. Yates said that he looked at different configurations for the building on the property, but even with reducing the size of the building, he could not come up with a better configuration than Mr. Chen had already submitted.

Rebecca Huss said that as they know, TxDOT sometimes, if you change or remove a building, removes or alters their driveway permit, and asked if they knew for sure that TxDOT will allow the 40-foot wide driveway. Mr. Roznovsky said that it was his understanding that if they do not modify the existing driveway they can keep it that way, but if they modify the driveway they will have to go to TxDOT's rules, and this driveway is wider than what TxDOT requires. Mr. Roznovsky said that the standard driveway width with TxDOT is 28 feet.

Mayor Jones said that Dave McCorquodale had a question about turn radius around the building. Mr. Roznovsky said that as far as the driveway goes, it is not an ideal situation, but due to the site, especially with the extra width of the driveway that is there, if it were a smaller driveway it would be difficult to make that turn. Mr. Roznovsky said that people that are trying to get back out onto SH 105 and head west could go out to McCown as well and make that turn if they don't want to make the tight turn. Mr. Roznovsky said they have a written agreement with an access easement with the neighboring property owner, so they both have access across both properties. Mayor Jones said that there was also an entrance off of John A. Butler. Mr.

Roznovsky said that would be a new driveway, and their proposed layout shows in and out onto John A. Butler, SH 105 and McCown. Mr. Roznovsky advised that the existing barber shop would be removed.

John Champagne said that this property is going to be exposed a great deal to visitors and traffic in general, and asked if it would be inappropriate to ask for and maybe work with the owner to make this very appealing in terms of landscaping and architecture. Mr. Yates said that it is located in the Historic District so that can be worked out. Rebecca Huss said that the school house has undergone a refinishing that does not really enhance its appearance. Mayor Jones said that the Planning and Zoning Commission will get the opportunity to look at the architectural façade, and the school house only changed their siding. Jon Bickford said that they are not approving the building or what the building looks like, just the variance.

Jon Bickford moved to accept the request for variance for the setbacks from 35 feet to 25 feet along SH 105 and from 15 feet to 10 feet along John A. Butler Street all within the property bounded by John A. Butler Street to the north, SH 105 to the south, and Prairie Street to the east, as written. T.J. Wilkerson seconded the motion.

Discussion: Rebecca Huss thanked Mr. Yates for going out and getting the information regarding the cars and for providing the visual information on the variances. Mr. Yates said that he appreciated that and apologized for not doing that the first time the variance was presented. John Champagne asked the City Secretary to note that Jon Bickford made a motion to approve a variance.

The motion carried unanimously. (4-0)

8. Consideration and possible action regarding approval of the proposed Montgomery EDC funded sidewalk project on Clepper Street.

Mr. Yates said that this item is to place a sidewalk from the old grade school on Clepper Street to the east side of Prairie Street. Mr. Yates stated that MEDC on March 19, 2018, approved \$19,886, which is the expected cost to place the sidewalks. Mr. Yates said that this item is approval of the expenditure of the MEDC funds.

Mr. Yates advised that this project has been discussed for several years and was specifically placed in the MEDC budget for the 2017-2018 fiscal year. Mr. Yates said that the rationales for this being an MEDC budget are that 1) it helps generate foot traffic between Fernland and Memory Park and the downtown area, 2) during special events the area immediately east of the school is used for visitor parking, causing those who parked there and want to walk downtown, to walk on Clepper Street, causing a dangerous situation for the pedestrians and vehicles.

Mr. Yates stated that during the MEDC Meeting there was a discussion regarding this matter, and he advised that Mrs. Fox had asked about the wisdom of sidewalk cost versus McCown Street improvements. President Jones and John Champagne had answered that they felt that people would use the sidewalk for general use and for special events. Mrs. Fox again reiterated at the meeting that the funds would be better put to use on downtown centered projects first. Mr. Yates advised MEDC that the sidewalks were specifically mentioned and \$20,000 was included in the MEDC Budget. Mr. Yates said that the MEDC Board approved the project with a 4-1 vote, with Mrs. Fox voting nay, and Ms. Brown was absent.

Mrs. Cheryl Fox was present and stated that she knew that the MEDC Board had approved the project and she was an assenting vote. Mrs. Fox stated that there were a couple of things that she wanted to address. Mrs. Fox said that if they have not already seen the street, she asked that they at least table the item until they can lay eyes on the street, because the street is way higher than the ditch. Mrs. Fox said that she has lived in the City for a long time and she knows that project was funded one time before and it failed. Mrs. Fox said that she was not sure why the project failed, but she thought that it had flooded a resident's yard. Mrs. Fox said that she was not opposed to the sidewalk itself, what she is opposed to is spending that money on the outside side of the City, when instead you could be working from the inside of the City and working out, or possibly over on Baja; she just did not think that it was a good project or that the funds were being well spent. Mrs. Fox said that she did not think that they were being good stewards of money in doing this project. Mrs. Fox said that part of that money was hers; she buys locally, at the Mayor's floral shop, she is a VIP at the Montgomery Steakhouse, and she buys at the feed store and she supports Montgomery locally with tax dollars, and she did not feel that this was a good project and she felt that the money could be spent better elsewhere.



Mrs. Fox said that once they get the sidewalk to the school, then what are you going to do. Mayor Jones said that he hoped in the future that they would plan to put a sidewalk in front of Mr. LeFevre's building up to Fernland, but that is another time. Mrs. Fox asked why they did not wait and do it all at one time, and take that money and apply it somewhere else that is much more needed in the City. Mrs. Fox said that she knew that there were people that walked, but said that she goes down that street and she really does not see that many people walking. Mrs. Fox said that she felt that the City Council should consult their voting constituents and see if they approve of this project and their money being spent like that.

Mayor Jones provided some history of this project, stating that it has been on MEDC's radar for many years, and on many budgets, but has not been a very high priority. Mayor Jones stated that some work was done on the project. Mayor Jones said that Mrs. Fox had mentioned about the street and where the sidewalk would go as not being level, but said that it was a lot better than it used to be due to some preliminary work that has been done that buried drainage lines as well as putting dirt over it. Mayor Jones said that he thought what had happened was that they had budgeted a specific amount and that was all the work that could be done at that time, which is where they left the project. Mayor Jones said that it would be a much more expensive project if they had not already done that work. Mayor Jones said that the proposal does include bringing in more dirt and packing it, and putting in the sidewalks. Mayor Jones said that the idea was that they have some nice amenities downtown, the library, Fernland and Memory Parks, and said that it would be nice to have a walkable community. Mayor Jones said that in order to walk down Clepper Street you either have to walk in the ditch or on the street, and neither one is favorable, which is why it has been on the radar for quite some time.

John Champagne said that he was generally in favor of the project because it does connect, but Mrs. Fox made a pretty good point, and said that he would be open to taking these funds that are budgeted for this if it was earmarked for Baja to cover that ditch. Rebecca Huss said that she also thought that City Council approved MEDC's budget, and yes, the sidewalks are in there, but MEDC chose to use that money for the paving projects, which they decided were higher priority, so they are looking to take this money out of another category to use on the sidewalks. Mayor Jones said that he had to address using the funds for Baja because the MEDC funds can't be used for Baja. Rebecca Huss said that everyone knows that Clepper Street is a failed street, so they will eventually have to tear out Clepper Street and she felt that it was a

waste of money to do the sidewalks at this time. Rebecca Huss said that generally speaking, people do not desire to walk from place to place. Mayor Jones said that the sidewalk project has been pushed back several years. John Champagne said that Clepper Street was not a failed road, and just because they put a sidewalk in place does not mean that you can't repair a road and keep the sidewalk, because it is done all over the City. John Champagne said that he sees people walking around and taking photos and they want to get to Fernland, and said that a sidewalk would be used, but he did not know to what degree. Jon Bickford said that the area behind Fernland and Buffalo Springs is developing out, with more houses going in there, and he thinks that the reason they don't see people walking is because they are out at 4 a.m. walking. Jon Bickford said that he is out riding his bike at that time and there are no lights and you can't see a thing. Mayor Jones said that MEDC funds can be used for quality of life and things like having sidewalks is part of that. Rebecca Huss said that she did not think that they should be moving money from utility extension line item projects.

Rebecca Huss moved to table this item. T.J. Wilkerson seconded the motion. The motion failed with the following vote:

T.J. Wilkerson – Aye

John Champagne – Nay

Rebecca Huss – Aye

Jon Bickford – Nay

Mayor Jones broke the tie with a Nay Vote to not table the item. (2-3)

John Champagne moved to approve the funding for the sidewalks.

Mayor Jones stated that the motion died for lack of a second.

Rebecca Huss moved to deny the request for \$19,886 for sidewalks from this year's budget.

T.J. Wilkerson seconded the motion.

Discussion: Jon Bickford stated that he wanted to ask a question before he voted. Jon Bickford said that if they table the idea, they are saying not to put in sidewalks, specifically this sidewalk. Mayor Jones said that was correct. Jon Bickford asked if that action was being tabled until they gather more information or just period. Mayor Jones said that it means they are denying the action. Rebecca Huss said that her idea on tabling this was because Mrs. Fox's

recommendation was to go out and take a look at things and to visit with the constituents. Jon Bickford said that he did not get a chance to get a question in before they voted and he was trying to understand what the tabling was, because that would make more sense to him if there is truly an issue with the road. Jon Bickford said that he did not know if there was an issue or not, but if there is an issue and the sidewalk is going to make it worse, then he would say do not do it. Jon Bickford said if there is not an issue with the road, and the sidewalk is going to make it safer, then he would say do it. Jon Bickford said that he did not know what the answer is. Mayor Jones said that the money that has been spent on the project is sitting there being wasted. Rebecca Huss said that if they made a bad decision and spent the money, that does not mean that you should spend more money because you have already spent money and wasted it. John Champagne asked who said that it was a bad decision. Rebecca Huss said that having spent the money should not form their decision on whether they go forward.

Jon Bickford asked that the motion that is on the table be clarified. Rebecca Huss said that there was a motion to table that did not pass, another motion to approve that did not get seconded, and now there is a motion on the table to deny the project. The City Secretary stated that the motion was to deny the funds for the project.

Jon Bickford asked if that was for a period of the whole year or until they collect further data. Rebecca Huss said that she would make her motion to deny the request, until it comes back to City Council.

The motion passed with three Aye votes and 1-Nay vote by John Champagne. (3-1)

9. Consideration and possible action regarding Madsen and Richards, LLC variance request regarding the rear building line from the required 15 feet to 5 feet and the vegetative setback from the required 15 feet to 5.8 feet at 610 Liberty Street.

Mr. Yates presented the information to City Council. Mr. Yates stated that this variance involve a building permit improperly issued, funds expended by the builder based upon the improperly issued permit, an attempt by the City Administrator to correct actions to prevent suit against the City, while also attempting to follow the proper procedure. Mr. Yates advised that Mr. Madsen received a building permit signed by Autumn Redman, Utility Development

Clerk, who did not have authority to sign the permit. Mr. Yates stated that the building plan review had not occurred, nor had the City Engineer been notified. Mr. Yates stated that when Mr. Madsen called for water service and the Director of Public Works, Mike Muckleroy, was notified, he advised that he did not know of the project being reviewed by the City Engineer.

Mr. Madsen was advised of the lack of approval for the project, and was advised that he could not proceed with construction. Mr. Madsen was very concerned and stated that he had installed the rough-in plumbing and had purchased a \$100,000 metal frame building, and was planning on having the concrete poured on January 8, 2018. Mr. Yates said that he met with Mr. Madsen on January 9, 2018, and after conversations with Mr. Madsen, Mr. Roznovsky and Mr. Rick Hanna, Building Inspector, he wrote the January 9, 2018 memo to Mr. Madsen, to which Mr. Madsen agreed to comply.

Mr. Yates said that his thought process was to not get the City sued by Mr. Madsen, while also wanting to hold to the City ordinances, which he believed he had done except for the rear building setback. Mr. Yates said that because of the location of the building, the rear of the building is adjacent to the pond put in by the Heritage Apartments, and because of the height of the building in the rear, all there was, was air. Mr. Yates said that regarding the required vegetation barrier between commercial property and residential property, he admitted that he had given it no thought because of the distance of 1,000 feet between the apartments and Mr. Madsen's building.

Mr. Yates said that Mr. Madsen has complied with every stipulation in the memo and in all other requests made of him.

Mr. Yates said that the reason for the variance is because the City Engineer, in reviewing the site plan, pointed out the lack of the 15-foot rear yard setback and vegetation barrier. Mr. Yates said that last Thursday Mr. Madsen had agreed to plant bushes or whatever could grow in the 5 foot 8 inch area in the rear of the building.

Rebecca Huss asked if Mr. Madsen was present. Mr. Madsen stated that they are doing the process in reverse, and said that if they had known about the due diligence in the first place, when they were developing this building, they would have been able to address these things,

but they did not have an opportunity to address them. Mr. Madsen said that the minute that they were notified by the City that there was an issue, they jumped right on it and they hired Bleyl Engineering to do their civil engineering, which they thought had been done. Mr. Madsen said that Mr. Roznovsky has been gracious and talked to them on how to do everything and they put all that information together. Mr. Madsen said that this is a nice building. Mr. Yates said that they also did the Escrow Agreement. Rebecca Huss said judging from the correspondence and the timeline of events, she wanted to say thank you to Mr. Madsen, because it does seem like he was very willing to work with the City to get everything fixed. Mr. Madsen said that they have not removed any trees, so they have good trees on the back of the property that have been there for years. Mr. Madsen said that they intend to make it look prettier with vegetation and sod on the sides. Mr. Madsen advised that he felt the property will be pleasing to the community and will provide a more affordable location for smaller businesses on SH 105 to come out and generate business in the City. Mr. Madsen said that Mr. Yates and Ms. Hensley have been in contact on the procedures on how to accomplish these things.

John Champagne asked whether there was anything else out of compliance other than the variance. Mr. Yates said that there was nothing else out of compliance.

Jon Bickford asked if the Planning and Zoning Commission had reviewed the building and the plans. Mr. Yates said that they had looked at the information last night at their meeting and they recommended approval. Jon Bickford asked if they also did not look at it until it was built. Mr. Yates said that was correct. Jon Bickford asked how they got this far. John Champagne asked if the architecture was within what the City would have hoped for. Mr. Yates said yes, they are putting stucco and Austin bricks on the front and sides of the building. Mr. Madsen said that if they had to, it would be the nicest building torn down in the City of Montgomery.

Mr. Yates said that part of the reason that he did what he did was because they already had their rough-in plumbing and bought the building based upon the size of the property. Mr. Madsen said that basically they had four inspections at the site, and the City did not catch it until they were ready to pour concrete, which they were delayed for quite some time. Mr. Madsen said that Mr. Muckleroy pinpointed that there was an issue with the utility and so his plumber contacted them to say they had a problem and they could not get a permit, which is

when they jumped into action with the City. Mr. Madsen said that the City has been great to work with and they learned what they need to do so it will never happen again.

Mr. Madsen said that one request that he did have was that he would appreciate it if they could have Mr. Roznovsky's group expedite the process, because they want to finish the project, get it cleaned up and get the parking lot in. Mr. Madsen said that all of their submittals from Bleyl should be in today. Mayor Jones said that he was sure that the City Engineer would take care of the project with speed, as they always do.

Rebecca Huss moved to approve the rear set back variance request. T.J. Wilkerson seconded the motion, the motion carried unanimously. (4-0)

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, AMENDING ARTICLE III, "IMPACT FEES" OF CHAPTER 90 "UTILITIES" OF THE CITY CODE OF ORDINANCES BY DECREASING THE IMPACT FEES FOR WATER AND WASTEWATER IMPROVEMENTS THAT ARE ATTRIBUTABLE TO NEW DEVELOPMENT IN THE CITY'S WATER AND WASTEWATER IMPACT FEE SERVICE AREA WITHIN THE CORPORATE BOUNDARIES OF THE CITY; AMENDING CITY ORDINANCE NO. 2016-21, DATED DECEMBER 13, 2016; PROVIDING A TEXAS OPEN MEETINGS ACT CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE AFTER PUBLICATION.

Mr. Yates advised that this is the Ordinance adopting the Impact Fees.

John Champagne moved to adopt the Ordinance as presented. Rebecca Huss seconded the motion, the motion carried unanimously. (4-0)

11. Buffalo Springs Bridge Report by City Engineer.

Mr. Roznovsky advised that the contractor is on schedule and preparing for the rain that they are expecting in the next few days. Rebecca Huss said that every time that it has rained the

contractor has basically had to re-dig everything. Mr. Roznovsky said not every time, but the excavation pit fills in with water, so the contractor has modified his technique so the last few rains have been mostly water and only delayed them for half a day.

Mayor Jones asked about the wall that was built down the channel, and it looks like they are packing sand on both sides of it, and asked if they were going to pour a cap over the packed sand. Mr. Roznovsky said that the backside is being filled with stabilized sand on top of that, so from there up toward the street will be slope paving like it was before, but now it will be tied into the concrete to help.

12. Reckless Driving Report.

Mr. Yates said that since the last Council Meeting, the Police Department continues their enforcement on Old Plantersville Road. Mr. Yates advised that Dr. Rees, Superintendent for MISD, stated that he is ready to move forward in the spring with the following:

- Suspend parking privileges for any student arrested for reckless driving between the hours of 7 a.m. and 3 p.m. or during a school sponsored event, for six weeks, and any subsequent moving violation ticket will result in an additional six week suspension. A third ticket will result in the parking privileges being removed for the remainder of the that school year;
- Suspend parking privileges for any student who is ticketed for speeding two or more times in a six month period in and around the high school between the hours of 7 a.m. and 3 p.m. The suspension will last for six weeks. A subsequent ticket for any reason will result in parking privileges being removed for the remainder of the that school year; and
- Montgomery Police Department will coordinate with MISD Police Department and provide the names of any high school student who receives a reckless driving ticket or speeding tickets. The students will start out with a clean slate, so no past offenses will be counted against the student.

Rebecca Huss said that she has noticed an increase in the last week of volume and speed of the vehicles at 3 p.m. Mr. Yates said that he had told Dr. Rees that they would need to advertise this information. Mayor Jones asked about the startup date for the program. Mr. Yates advised that he would talk to the Chief and find out that information.

Rebecca Huss said that she still feels that a more responsive traffic signal at SH 105 and FM 149, to increase the amount of time for the east/west traffic for that 15 minutes when school lets out and on FM 149 north/south when MES lets out and when the Lone Star Cowboy Church lets out from their activities. Rebecca Huss said that if they had the timing for 35-45 more seconds for each green direction to move traffic, she felt that would fix the problem. Rebecca Huss said that they are only taking the backroads because they assume they are going faster in that direction. Rebecca Huss said that they need to hurry up that intersection project and the upgraded signal box.

**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 8:05 p.m.

14. Convene into Open Session.

Mayor Jones reconvened the Open Session at 8:29 p.m.

**POSSIBLE ACTION FROM EXECUTIVE SESSION:**

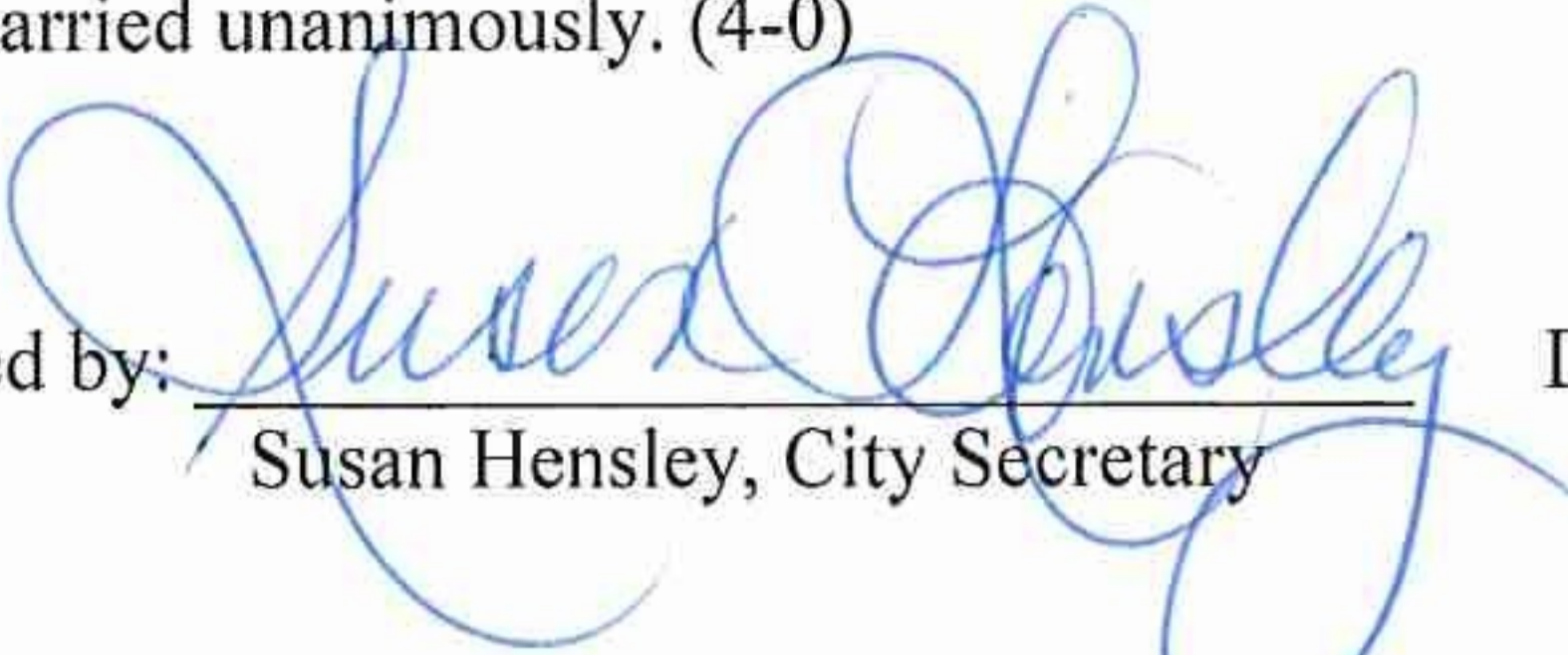
15. Consideration and possible action, if necessary, on matters deliberated on during Closed Executive Session with the City Attorney.



Jon Bickford moved to authorize the City Administrator and City Attorney to move forward with crafting a contract for purchase of commercial property for public usage. John Champagne seconded the motion, the motion carried unanimously. (4-0)

**ADJOURNMENT**

Jon Bickford moved to adjourn the meeting at 8:30 p.m. T.J. Wilkerson seconded the motion, the motion carried unanimously. (4-0)

Submitted by:   
Susan Hensley, City Secretary

Date Approved: 04/24/18

  
Mayor Kirk Jones

