

MINUTES OF PUBLIC HEARINGS and REGULAR MEETING

October 25, 2016

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

Absent: Jon Bickford City Council Place # 1

Also Present: Jack Yates City Administrator
 Larry Foerster City Attorney

INVOCATION

T.J. Wilkerson gave the invocation.

PLEDGE OF ALLEGIANCE TO FLAGS

PUBLIC HEARING:

Convene into Public Hearings:

1. Public Hearing for the purpose of considering the land use assumptions and capital improvements plan under which an impact fee may be imposed. Any member of the public has the right to appear at the hearing and present evidence for or against the land use assumptions and capital improvements plan; and

Mayor Jones convened the Public Hearing at 6:02 p.m.

Mr. Glynn Fleming, City Engineer, presented the information stating that they have spoken at length about the City's intent to adopt an Impact Fee Zone or Zones throughout the City. Mr.

Fleming said that City Council had created a Capital Improvements Advisory Committee several months ago, which has met several times. Mr. Fleming said the Committee's first item of completion is before City Council this evening, which is a recommendation of Land Use Assumptions and a Capital Improvements Plan.

Mr. Fleming advised that the Committee has opted to have one single zone with a City wide Impact Fee and is based upon the existing City's Zoning Map, which is kept on file with the City Secretary.

Mr. Fleming said that the recommendation being offered by the Capital Improvements Advisory Committee tonight to adoption of a Land Use Assumption based on the City's existing Zoning Map.

Mr. Fleming said that the Committee's second recommendation that they are offering this evening is the adoption of the Capital Improvements Plan, which is a listing of capital projects which will be needed, all or in part, to facilitate new growth or development thought out the City.

Mayor Jones asked Mr. Fleming to speak a little bit more on the Land Use Assumptions and talk about some of the areas of concern. Mr. Fleming said if they had some areas around town that were designated for a specific purpose, such as a port, those would be areas easily identified that they might choose to associate a certain fee for a certain project or certain need. Mr. Fleming said that they don't really have that in this area, so their recommendation to the Committee was to work from the existing Zoning Map. They know of areas that are likely to develop as commercial, single family, but beyond that they don't have areas that are likely to be designated for a specific purpose.

Mayor Jones said that at the present time the City has an Impact Fee Zone, and asked if this would be a separate zone or would it be encompassed into the other zone. Mr. Fleming said that the new Impact Fee would supersede that zone, which would then cease to exist.

Rebecca Huss asked about how time and actual experience will affect the list of capital projects and the Impact Fee going forward. Mr. Fleming said that the Texas Local Government is largely the blueprint for this, so they work with the guidelines that are provided. Mr. Fleming said that they work with a ten (10) year planning window, so all of the projects that they have incorporated into the existing Capital Improvements Plan is for growth that is either imminent or coming within the next 10 years.

Mr. Fleming said that the Code provides that they periodically review the list and completed projects are removed from the list and new projects added.

Mayor Jones said that basically the planned Capital Improvements in the City encompass the Impact Fee Zone, in other words the whole City, at least the main thoroughfares of the City would be involved. Rebecca Huss said the Capital Projects are only those that are needed for Montgomery's infrastructure for residential or commercial growth. Mr. Fleming said that there were certain projects that would facilitate existing customers as well as feed new growth.

John Champagne asked, if historically, the Impact Fee has recovered most of the costs in other municipalities. Mr. Fleming said that in other municipalities, yes absolutely. John Champagne asked if any current ongoing projects would be exempt from Impact Fees if they passed the Ordinance later on this year. Mr. Fleming said that, yes, the existing projects would be exempt.

Mr. Shackelford said that if the Impact Fees were imposed next month, the fees would not be collected during the next 12 months, the assessment would start one year from the date of the ordinance being adopted.

Mayor Jones asked how the fees are allocated and collected. Mr. Fleming said that the fees are allocated on a per connection basis, there would be a fee and the fee would be collected at the time of connection to the system and at the time of the development of the plat. Mr. Fleming said that the Impact Fee would be directly associated with the projects on the Capital Improvements Plan. Mayor Jones asked if application of Impact Fees in other municipalities had prevented development. Mr. Fleming said that it did not.

Mr. Shackelford said that the City of Magnolia has had an Impact Fee for at least the last five years and they are experiencing considerable growth at this time. Mr. Shackelford said that the City of Magnolia's fees structure is similar to the way the City of Montgomery's fees structure has been calculated.

Mayor Jones said that some people might think that it is unfair that they have to help pay for other development with the Impact Fee, if the whole City is an Impact Fee Zone. Mr. Shackelford said that existing residents would not be paying the Impact Fees.

Mr. Phillip LeFevre said that he was not sure of the details of what the City is planning here, and said that he is not pro or against them. Mr. LeFevre said that he, hopefully, did not want them to make the mistake that he made. Mr. LeFevre said that he did not think that he had made a mistake until about one year ago when the City Attorney was talking and he said from

his experience, the City of Conroe, had not always benefitted from successfully doing infrastructure with Impact Fees. Mr. LeFevre said that he did not want to put words in the City Attorney's mouth, but that was essentially what he took away from the meeting.

Mr. LeFevre said that he had spent quite a lot of money 10 years ago doing a bunch of things outside of town. Mr. LeFevre said that in retrospect some of that work, instead of all being done at once, could have been done gradually. Mr. LeFevre said that with Buffalo Crossing, it is very hard to predict because they paid for the Impact Fee for the waterline to go all the way down the hill, and nothing has gone in there yet, so they will never get their money back for the waterline. Mr. LeFevre said that in Lake Creek Village, Section One, they put the waterline extension all the way down to the lift station. Mr. LeFevre said that they are basing their assumptions on an area, but what if nothing develops. Mr. LeFevre said that if he had to do it all again, he would still do it, but he would think it through a little more carefully and perhaps try to stagger the improvements rather than putting all the roads in at once, and other infrastructure.

Mr. LeFevre said that he was only asking the City to be cautious and to not get trapped into spending a whole lot of money, and then they go into a depression or something else, and then all of a sudden those improvements take a whole lot longer to use than they anticipated. Rebecca Huss said to that point, on the wastewater side, 60 percent of the total project listed are costs related to the sewage treatment plant, which is mandated by the state when they reach a certain capacity. So in some ways the City does not have a choice about spending the funds. Rebecca Huss said that even if they have one more toilet, they will need a new sewage treatment plant and there is nothing that they can do if they have to borrow 5 million dollars to get capacity that only serves one user. Rebecca Huss said that they will delay as long as they can, but sometimes there are investments that can't be put off because it is mandated by the state to make them.

Mr. Fleming said that was one of the reasons they work on a ten year design plan because the improvements are designed to be phased in over time. Mr. Fleming said that the wastewater treatment plant will be done in two to three phases. Mr. Fleming said that they put in an elevated water storage tank on the list because they know that they will need it, but that will be toward the end or possibly longer than the 10 year plan.

Mayor Jones said that even though you know it is a long way down the road, they will be collecting for it now.

Ms. Tina Ritchie – said that she has family and relatives that live in Magnolia. Ms. Ritchie said that Magnolia has had a lot of talk about their Impact Fee and the last she heard they were thinking about doing away with their Impact Fee. Ms. Ritchie said that she had not attended their meeting but she was only stating what she had heard, and was food for thought.

Keven Merrel – asked if there was a way that they would be able to see the list of Capital Improvements and whether that information was open to the public. Mr. Fleming said that the item up for adoption tonight is the Land Use Assumptions and proposed Capital Improvements Plan. Mr. Fleming said that both of those items were advertised for publication and public viewing thirty (30) days ago and they are on file with the City Secretary, so a request can be made to review that list.

Mayor Jones said that Mr. Foerster was mentioned during the hearing. Mr. Foerster said that he deferred to Mr. LeFevre, in terms of Conroe's Impact Fees, because he was not aware that they had Impact Fees and he does not represent the City of Conroe, nor do any of the cities that he represents have Impact Fees so he really could not speak in practice on what has happened in any cities that he would know about. Mr. Foerster said that Impact Fees are deemed to be very prudent and a very popular mechanism to deal with rapid growth in a community, such as the things that the City Engineers have discussed this evening. Mr. Foerster said that he has no objection to Impact Fees.

Mayor Jones adjourned the Public Hearing at 6:20 p.m.

2. Public Hearing regarding an Application for Alcohol Beverage Permit for Cowpokes located at 22016 Eva Street "A", Montgomery, Texas (previously the Heritage House) as submitted by Brave Spear LLC owner David Gerrard.

Mayor Jones convened the Public Hearing at 6:20 p.m.

Mr. Yates advised that the applicant was David Gerrard, and the property was previously the Heritage House located on SH 105. Mr. Yates said that a legal notice was published and notices were sent out to all the property owners within 200 feet of the location and the City did not receive any public comments. Mayor Jones said that the Heritage House had a beer and wine permit.

No public comments were made.

Mayor Jones adjourned the Public Hearing at 6:21 p.m.

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.

Ms. Tina Ritchie – stated that she did not know if anyone noticed but there are some issues with City Hall as far as insubordination goes, and it is at the highest level she has ever seen, and she has been here for a long, long time. Ms. Ritchie said that she called City Hall and asked a representative about an ordinance and got told what she could and could not do. Ms. Ritchie said that they followed every step, and all it did was cost a lot of money and a lot of time, because the very next day other employees at the City said “Oh that is not our fault, you should not have believed what she said.” Ms. Ritchie said that was the employee’s explanation, which was not a very good explanation.

Ms. Ritchie said that they talked to two employees of the City asking when the next Council Meeting was and they were given three different dates. They were given the date of November 8, 2016 and told that they were put on the agenda. Then they were told that there was no Council Meeting on November 8, 2016, so they were putting them on the Agenda for November 13, 2016, then they were told that was wrong it is going to be November 15, 2016. Ms. Ritchie asked if any of City Council can confirm when the next City Council Meeting will be since City Hall can’t. Mr. Jeffrey Waddell stated that it is on the calendar on the web site. Ms. Ritchie said that it was not on the calendar, and said that she had the floor, just to let him know. Ms. Ritchie said that her three minutes were not up, and asked the Mayor if that was correct. Mayor Jones said that was correct. Mr. Ritchie asked if Mr. Waddell was a City employee, and said again, let’s talk about insubordination at its finest. Mr. Waddell said that he apologized to Ms. Ritchie. Ms. Ritchie said that they are done with this and said that if they can’t call City Hall and get told the truth about simple issues, then there is a problem.

Ms. Ritchie asked what they are going to do if somebody calls and says can I put up a six foot privacy fence and paint it purple and gold, and they get told yes, will the City really come in four days after they complete it and tell them to tear it down because they should not have believed what the people told them. Ms. Ritchie said that they are going to tell you that none of this happened and this is all lies and all made up. Ms. Ritchie said that she has every phone conversation on her phone recorded. Ms. Ritchie said that they show the time, date of the complete phone conversations, and there is no way to edit the conversation or break them up, they are there.

Ms. Ritchie said that you have a Director that sent two of his employees outside of the City to commit a crime. Unfortunately, Ms. Ritchie said that she could not file charges against the Director, she had to file them against the two employees, just because their boss tells them to commit a crime, don't give them the right to do it. Ms. Ritchie said that now those two employees have charges pending against them because they were following what their boss told them to do. Ms. Ritchie said that again, she can back that up, he admits it on a recorded phone conversation, and he admits sending them out of Montgomery City limits.

Mayor Jones stated that it was time for Ms. Ritchie to start winding her statement down.

Ms. Ritchie said that she is on the agenda for the next Council Meeting, whenever that might be. They will have to try and find out for real when that is. Ms. Ritchie said that this is just a taste of what is coming, okay, and said "either you all can get involved and find out the truth, you can make copies and do whatever they want. Ms. Ritchie said that she will play the recordings for City Council whenever she needs to. Ms. Ritchie said that something needs to change here, when a man refers to a woman as "ma'am" she does not think she is going to get offended, but yet the City has a psycho that carries a gun that the statement offends.

Mayor Jones said it was time to wind it down and thanked Ms. Ritchie. Ms. Ritchie said that she raised her hand and admits who she is.

CONSENT AGENDA:

3. Matters related to the approval of minutes for the Public Hearings and Regular Meeting held on October 11, 2016.

Dave McCorquodale moved to approve the minutes as presented. T.J. Wilkerson the motion, the motion carried unanimously. (4-0)

CONSIDERATION AND POSSIBLE ACTION:

4. Consideration and possible action on Department Reports.
 - A. Administrator's Report - Mr. Yates presented his report to City Council.

John Champagne asked about the flood damage in the City and asked whether Flagship Boulevard would be covered later, along with Pizza Shack. Mr. Fleming said that they would be covered.

- B. Public Works Report – Mr. Muckleroy, Public Works Manager, presented his report to City Council. Mr. Muckleroy said that their heavy trash weekend was a success as always. They conducted the setup and cleanup for the Wine Fest. Mr. Muckleroy said that they had four water leaks and two sewer stop ups during the month. They installed the float switch at the Memory Park fountain. They fixed a sewer stop up under the Simonton Building by releveling the pipes.

Mr. Muckleroy said that the Fernland Docents reported 435 visitors and they provided 34 tours. Mayor Jones asked if the 34 tours were individual numbers or were they groups. Mr. Muckleroy said that he did not know, but he could ask them to break the number down so they would know. Mayor Jones said that it might be interesting.

John Champagne asked what type of leaks they had. Mr. Muckleroy said that two of them were at Memory Park, and the other two were minor, one being a service line and another a meter leak, but nothing major. Rebecca Huss asked if the automatic meter reading system (AMRS) helped them locate the leaks. Mr. Muckleroy said no, they were leaks on the City's system. Mr. Muckleroy advised that they were notifying residents that have leads by placing a notice on their door with an information sheet on the back of the notice so that they can get set up on the high water use alerts. Mayor Jones asked if a leaky toilet would be pegged in the system. Mr. Muckleroy said absolutely it would set off the system. Rebecca Huss said that she felt that system provided a lot of value to the people that they are helping. Mr. Muckleroy said that he gets a lot of good comments regarding the AMRS.

- C. Police Department Report – Chief of Police James Napolitano presented his report to City Council. Chief Napolitano said that he was lucky enough to attend the first counter terrorism seminar put on by Department of Public Safety and the FBI in Austin last month. Chief Napolitano said that the seminar was quite interesting and they focused on Texas, with the local terrorist groups, overseas groups and groups from

Mexico, and the amount of impact that they are having on the cities. Chief Napolitano said that the following week he attended the COPS/YNIC Conference in San Marcos. One of the presenters at the Conference was the Chief Deputy of Alpine, Texas Sheriff's Department, who was the first to arrive at the active shooter at Alpine High School. Chief Napolitano said that if it can happen in a small town like Alpine, it can happen anywhere. The City of Montgomery has a large influx of people that come to the City.

John Champagne asked how many people or vehicles the Chief estimated came through the City of Montgomery every day. Chief Napolitano said that it was about 40,000 visitors per day, and they have a lot of people that are already here that move their children to and from school each day. Chief Napolitano said that, as Mr. Kotlan said a while back, our impact from our economic size, is not the people here but people coming there to buy what they need. Chief Napolitano said that when the new Kroger opens it will bring people into Montgomery.

Chief Napolitano said that he had a complaint from a resident regarding traffic on SH105 by Cedar Brake Park, where the road merges into one lane, so he sent Officer Carswell out and within an hour and 15 minutes he had written 13 tickets. Chief Napolitano said that when an officer has a DWI, it takes 5-6 hours for them to process all the information.

Dave McCorquodale asked about the manual traffic control at the intersection of the SH105 FM 149, asking if they felt that it was working and how many man hours were required to manage the traffic light each day. Chief Napolitano said that they spend approximately 10 hours each day manning the controls for the intersection, but he is hoping that Flagship Boulevard will open soon.

- D. Court Department Report – Ms. Rebecca Lehn, Court Administrator, presented her report to City Council. Ms. Lehn said that beginning next month, she will also break down the warrants, because they now have a warrant officer. Ms. Lehn said that last month the warrant officer cleared 60 warrants. Ms. Lehn said that the warrant officer breaks down her information detailing how many turned themselves in, bonded out of jail, how many received jail credit, etc. Ms. Lehn said that in addition to the monthly report, she had included an overview showing where they were five years ago through current date. Ms. Lehn said that the comparisons are from the year prior, with the totals

for the past five years. Ms. Lehn said that the largest increase was from 2014 to 2015. Ms. Lehn said that citations are up 35 percent from five years ago. Rebecca Huss thanked Ms. Lehn for putting the information and said that it was nice to have all the information in one place. Ms. Lehn said that she would prepare this report at the end of each fiscal year, including the warrant breakdown.

- E. Utility/Development Report – Mrs. Ashley Slaughter presented her report to City Council. Mrs. Slaughter advised that there were six new utility accounts and 14 disconnects. Mrs. Slaughter said that they had six cut offs, with all but one account being reinstated. John Champagne asked if they could substitute the word “discontinue” for “cut off” in the future. Mrs. Slaughter advised she would do that, but stated that was the terminology that was in the Incode system. Mrs. Slaughter said they had 20 permits, with one being a new home. Mrs. Slaughter said that there were four bookings of the Community Center for a profit of \$600. Mrs. Slaughter advised that the meter reading was completed this month, with four issues, the same as last month, two with the Neptune meters, and two others where the register was switched when a leak was detected. Mrs. Slaughter said that the two Neptune meters are reporting lower than what they are actually reading in the field. Mrs. Slaughter said that the Accurate representative is supposed to look into the problem, but she has not heard anything yet.

Rebecca Huss asked about the Buffalo Springs Plant water usage, and said that she thought the 337,000 gallons was significantly more than the last couple of months. Rebecca Huss said that averaging would have been 225,000 to 250,000 gallons. Mrs. Slaughter advised that she had notices that high usage and she had notified Mr. Muckleroy. Mr. Muckleroy said that he had been looking at the usage for the last couple of days, and said that they are not sure if it is a reading error. They have traced it back to the exact day that the usage increased, but at this time he did not have a definitive answer. Mr. Muckleroy said that they think it might have something to do with when they converted and used Well #3 more because the water got warmer, and they have also had to go back to using the water softener for the last month because of the harder water. Mr. Muckleroy said that he would come back with a definite answer to the usage.

F. Water Report – Mr. Mike Williams, with Gulf Utility, presented his report to City Council. Mr. Williams said that there were a total of six district alerts. A couple of the alerts on August 22 and September 6, were related to power imbalances. On August 22 they also had a generator running alarm, resulting from a mouse chewing some wiring, so they ended up having to replace the controller and they have placed bait blocks around the generator to prevent that from occurring.

There was a high wet well at Lift Station 2, possibly due to rain in the area. They also had an elevated run time at Lift Station 5, so they had the pumps pulled to prevent a breakdown. Mr. Williams advised that the flow for the month of September at the Sewer Plant was 1,986,000 gallons and the daily peak flow was on September 8 at 91,000 gallons and the average flow is 64,000 gallons.

Mayor Jones asked if the City was at an optimum run on each well, and asked if they had looked into what was optimum. Mr. Williams said that they had put some information together and he believed that Mr. Yates and Mr. Fleming are putting together the efficiency numbers.

Mr. Williams said that last month he had reported that they had a higher ammonia level at the sewer plant was at 1.92, and this month they are back down to .38, which is around the normal level. Mr. Williams said that there were no excursions for the month of September. Mr. Williams said that they had changed labs because the lab did not want to look into the ammonia level. The new lab was able to run different tests and the reading was just below an excursion and now it is back to normal.

Mr. Williams said that there had been 6.43 inches of rain during the month. Mr. Williams advised that the official rain gauge is located at the front of the Sewer Plant. Mr. Williams said that they had an accountability of 82% percent for the wells, which is down from the 90's. Mr. Williams said that they have not seen any leaks this month that would represent that figure. Rebecca Huss said that was strange because Mr. Williams's figures are matching the City figures for each gallon that is pumped, and they have people reporting actual numbers for flushing. Mr. Williams said that he has double and triple checked the flushing numbers. 1.7 million gallons is missing, which is a lot. Mr. Williams said that they have checked for leaks, but they had not found anything, so they will continue to look into the matter. John Champagne said that he would think that should fall under the category of unbilled water, and asked if that was the cost of doing business. Mr. Muckleroy said that it was to a certain extent. John

Champagne asked to what extent. Mr. Muckleroy said that there would always be some degree of loss. John Champagne said that they had 18% percent unaccounted for water loss, which is a cost, and he knew that they did not include that in the figures. John Champagne said that if the amount is unaccounted for, it is a cost, whether it is accounted for or not, and the City is paying for that and at some point that needs to be added into the cost for producing water, or they need to find the water that they are losing. Rebecca Huss said that Mrs. Slaughter's report stated that there were 79,000 more gallons than this report. Mr. Williams said that he would check out Mrs. Slaughter's report. Mr. Williams said that he takes Public Work's flushing and he put it into the time frame that they produced the water, but he will check Mrs. Slaughter to see if she is doing it on a monthly basis. Mayor Jones said that if they have a lot of contractors in the area and they are using the water, are they measuring the water usage. Mr. Muckleroy said that they use temporary meters, and said that two temporary meters are at the Kroger site. Mr. Muckleroy said that they manually read the temporary meters each month. Mr. Muckleroy said that before they read the meter this last time, they ran water through the meter and through a one inch meter to make sure that they read the same. Mr. Muckleroy said that they had good readings on all of them, in fact two of them were brand new Beacon meters that will read electronically. Mayor Jones asked if there was a chance that another contractor could use another contractor's meter. Mr. Muckleroy said that there was always a chance of that occurring. Mr. Muckleroy said that if he ever sees someone pulling water off of a meter, he will stop and see what is going on, but he has not seen anyone doing that.

John Champagne asked Mr. Fleming, if they were to compare the water quality of the water that they get out of their faucets in the City to all water that is being bought at Brookshire Bros. for drinking, how far apart would those two be in terms of solids and such. Mr. Fleming said that it depended on the "bottled water," because a lot of bottled water actually comes from a municipal water source. John Champagne said that water is becoming more and more expensive, and said that if the City were to become more customer service oriented and got our water to where it was some of the best water in the area, they would not need bottled water. John Champagne asked how far they were from getting rid of solids or anything like that, and what type of cost are they looking at. Mr. Fleming said that there is a water quality report that goes out annually with the customer billing statements, which provides a full breakdown of the water chemistry

as compared to the state regulation and base ideal. Mr. Williams said that a copy of that report is on the City's web site. Mr. Williams said that when they were using Well 4 more, the water was a lot softer and comes up a lot cleaner. John Champagne said that they might want to promote that on the web site.

G. Engineer's Report – Mr. Fleming said that regarding accountability, ideal accountability system wide would be at 93-95% percent. Mr. Fleming presented his report to City Council. Mr. Fleming said that the Impact Fee public hearing will be held on December 13, 2016, and then next scheduled Capital Improvements Advisory Committee is on November 2, 2016. Mr. Fleming advised that a draft copy of the Impact Fee Analysis Report was enclosed with the Engineer's Report.

Mr. Fleming said that there was a lot of talk earlier regarding the traffic problems around town, and said that in the summer the City had entered into an Interlocal Agreement with Montgomery County Precincts 1 and 2 for a Joint Traffic and Mobility Study in the area, which is underway. Mr. Fleming said that the data has been received in house last week and they are working on disseminating the data, and they should have a better update at the November Meeting. Mayor Jones asked whether Flagship Boulevard and Buffalo Springs Drive being down significantly skew the data. Mr. Fleming said that they had accounted for Buffalo Springs Drive in the planning, but Flagship Boulevard just closed last week, so there might be a little of that built into the later count data. Mr. Fleming said that they know the exact date and time that Flagship Boulevard was put out of service so they can normalize for that closure.

Mr. Fleming said that the Kroger project was now underway and the preconstruction meeting was held on October 15, 2016, and the contractor was issued a Notice to Proceed.

Mr. Fleming said that the engineering design for Pizza Shack project is largely complete. Mr. Fleming said that they will not be allowed to draw down on construction funds for that project until the business to be served, and participating in the grant, shows "measurable" progress on construction at the site. Mr. Fleming said that they are sort of in a holding pattern until they have some activity underway at that job site. Mr. Fleming advised that the Lake Creek Village Section Three, Preliminary Plat was approved by the Planning and Zoning Commission. Mr. Fleming advised that Lake Creek Village, Section Two Final Plat is on the agenda for tonight.

Mr. Fleming said that they are continuing to work with FEMA for advanced funding for the Buffalo Springs Bridge, and they have initiated requests for geotechnical soil studies to the adjacent side slopes and for the initial site survey. Mr. Fleming said that their expectation is still to have a complete package to submit to FEMA late this year or very early January, 2017. Mr. Fleming said they have reached out to neighboring property owners both immediately up and down stream, through the City Attorney, with the intent right now to have a sit down meeting with those individuals, most likely in early December to start to coordinate planned activities.

Mr. Fleming said that Flagship Boulevard is currently out of service. There is a 60-inch plastic storm sewer pipe that runs beneath the failed section of paving. The pipe was heavily damaged during the April and May storms, and then failed in its entirety last week. Mr. Fleming said that they have been working with FEMA up to this point. The contractor has been on site since last Sunday, and they had a sizable amount of excavation to get out of the way, which is largely complete. The first concrete pour at the site was late this afternoon, and there will be activity at that location over the next few days. Mr. Fleming said that he would like to think that they would be completely done, with permanent repair of storm line, and have the road open and functioning by next week. Mayor Jones said that he was under the impression that they were going to repair the pipe and cover it up with a temporary cover, and then come back with a permanent cover. Mr. Fleming said that was correct, this would be the complete repair of the storm sewer, but the temporary repair of the road with crushed stone, so that they can open the road as quickly as possible. Mr. Fleming said that they will continue to work with FEMA, and try to schedule the repaving during the time when school is not in session. Mayor Jones asked if they had to tear up more concrete than they thought. Mr. Fleming said no, the magnitude of the excavation was actually more than they thought, with numerous utility conflicts, including a City sanitary sewer line, existing fiber optic conduit and natural gas lines. Mr. Fleming said that it was generally a tight spot to work with the pond slopes. John Champagne asked what was going to be replaced for the plastic pipe that is being removed. Mr. Fleming advised that they would be replacing the failed section of the plastic pipe and they will basically construct, in the field, a new junction box around the failed section. Mr. Fleming said that was the least intrusive and quickest way to repair the problem permanently and get the road back open. Mayor Jones asked if it would be concrete at the break point

hooking into the plastic pipe. Mr. Fleming said that they will construct the junction box and place a manhole above the junction, and then fill over the remaining line to get the road back open. Mr. Fleming said that they will have to go back in and repair the paving at a later date.

Rebecca Huss asked how close the removal of the existing paving was to FM149. Mr. Fleming said that he was still working out the details with FEMA, but there is several hundred linear feet of paving, from the intersection of FM 149 to behind Brookshire Bros. Rebecca Huss said the turn lane going north from Lone Star Parkway on to FM 149 has been discussed in the past, in terms of backing up traffic and how people are driving in the ditch and back up on to FM 149. Rebecca Huss said that she was wondering if they could spend a little extra money and deal with that as an add-on project, or whether it would need to be a completely separate project. Mr. Fleming said that they could address that issue when they do the permanent paving repairs.

Mr. Fleming said that were ongoing with the request for some capital project funding from the Water Development Board. On October 6, 2016 they received a request for some additional information and some additional data, which they are working on. Mayor Jones said that they were working on some deadlines with the Water Development Board. Mr. Fleming said that was correct.

- H. Financial Report – Mrs. Cathy Branco, Financial Consultant, presented her report to City Council. Mrs. Branco said that preliminarily, at the end of September 30, 2016, the City was showing a positive position, both in the operating and most of the other funds. The Utility Fund is up \$6,000, which Mrs. Branco said was wonderful. Mrs. Branco also advised that she was preparing the closing entries for the Annual Audit. Mrs. Branco said that she hoped that they would have the Auditors in house in the next couple of weeks.

Mr. Yates advised this year with a \$2.48 million dollar City Budget, they were 1.5% percent under for General Fund expenses, and 8.5% percent under for expenses in the Utility Fund. For income, the Utility Fund came in 11% percent higher, and 4.9% higher in the General Fund. Mr. Yates said that they underestimated the income and overestimated the expenses, and said that he thought is spoke well of the City Council and for the staff to bring it in that close. John Champagne said that he agreed. Rebecca

Huss said that the Utility Fund is in a positive position, which has been an unusual occurrence, so it is a nice job on both sides.

John Champagne said that when he hears one of our contractors say that he is changing vendors because of lack of customer service, that is good and he likes to hear that.

Mayor Jones said that the City is fiscally sound. Mrs. Branco said she thought so and she wanted to keep it that way.

Rebecca Huss asked if they needed to amend last years' budget to account for where they ended the year. Mr. Yates said that they did not need to do an amendment to the budget.

Rebecca Huss moved to accept the Departmental Reports as presented. Dave McCorquodale seconded the motion, the motion carried unanimously. (4-0)

5. Presentation and discussion regarding dredging Waterstone Canal by Dr. Thomas Kozak.

Dr. Kozak make a presentation to City Council regarding the Waterstone Canal. Dr. Kozak stated after the storm in May, and there were three streams overloaded with water, which in turn sent trees, silt and trash downstream. All of this debris filled up the Waterstone Canal and made it unusable for approximately one mile downstream. Dr. Kozak advised that they have had difficulty getting a response from the owner of their subdivision, Steve Bowen, so they formed their own Homeowner's Association.

Dr. Kozak stated that on October 5, 2016 Mr. Bowen told them that he did not have a plan to fix the canal, contrary to what he had said early in a sales promotion ad. Dr. Kozak said that FEMA has advised that Mr. Bowen has not filed for any FEMA relief, and the same from the San Jacinto River Authority. Mr. Yates has advised them that the City will not be taking any action on the canal, and they were hoping to get a letter from the City stating that they were not going to repair the private canal, and he would like to get a letter stating that information. Dr. Kozak said that he was still trying to contact the U.S. Corp of Engineers, which was one of the agencies sited. Dr. Kozak said Mr. Fleming had said that he was going to contact the National Resource Conservation Services to see if they have any relief available.

Dr. Kozak said that the canal owners have paid a significant premium in our lot, up to \$50,000 additional, from the inside lots, to have what is considered water front lots. Dr. Kozak said that this summer has been a waster for everybody and they have not been able to use the canal. Dr. Kozak said that Mr. Fleming has advised that when FEMA comes out to repair the bridge, he is going to ask if they could fix 100 feet of the canal on each side of the bridge. Dr. Kozak said that if the dredgers are already out there, then they might be able to have them do the work as a completely separate deal from the City.

Dr. Kozak described other options that they might seek, such as a deposition from Mr. Bowen under oath, and possibly seeking a class action law suit, or seeking tax reductions for waterfront lots that are no longer waterfront. Dr. Kozak also mentioned that they would need to find out the rules for picketing because there are other homes that are being built that will face the same problems.

Dr. Kozak said there was currently a lawsuit going on regarding soil samples and the problems with lots falling apart similar to the cliffs in California.

Dr. Kozak said that the owners do not get an accounting of the funds, minutes of meetings or votes. Dr. Kozak said that they have offered to take over the Homeowner's Association, and they have someone that is qualified to handle the finances. Dr. Kozak thanked the City for listening and asked for any direction that the City could provide. There were others that had asked to speak, but said that Dr. Kozak had covered everything. Mayor Jones thanked Dr. Kozak for the presentation.

6. Consideration and possible action regarding approval of an Application for Alcohol Beverage Permit for Cowpokes located at 22016 Eva Street "A", Montgomery, Texas (previously the Heritage House) as submitted by Brave Spear LLC owner David Gerrard.

John Champagne moved to approve the Alcohol Beverage Permit for Cowpokes located at 22016 Eva Street "A", Montgomery, Texas (previously the Heritage House) as submitted by Brave Spear LLC owner David Gerrard. Rebecca Huss seconded the motion, the motion carried unanimously. (4-0)

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

IN RECOGNITION OF MUNICIPAL COURT WEEK, NOVEMBER 7-11, 2016. A RESOLUTION RECOGNIZING THE IMPORTANCE OF MUNICIPAL COURTS, THE RULE OF LAW, AND THE FAIR AND IMPARTIAL ADMINISTRATION OF JUSTICE.
(Tabled at the October 11, 2016 Meeting)

Rebecca Huss moved to adopt the following Resolution: A RESOLUTION IN RECOGNITION OF MUNICIPAL COURT WEEK, NOVEMBER 7-11, 2016. A RESOLUTION RECOGNIZING THE IMPORTANCE OF MUNICIPAL COURTS, THE RULE OF LAW, AND THE FAIR AND IMPARTIAL ADMINISTRATION OF JUSTICE. T.J. Wilkerson seconded the motion, the motion carried unanimously. (4-0)

Mayor Jones read the Resolution into the record as follows:

IN RECOGNITION OF MUNICIPAL COURT WEEK

November 7-11, 2016

A RESOLUTION RECOGNIZING THE IMPORTANCE OF MUNICIPAL COURTS, THE RULE OF LAW, AND THE FAIR AND IMPARTIAL ADMINISTRATION OF JUSTICE

WHEREAS, municipal courts play a significant role in preserving public safety and promoting quality of life in Texas;

WHEREAS, more people come in contact with municipal courts than all other Texas courts combined and public impression of the Texas judicial system is largely dependent upon the public's experience in municipal court;

WHEREAS, the City of Montgomery hosts the Montgomery Municipal Court;

WHEREAS, state law authorizes a municipality to either appoint or elect a municipal judge for a term of office, the Montgomery Municipal Court is a state court and its judges are members of the state judiciary;

WHEREAS, the procedures for the Montgomery Municipal Court operations are set forth in the Texas Code of Criminal Procedure and other laws of the State of Texas;

WHEREAS, the City of Montgomery is committed to the notion that our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us and that judges and court personnel should comply with the law and act in a manner that promotes public confidence in the integrity and impartiality of the judiciary;

WHEREAS, Montgomery Municipal Judges are not policy makers for the City of Montgomery but are bound by the law and the Canons of Judicial Conduct and are

required to make decisions independent of the governing body of the City Council, city officials, and employees;

WHEREAS, the City Council recognizes that the Constitution and laws of the State of Texas contain procedural safeguards in criminal cases for all defendants, including indigent defendants, and supports the Montgomery Municipal Court in complying with such legal requirements.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS THAT THE WEEK OF NOVEMBER 7 – 11, 2016 IS HEREBY RECOGNIZED AS MUNICIPAL COURT WEEK IN RECOGNITION OF THE FAIR AND IMPARTIAL JUSTICE OFFERED TO OUR CITIZENS BY THE MUNICIPAL COURT OF MONTGOMERY.

PASSED AND APPROVED ON THIS THE 25th DAY OF OCTOBER, 2016.

Mayor Jones presented the Resolution to Rebecca Lehn, Court Administrator, Krystal Gonzalez, Deputy Court Clerk, and Kimberly Duckett, Deputy Court Clerk. Mayor Jones thanked the Court Administrator and Deputy Court Clerks for the job that they all do.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, APPROVING THE LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN FOR THE CITY'S PROPOSED WATER AND WASTEWATER IMPACT FEE SERVICE AREA; PROVIDING FOR SEVERABILITY AND TEXAS OPEN MEETINGS ACT CLAUSE; AND DECLARING AN EFFECTIVE DATE.

Dave McCorquodale moved to adopt the following Resolution: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, APPROVING THE LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN FOR THE CITY'S PROPOSED WATER AND WASTEWATER IMPACT FEE SERVICE AREA; PROVIDING FOR SEVERABILITY AND TEXAS OPEN MEETINGS ACT CLAUSE; AND DECLARING AN EFFECTIVE DATE. Rebecca Huss seconded the motion, the motion carried unanimously. (4-0)

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

A RESOLUTION CALLING A PUBLIC HEARING BEFORE THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, AND THE CITY OF MONTGOMERY CAPITAL IMPROVEMENT ADVISORY COMMITTEE TO BE HELD AT CITY HALL, 101 OLD PLANTERSVILLE ROAD, MONTGOMERY, TEXAS, TO HEAR ANY AND ALL PERSONS DESIRING TO BE HEARD ON OR IN CONNECTION WITH ANY MATTER OR QUESTION INVOLVING THE ADOPTION OF IMPACT FEES FOR WATER AND WASTEWATER, AND DIRECTING SAID NOTICE BE PUBLISHED IN THE OFFICIAL NEWSPAPER OF THE CITY OF MONTGOMERY, TEXAS AND POSTING ON THE CITY'S WEBSITE.

Rebecca Huss moved to adopt the following Resolution: A RESOLUTION CALLING A PUBLIC HEARING BEFORE THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, AND THE CITY OF MONTGOMERY CAPITAL IMPROVEMENT ADVISORY COMMITTEE TO BE HELD ON DECEMBER 13, 2016 AT 6:00 P.M. AT CITY HALL, 101 OLD PLANTERSVILLE ROAD, MONTGOMERY, TEXAS, TO HEAR ANY AND ALL PERSONS DESIRING TO BE HEARD ON OR IN CONNECTION WITH ANY MATTER OR QUESTION INVOLVING THE ADOPTION OF IMPACT FEES FOR WATER AND WASTEWATER, AND DIRECTING SAID NOTICE BE PUBLISHED IN THE OFFICIAL NEWSPAPER OF THE CITY OF MONTGOMERY, TEXAS AND POSTING ON THE CITY'S WEBSITE. T.J. Wilkerson seconded the motion, the motion carried unanimously. (4-0)

10. Consideration and possible action regarding the City of Montgomery Municipal Code Codification presentation.

Mr. Yates presented the information to City Council stating that the final proof was ready for printing after several months of staff review. Mr. Yates said that after approval of the final proof, the City will receive the ordinance to adopt the final Code. Mr. Yates said that that last time that the Code was updated was in 2005. Mr. Yates said that he was asking City Council for their approval to print the final proof.

Dave McCorquodale asked if in addition to the Binder, the information would be clarified online when you go to Municode, even if you are outside the City. Mr. Yates said that you

will be able to do a word search, such as “signs”, and you will be able to find all the information on signs or water and sewer rates, etc.

Mr. Foerster said that he had spoken to the City Secretary and City Administrator, and since the Impact Fees will be changing, he would like to suggest including the proposed Impact Fee Ordinance, which will be approved in December, in this codification. Mr. Yates said that they will budget \$3,500 each year for supplements to the Code. Mr. Foerster said that he was advised by the City Secretary that the Impact Fee Ordinance will not be in the Codification because the submittals have been cut off and it will be in a future supplement and on the web site. Ms. Hensley advised that the Code would be updated approximately 2-3 times per year. Ms. Hensley also advised that after 10 years, Municode recommends that the Code have a legal review to make sure that none of the ordinances are in conflict with State law or with each other.

John Champagne said that this was outstanding. Mayor Jones said that they have been talking about doing this for 10 years and it is so great to see this get approved. Mayor Jones said that before they go any further, he would like to thank Susan Hensley for taking the lead on this and making it happen, finally, and for doing a good job. John Champagne said it was outstanding. Rebecca Huss said to Ms. Hensley that having the knowledge of what they need to be doing has really been helpful since Ms. Hensley has worked for us, and said she was very grateful for her considerable energies towards this project. Ms. Hensley thanked the Mayor and City Council for their comments.

John Champagne moved to approve printing the City of Montgomery Code of Ordinances final proof as presented. T.J. Wilkerson seconded the motion, the motion carried unanimously. (4-0)

11. Consideration and possible action regarding purchase of Wade Street, and acceptance of Wade Street as a public street.

Mr. Yates advised that Mr. Washington, Jr. has presented the issue in February of this year. Mr. Washington brought it to the City’s attention that Wade Street was not a platted street. The City Attorney pointed out that the City held the right to maintain and operate the street

because it has been in the public use for more than 10 years. City Council chose to compensate the owners of Wade Street for the right of way area.

Mr. Yates advised that the three property owners have signed the deeds. Mr. Foerster has advised that the filing of the warranty deeds will represent the acceptance of Wade Street as a public street. Mr. Yates advised that the action will include payment to the property owners for the following property: Mr. Washington, Sr. for 1,331 square feet of property for \$1,876.71, Mr. Washington, Jr. for 6,177 square feet of property for \$6,547.62, and Mr. Paul Muller for 2,033 square feet of property for \$2,160.82.

Mr. Yates said that according to the City Attorney, if City Council approves the payment, they will file the warranty deeds and that will essentially dedicate the street as public. Rebecca Huss said that she knew this took a lot of work, along with the engineering and legal, but she felt that it was better handled this way, rather than taking it on a prescriptive right of way. Rebecca Huss said that she appreciated all the work and time that was put into this effort.

Rebecca Huss moved to approve purchases of Wade Street from the three (3) owners and to accept Wade Street as a public street. Dave McCorquodale seconded the motion, the motion carried unanimously. (4-0)

12. Consideration and possible action regarding acceptance of the Final Plat and Certificate of Acceptance of Improvements for Lake Creek Village, Section Two.

Mr. Fleming presented the information to City Council. Mr. Fleming recommended approval of both items.

Mayor Jones said that this subdivision has run into a lot of unexpected drainage issues, and asked if that was going to happen in this section. Mr. Fleming said that was a fair statement for Section One of this subdivision. Mr. Fleming said that they had the opportunity to review and comment on Section Two from the beginning of the project, and he would like to think that the drainage oversight that they applied to this Section was sufficient. Mr. Fleming said that in the microcosm of what occurs in these few streets, he thinks that they feel pretty good

about them. Mayor Jones asked if Section Two was topographically different than Section One. Mr. Fleming said that was a fair statement, and said it was worth noting that this subdivision ultimately drains through other areas downstream of Lake Creek Village Section One and so on.

Rebecca Huss asked if they had a discussion, at some point, about this property conveying water to fill Memory Park Pond. Mr. Fleming said that a portion of property is intended to drain into the pond. Rebecca Huss said that she thought that these streets would be privately owned. Mr. Fleming said that these streets are platted private, but the City owns the water and sanitary sewer lines. Mr. Shackelford said that the drainage was also private, until it goes into Memory Park or the City streets. Mr. Fleming said that the Certificate of Acceptance is only for the water and sanitary sewer improvements.

John Champagne moved to approve the Final Plat and Certificate of Acceptance of Improvements for Lake Creek Village, Section Two. Rebecca Huss seconded the motion, the motion carried unanimously. (4-0)

13. Consideration and possible action regarding award of the bid for the City Mowing and Right of Way Maintenance Contract.

Mr. Yates presented the bids to City Council, stating that both he and the Public Works Department were recommending accepting the bid submitted by Innovative Outdoors, LLC for all City facilities and right of ways in the amount of \$80,035.92, which was the low bid. Mr. Yates said that if the bid is awarded, they would notify the current contractor with a 30-day notice. Mr. Yates said that the next best bid was submitted by Easley Enterprises of TX, Inc. for \$90,738.00, and the other bids were considerably higher. Mr. Yates advised that Mr. Muckleroy personally knew Innovative Outdoors, LLC, and recommended awarding the bid to Innovative Outdoors, LLC.

John Champagne asked whether the current contractor chose not to bid, or was he invited. Mr. Yates said that he was invited to bid, but chose not to submit a bid. John Champagne asked what the cost was for 3rd Day Creations. Mr. Muckleroy said that it was budgeted at \$78,000, it was \$70,000 before they added Summit Business Park and Emma's Way, which took it up

to \$74,000 or \$75,000. John Champagne asked Mr. Muckleroy, other than price, what other criteria he used to make his choice, such as equipment or personnel. Mr. Muckleroy said that he used both, because he is going to use a tractor on the right of ways to get the job done quicker, and he had a good gut feeling about the contractor, plus he lives here in town, and this will be his pet project. Mr. Muckleroy said that this is what the contractor does for a living.

Rebecca Huss said that they will not be able to pick up trash when they are on a tractor, like the current contractor does while he is mowing. Mr. Muckleroy said that they will have to pick up the trash ahead of time, which trash pickup is included in the contract.

Dave McCorquodale moved to award the mowing contract to Innovative Outdoors, LLC for a contract with the City in the amount of \$80,035.92 per year. Rebecca Huss seconded the motion, the motion carried unanimously. (4-0)

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.

14. Convene into Closed Executive Session pursuant to the Texas Open Meeting Act at Sections 551.071 of the Texas Government Code to meet with the City Attorney to receive legal advice about pending or contemplated litigation.

Mayor Jones convened into Closed Executive Session at 8:00 p.m.

15. Convene into Closed Executive Session pursuant to the Texas Open Meetings Action at Section 551.072 of the Texas Government Code to meet with the City Attorney to receive legal advice about real property.

16. Reconvene into Open Session and take possible action(s) resulting from deliberations made during Closed Executive Session.

Mayor Jones reconvened the Open meeting at 8:48 p.m. There was no action taken resulting from the Closed Executive Session.

COUNCIL INQUIRY:

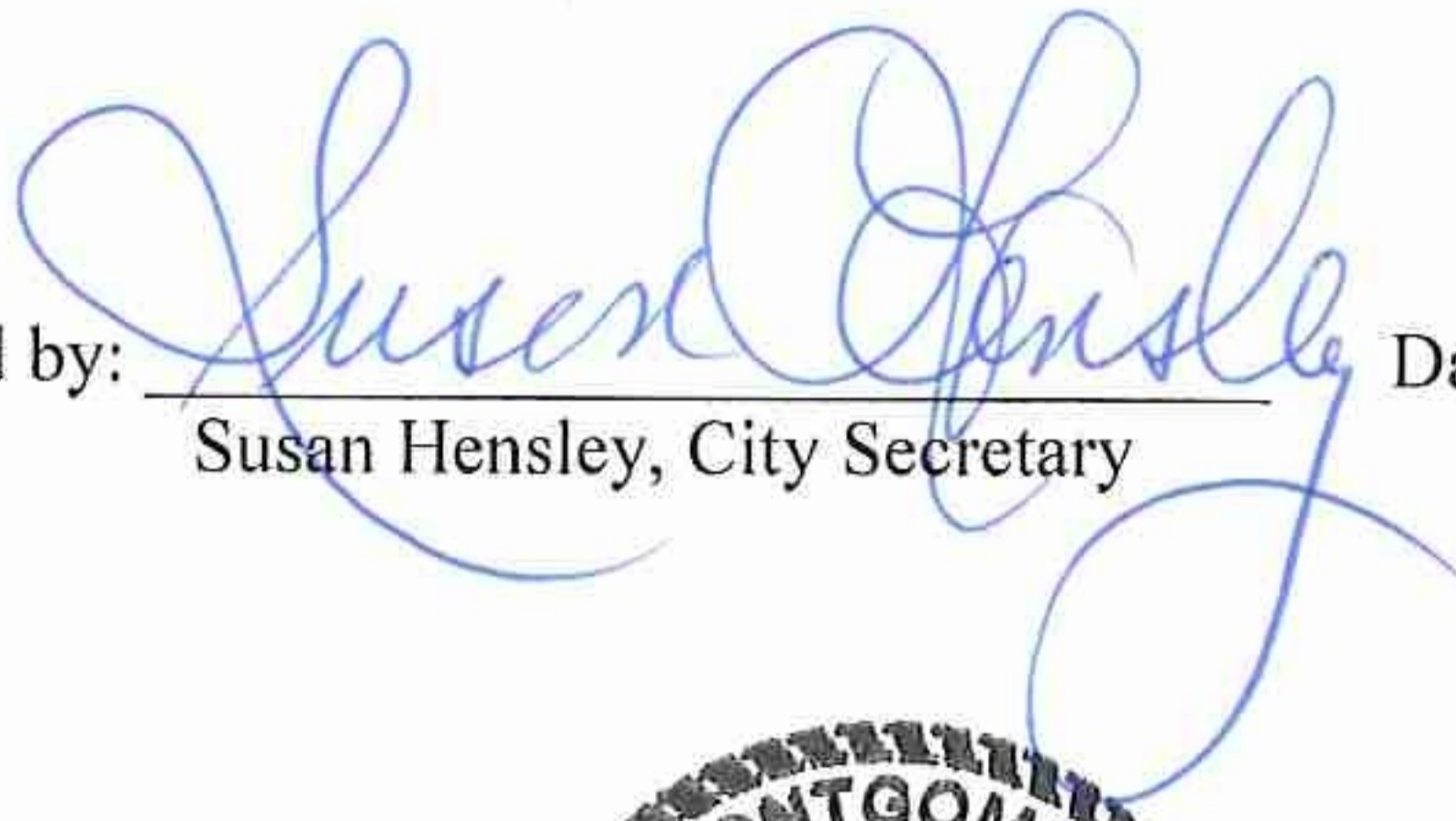
Pursuant to Texas Government Code Sect. 551.042 the Mayor and Council Members may inquire about a subject not specifically listed on this Agenda. Responses are limited to recitation of existing policy or a statement of specific factual information given in response to the inquiry. Any deliberation or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

No comments were made.

ADJOURN

John Champagne moved adjourn the meeting at 8:49 p.m. Rebecca Huss seconded the motion, the motion carried unanimously. (4-0)

Submitted by:



Susan Hensley, City Secretary

Date Approved:

12/13/2016





Mayor Kirk Jones