

MINUTES OF REGULAR MEETING

July 12, 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 Position # 2
 Rebecca Huss City Council Position # 4
 Dave McCorquodale City Council Position # 5

Absent: Jon Bickford City Council Position # 1
 T.J. Wilkerson City Council Position # 3

Also Present: Jack Yates City Administrator
 Larry Foerster City Attorney

Mayor Jones advised that T.J. Wilkerson was running late, but was expected to attend the meeting.

Mayor Jones advised that this was the second absence in a row for Jon Bickford. Mayor Jones stated that Jon Bickford had sent a message to City Council requesting to be considered for a leave of absence due to a family illness. Mayor Jones said that the request arrived too late to be put on the agenda for tonight, but will be placed on the next City Council Meeting agenda for consideration.

Mayor Jones then welcomed all the visitors to the Council Meeting.

INVOCATION

John Champagne gave the invocation.

PLEDGE OF ALLEGIANCE TO FLAGS

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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 Logan Bonner, with Boy Scout Troop 491, that is based in Montgomery, Texas. Mr. Bonner advised that he was attending the meeting to decide on an issue in the community and then write about that issue as part of the requirement to earn his Community Merit Badge.

Mayor Jones advised that there were some residents that were here tonight to make comments, and reminded City Council that all they could do is listen to the comments. Mayor Jones said that there is no need for discussions. Mayor Jones asked the speakers to limit their time, preferably three minutes or so.

Mrs. Amy Font, who resides in Waterstone, stated that they are very concerned about their property. Mrs. Font said that apparently they had been complaining to the wrong people and she needed to come before City Council. Mrs. Font said that she was sure that everyone has seen the canal and what they are dealing with in their backyard. Mrs. Font said that she has lived in Waterstone for two years and the canal has been dry 8 months out of the year. Mrs. Font said that they have taken a lot of damage to her home in the back and their boat, along with everything else with the floods that came in on Memorial Day weekend.

Mrs. Font stated that she has been talking with Mr. Glynn Fleming, City Engineer, and she thinks she knows where the bridge is going and they are going to repair it with FEMA. Mrs. Font said that her issue is that she has continuously tried to contact Mr. Steve Bowen, and she also attempted to invite him to the meeting tonight, but he refused to attend. Mrs. Font said that she feels very intimidated today coming to talk to City Council after the conversation that she had with Mr. Bowen this afternoon. Mrs. Font said that Mr. Bowen said for her to go down to City Council tonight and complain about the ditch, because then he will be in the press in the morning and they could possibly be delaying work to be done. Mrs. Font said that she had proof that Mr. Bowen owns the ditch, the property around her home and all of Waterstone. Mrs. Font said that she knows where Mr. LeFevre's property ends and Mr. Bowen's begins. Mrs. Font said that today every time that she went to speak to Mr. Bowen at his

office he would shut and lock the door. Mrs. Font said that they did not want to speak to anyone from Waterstone.

Mrs. Font said that the problem is the taxes on her house are \$17,000 and it is useless. Mrs. Font said that her and her husband bought their home to retire in. Mrs. Font said that they are waterfront property, which is what all the signs out front say, but they are not waterfront property. Mrs. Font said that they are buried in mud. Mrs. Font said that they also own the lot next door to them. Mrs. Font said that her relator told her today to give the lot away. Mrs. Font said that she went down to ask Mr. Bowen to purchase the lot back for what she had paid for it. Mrs. Font said that she was also told if she would buy the land across from her home, then he would purchase the lot, which she did not care to do.

Mrs. Font said that when she purchased her home at 156 Waterstone, she was told that nothing was going to be developed across from her, but now she knows that Mr. Bowen had plans in December, 2015 to develop a community across from her. Mrs. Font feels that she has been lied to again. Mrs. Font said she can't believe that she is being taxed like she is. All she wants is the area cleaned and fixed. Mr. Font said that this is the third time that they have flooded in their community, with it coming over the bank and cost him \$25,000 to \$30,000 in damages. Mr. Font said that he bought waterfront property so he could have a boat and now it will cost \$353 to store his boat. Mr. Font said that he asked if they could store their boat in the driveway because none of the neighbors have junk boats, but no they could not. Mrs. Font said that Mr. Bowen told them to do what they have to do with their boats right now. Mrs. Font said that Mr. Bowen is developing the peninsula. Mrs. Font said that she asked Mr. Bowen to stop work on the peninsula and come and help all the residents that are there in Waterstone and paying taxes, \$60 a year to the SJRA and \$660 a year in POA dues, and she can't get any answers. Mrs. Font said that she has pulled all the information, and Mr. Bowen owns all the lots across from her residence and Waterstone. Mrs. Font said that she feels so intimidated from what Mr. Bowen said to her about being in the press tomorrow. Mrs. Font said that Mr. Bowen is waiting for Mr. LeFevre to finish developing a detention pond further down the line. Mrs. Font said that she understands there is an issue coming from Town Creek and there are several subdivisions that are flooding them. Mrs. Font asked what was going to happen tomorrow when they have a major rain, because she is buried in mud. Mrs. Font said that she asked Mr. Bowen to come tonight and he refused.

Rebecca Huss said that she appreciated Mrs. Font coming to City Council and feeling that she could share, and said that they were always welcome to come here and speak to the City.

Mrs. Font said that she had one quick question and asked whether the City could help them and asked where they go from here. Mr. Font said that the value of their home depreciated over \$100,000 over night. Mr. Font said that if a child fell off into the canal now it is like quicksand out there. Mr. Font said that if there were no adults there it would be bad and said that an adult will sink 4-5 feet in the mud. Mrs. Font said that the gentleman that bought the house 4-5 houses down stuck a ladder in the mud and said that he was trying to dredge himself out because he can't get his boat out of the canal. Mrs. Font said that neighbor has also sent messages out to all the neighbors saying not to let any of the children walk across the mud because he sunk in the mud and barely got out. Mrs. Font said that she is very concerned and felt like the City should be involved.

Mrs. Linda Stewart, along with her husband and daughter also reside in Waterstone, and asked the other Waterstone residents to stand up to show how many were in attendance. Mrs. Stewart advised that they had bought their home in 2011, thinking that they would also retire here. Mrs. Stewart said that it was beautiful and Montgomery was an appealing little town, and now they have construction and Kroger coming in along with a lot of other things. Mrs. Stewart said that in 2011 they had fires and drought back there. The following year the channel was a little back down, certainly not what they had thought when they moved in. In the following two years, they saw the water come back, and they had the flooding. Mrs. Stewart said that the Spring Creek Bridge looked like a dam the day of the flood with the water flowing through it. Mrs. Stewart said that this is one of those things where Mr. Bowen has refused repeatedly to come to the aid of the residents of Waterstone. Mrs. Stewart said that Mr. Bowen needs to be held accountable for this. Mrs. Stewart said that they are residents of the City of Montgomery so why when you see that type of destruction, would new residents come to the City. Mrs. Stewart asked the City to please consider this information and if there is anything that the City can do they would appreciate it. Mrs. Stewart thanked City Council.

Mr. Kim Cunningham, who resides in Waterstone, stated that he thought the other two ladies had done a fine job of stating the information. Mr. Cunningham said that he would first like to start off by recognizing all the Police Officers out here that take care of us on a daily basis and said that they really appreciate the job that they do. Mr. Cunningham said that "may the good Lord watch over them as they watch over us."

Mr. Cunningham said that the main issue that he sees, as Mrs. Font stated, was the lack of response. Mr. Cunningham said that if there would be a clear direction or a plan on how it would be fixed and

how it was going to be addressed, they would all be at ease. Mr. Cunningham said the constant slamming of the door in their faces when they go to try and discuss the issue is not conducive to an environment that they all purchased their homes to be in. Mr. Cunningham said that if their home is devalued and the community as a whole continues to degrade, that will be less tax dollars that the City will have to provide support services. Mr. Cunningham said he is going to remove the debris at his own expense because he cares about his neighbors and the property. Mr. Cunningham said that he had told Mr. Bowen that he was going to buy a boat for the kids, and Mr. Bowen said for him to plan on saving his money. Mr. Cunningham said that type of response from Mr. Bowen was not conducive to a constructive environment.

Mr. Johnny Romero said that the previous speakers had covered everything that he was going to state.

Mr. Foerster, City Attorney, thanked the people from Waterstone for being in attendance tonight, and said that this is important to the City. Mr. Foerster said that he wanted them to know that the City Council by law can't discuss this matter, because this is not listed as an agenda item that has to be posted 72-hours prior to the meeting. Mr. Foerster said that he wanted them to know that as they leave here tonight, this is an issue that is very concerning to the Mayor, City Council and members of City staff. Mr. Foerster said that they have been working on this issue long before the flooding occurred on Memorial Day weekend. Mr. Foerster said that while Mrs. Font is correct that these are plats and reserves and canals are part of Mr. Bowen's property and the City has no legal obligation or ownership of them, but nonetheless, they join with you in being concerned about the matter and they are going to work as constructively as they can to work with Mr. Bowen, and Mr. Bowen's attorney, Mr. Steve Weisinger is present tonight, who is also concerned about the matter. Mr. Foerster said that they have been working in that direction, but it is not something that will happen overnight. Mr. Foerster said that there was a lot of silt and mud in those canals. They have to correct not only what is in the canals now, but as the engineers say "what is happening upstream" and the impacts that can occur should they have another rain. Mr. Foerster said aside from that, he is afraid there is nothing more that they can address tonight.

Rebecca Huss asked if there were any provisions in the Texas laws that would allow people that have not appealed their property tax values in response to an emergency to go back and request an adjustment. Mr. Foerster said that he could not answer that question because he did not know of any, which is not to say that there is not. Mr. Foerster advised that Mark Castleschouldt, Director with the

Montgomery County Appraisal District, has entertained objections after the date, but he did not know if that would be available. Mr. Foerster said that would not fix their problem. Mr. Cunningham and the other residents said they were not worried about their taxes because they have already been paid for this year. Mrs. Font said that they just want the problem fixed. Mr. Foerster said that they have been involved with this matter prior to calling the City last week, so they are aware of the matter and they are, as City staff, doing what they can to assist the Waterstone residents in getting this matter resolved. Mr. Foerster said that this will not be a quick fix, which he thinks that everyone here understands.

CONSENT AGENDA:

1. Consideration and if determined appropriate, take action regarding approval of Minutes for the Regular Meeting held on June 28, 2016.

John Champagne moved to approve the minutes as presented. Dave McCorquodale seconded the motion.

Discussion: Rebecca Huss stated that in the minutes the tree ordinance stated that the ordinance was supposed to be brought back today for final approval. Mr. Yates advised that the Kroger Agreement had taken up a lot of the City Attorney's time. Mr. Foerster stated that the ordinance has been drafted and would be ready for certain at the next meeting.

Mayor Jones noted for the record that T.J. Wilkerson arrived at the meeting at 6:25 p.m.

The motion carried unanimously. (4-0)

CONSIDERATION AND POSSIBLE ACTION:

2. Consideration and possible action regarding recent flooding at 920 College Street by Ms. Merily Thompson.

Mr. Fleming advised that the City had been contacted by Mrs. Thompson last week regarding some drainage issues in another portion of town.

Mrs. Merily Thompson stated that she had come to the City prior to the approval of the development which has been created around the park, where Mr. Cheatham is the developer. Mrs. Thompson said that the cause and effect of that development was her concern however long ago that was, because the direct runoff would be coming in her direction and she voiced her concern back then because she felt that it was going to be a problem. Mrs. Thompson said that the concern has come to fruition. Mrs. Thompson said that what she has encountered from the last rain is impassable water, to the point that it came over the road because the culverts that are existing can't handle the amount of rain that they had. However, they have had larger rains and she did not have an issue before this, so she has to believe that it comes from the change in the direction of the watershed. Mrs. Thompson said that the water was inches from coming into her house, which was built out of the flood plain according to the County's specifications. Mrs. Thompson said that the water also came across two thirds of her son's property, which is adjacent to her property. Mrs. Thompson said that the water that comes between their properties is raging and said that it was a health issue for anyone that might have small children, animals or whatever. Mrs. Thompson said that there was erosion and just all kinds of stuff going on, and she thought it was a problem because she can't stop the direction of the water. Mrs. Thompson said that they needed to come to a logical means for everybody involved to make this a better situation, because the people in the subdivision behind them are also affected when the water comes down and goes across the road and is obviously down in Waterstone, which she is very sorry about. Mrs. Thompson said that she did not realize the extent of what was going on there, but the problem is huge and needs to be resolved. Mrs. Thompson said that the erosion that is occurring on her property because of the water is substantial. Mrs. Thompson said that her concerns are: flooding, erosion and a lot that has no value now because she can't impede the water and it is unbuildable. Mrs. Thompson said that she does not see the retention pond that she thought was in the original development plan, so she does not know if there are still some issues that need to be addressed. Mrs. Thompson said that they are not even halfway through the development and they have problems, so when they add the other houses they will have a bigger problem. Mrs. Thompson said that she hoped the City has some resolutions. Mrs. Thompson said that she wanted to make sure that everyone was very clear that these are not new issues,

because they talked about them before the development ever occurred and said it is a problem.

John Champagne asked Mr. Fleming whether all due diligence, in terms of runoff, was done prior to the development. Mr. Fleming said that all the records suggest that it was, because this development was reviewed and approved by the previous administration in the summer of 2014. Mr. Fleming said that yes it appears as though due diligence was done because there is a signed, sealed statement with the Engineer of Record, on the plan set, attesting to the fact that there is no adverse effect to the neighboring property owners and downstream property owners as a result of the development. Rebecca Huss said that they spoke about Mrs. Thompson's concerns at length and that was something that the Engineer attested to and said that he had insurance to cover if he made a mistake in his calculations.

Mr. Fleming said that he would be happy to answer any questions, and he had a couple of thoughts regarding the conversation at large that they have had this evening. Mr. Fleming said that as far as the design criteria, the City of Montgomery does not have their own dedicated drainage design criteria, the City follows the Montgomery County Design Criteria. The County Design Criteria mandates that they design to a 5-year storm frequency. Mr. Fleming said that all developments that come to the City are reviewed against that standard. Mr. Fleming said that the two events that they saw on April 16, 2016 and again on Memorial Day weekend, so far out strike what is reasonable or possible in design criteria, and are commonly referred to as 500-year events. Mr. Fleming said that statistically speaking, it means that there is a .02 percent chance that you are going to get that storm on any given day. Mr. Fleming said that the City of Houston only requires them to design to a 2 year frequency.

Mayor Jones asked if there was some sort of detention pond at that location, this event would have overrun that by a longshot. Mr. Fleming said that a detention pond would have been designed to contain a 25-year event, so this event would have easily overwhelmed that. Mr. Fleming said that while development is still underway, it has not been closed out and accepted by the City. Mr. Fleming said that they have inspected it once for general compliance with construction drawings and found it to be overall compliant, but there are

a handful of punch list items, but none would directly impact or cause what they saw during this event.

Dave McCorquodale said that it was his understanding that there was no detention pond, it was a direct discharge. Mr. Fleming said that it was his understanding that is not really an intent to have a true detention pond and there is sort of a natural watercourse that runs through there, and Caroline Street was extended and some culverts were placed beneath there, and the intent might have been for the culverts to act as restrictors for the watercourse. Mayor Jones said he understands that you can't engineer to a .02 percent flood, but asked what a normal heavy rain might be and asked if they had any even anecdotal accounts of what happens to that situation in just a normal heavy rain. John Champagne said that he believed that Mr. Fleming had stated that the default criteria was a 5-year event runoff. Mr. Fleming reviewed a map of the area in question. Mr. Fleming said that Mrs. Thompson has an elevation certificate documenting that the finished floor elevation is a minimum of one foot above the flood elevation shown. Mr. Fleming said that they have seen two 500 year events that overwhelmed the natural watercourse, culverts and road. Mr. Fleming said that after going out to Mrs. Thompson's property and seeing the drainage channel the rain events had clearly overwhelmed those as well. However, Mrs. Thompson's home did not flood. Mr. Fleming said that he understands that it is scary to see and not fun to be there while it is happening, but at least in this instance with two 500 year events occurred and the home was constructed properly and there was not structural flooding.

Rebecca Huss asked how much it would cost if the development was built with a 25-year standard instead of the 5-year standard, and whether there was a percentage increase in the cost. Mr. Fleming said that was not something that would be really easy to say because it would be strictly site specific.

Dave McCorquodale said that looking at the overall drainage, and asked about the culverts underneath College Street and asked if we would be looking at those so we are not making a detention pond through her property. Mr. Fleming said that at first glance there are three culverts that run beneath College Street that are not in great shape, but in functional condition. Mr. Fleming said that knowing what we know now, it will be one of the things

that he will add to his list to monitor their condition and if they do get to a point where he felt that they need to be worked on or repaired he will put them to the top of the list. Mayor Jones said that the detention pond at Stowe's feeds into that same channel, so he thought there should be a lot happening upstream even though it is restricted by the road culvert because there is a lot of water coming from upstream that far outweighs what might be coming off of that subdivision. Mr. Fleming said that the Mayor was very astute. Mr. Fleming said that all told within the City limits there are roughly 3,500 acres and part of the challenge faced in a rapidly developing area is large developments that are taking down 200-150 acre parcels are very easy to review drainage for, but an area like this is going to develop in half acre, 2-3 acre parcels, which is what they are seeing. These smaller developments present a challenge. Mr. Fleming said that he can't speak to how things were done in the past, but he can tell them now that they review all developments and apply a lot of scrutiny regarding drainage. They are looking at not only the individual impact the development has, but they are trying to look at it cumulatively in terms of the overall impact caused not just by that parcel but the parcels around them. Mr. Fleming said that they have been taking all that into account.

Mayor Jones said when Mrs. Thompson said she was clearly out of the Floodplain, did she mean the 100-year Floodplain. Mrs. Thompson said that they just asked her to be above the flood elevation based on the County's specifications. Mr. Fleming said that would be a typical design standard. Mayor Jones confirmed that it would be above the 100-year Floodplain. Mr. Fleming said that was correct.

Mr. Fleming said as they move forward and see more probable rain events they will keep an eye on this area, and if they do see something they will advise. Rebecca Huss asked about the City's Floodplain Map and whether it was up to date and current. Mr. Fleming said that they were very current. Mr. Fleming said that in about 2011 FEMA began redrawing all their maps, and the maps in this area were drawn in 2014.

John Champagne said given any location during a certain amount of rain and a certain period of time, is it Mr. Fleming's belief, as a professional engineer, would there be any property immune to flooding. Mr. Fleming said no. Mayor Jones said that Mrs. Thompson contends that this new subdivision is causing the problem, and asked Mr. Fleming for his

thoughts. Mr. Fleming said that based on the two rain events that we have spoken of, he thought that it is impossible to make a reasonable assessment whether that is or is not the case. Mr. Fleming said that these two events would have inundated anything that was designed because we watched the impacts of these two events all over town, with a lot of damages in other areas as well. Mayor Jones said that there were a lot of places under water that he had never seen under water before. Mr. Fleming said that he had also seen water in areas that he had never seen before.

Dave McCorquodale asked Mr. Fleming about when they look at infiltration and the engineer does his calculations do they take into account the particular soil types. Mr. Fleming said that soil type and vegetative cover are taken into account when they are making their calculations. Rebecca Huss asked if there was a difference with trees versus new grass. Mr. Fleming said that it changes the patterns of the runoff and the time it takes the water to be absorbed. Rebecca Huss said that is something that has been happening where there has been a lot of clearing prior to development. Mr. Fleming said that it is all covered under the County Drainage Criteria. Rebecca Huss said that it was illegal to send water to someone else's land or to change the course of the water on your land to effect theirs. Mr. Fleming said that you may not discharge waters in a concentrated fashion. Rebecca Huss asked if you could change the path of the water as long as you don't change the quantity of the discharge. Mr. Fleming said that you can't discharge directly on your neighbor's property, you have to make allotments to convey the water.

John Champagne requested that they move to the next topic. Rebecca Huss said that she appreciated that Mr. Fleming was putting this on the list of items to check regularly and she felt that it was important to stay on top of the matter.

3. Consideration and possible action regarding acceptance of the conveyance of a Public Access Easement by QBS Custom Homes, Inc., a Texas Corporation, to the City of Montgomery, Texas, for and 0.0556 acres or 2,423 square feet of land being part of Lot 7 of West Side at the Park, Section 1, according to the map or plat thereof recorded in Cabinet Z, Sheet 2937, of the Map of Records of Montgomery County Texas (M.C.M.R.), lying in the Benjamin Rigsby Survey, Abstract 31, in Montgomery, Montgomery County, Texas.

Mr. Fleming advised this was just cleaning up an Access Easement issue and pertains to the West Side of the Park development. Mr. Fleming said that when it was originally developed and designed there was plans for an Access Easement to come off of Caroline Street in between lots 10 and 11. During the construction phase the developers engineer contacted the City Secretary requesting to revise that and they did not have any objection then, nor does he have any objection now. Mr. Fleming said that there were a couple options on how to handle it, either file a new plat or leave the original in place and record a new easement, which is what they have chosen to do. Mr. Fleming said that original easement remains in place and they just recorded a second easement.

Rebecca Huss asked if the City will be, at some time, responsible for maintaining the road. Mr. Fleming said that was correct it would be a public road. Dave McCorquodale asked if they would still have a single access. Mr. Fleming said that was correct.

Rebecca Huss moved to approve the request for acceptance of the conveyance of a Public Access Easement by QBS Custom Homes, Inc. Dave McCorquodale seconded the motion, the motion carried unanimously. (4-0)

4. Consideration and possible action regarding an Agreement by and between the Kroger Company and the City of Montgomery for additional funding of the proposed public improvements intended to serve the 52-acre Kroger/Milestone Development. (Tabled at the June 28, 2016 Meeting)

Mr. Foerster advised that they have had a number of teleconferences with the Kroger people, their lawyer, Mr. Fleming, Mr. Yates, himself and Nic Houston, the grant administrator and they have been working on the language of the agreement. Mr. Foerster said that they will have the final draft to be presented to City Council at the next meeting.

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

5. Consideration and possible action regarding construction plans for Heritage Medical Plaza.

Mr. Fleming advised that some of the initial site work has begun on the development, where the old structure and some of the trees have been taken down. Mr. Fleming said the developer has obtained the services of a landscaping architect, and they are finalizing landscaping plans that should come before City Council before the end of the month.

Mr. Fleming said that the last item that was still outstanding and was being discussed was how to approach Houston Street and what improvements would be needed there. Mr. Fleming said the developer has asked for the ability to revise their construction plans to show the planned driveway out onto Houston Street to be phased in at a later date. Mr. Fleming said that the developer wants to move forward with their utility and building construction, while they work through some variance issues with TxDOT. Mr. Fleming said that the developer is prepared to go through construction now, extensively TxDOT could delay that process 120 days, if not more, to review their submission. Mr. Fleming said that he offers no objection to their request.

Mayor Jones said that the reason that they are here is that City Council approved construction drawings, pending the resolution of Houston Street. Mayor Jones said that there is no satisfactory resolution at this time. Mr. Fleming said that he has met with both TxDOT, the developer and his engineering team regarding this matter. Mr. Fleming said that what Mr. Cheatham, property owner, is most interested in is that they take a long look at what exactly they are doing to this particular intersection.

Mr. Fleming said that his will have a very visible impact on the heart of the City, and whatever they do, they will have to live with for the next 30 plus years. Mr. Fleming said that they are also setting how they are going to approach every one of the intersections that will develop along 149 and all the way up to Old Plantersville Road. Mr. Fleming said that he thought it was important that they a good hard look at this intersection and make sure that they get it right. Mayor Jones said the reason that the traffic signal is there at SH105 and Houston Street was because of the Post Office. Mayor Jones said that the north/south traffic is not like it used to be, but he felt that it is in the best interest for Mr. Cheatham's project and the City to get the driveway on Houston Street. Mayor Jones said that he hoped that the Houston Street driveway could get worked out. Mr. Fleming said that he truly

believes that is what everyone wants, and the developer has indicated a willingness to make that happen.

Mayor Jones said that if all fails with the Houston Street driveway, Mr. Cheatham has an entrance/exit on SH105. Mr. Fleming said that some of the conversations that he has had with Mr. Cheatham's engineering team, was that they could always put a statement on the drawings to indicate a willingness or intent, both for the City and the developer, in the near future to make the Houston Street driveway happen. Mr. Fleming said that from a traffic standpoint they know that they need the Houston Street driveway.

Mayor Jones said that by approving this action, it will allow the developer to move on with all phases of construction. Mr. Fleming said that was correct, it would allow the developer to move forward with utility and building construction, assuming the developer has proper building permits. Mr. Fleming said that they would continue to work with TxDOT and the developer probably for the rest of this year to get the Houston Street issue resolved as quickly as possible.

Dave McCorquodale asked about the 25 and 35 foot radius of the intersection that is mentioned in the agenda materials, and asked what radius they were talking about. Mr. Fleming said that right now what they have discussed with TxDOT was a preliminary discussion, because he has not seen a formal variance request at this time. Mr. Fleming said that what they are talking about is a 20 foot radii. Mr. Fleming said that the existing configuration at that intersection (SH105 and Houston Street) would remain and the signal structure would not be relocated. Dave McCorquodale asked if it would be the edge of pavement radii. Mr. Fleming said that it would be the turning radii. Mr. Fleming said that Houston Street would be proposed to be widened to the west. Mr. Fleming said that one thing that is of interest to the City, TxDOT has indicated that they would like to see a 35 foot clip on each corner, recorded by plat, which is something that Mr. Cheatham would have to give up on his side, and the City on the side of Cedar Brake Park. Mr. Fleming said that this would not change the appearance of the intersection and would not require them to move anything in the Park, it would just allow them to put ADA compliant access ramps there in the TxDOT right-of-way. Mr. Fleming said that TxDOT wants the access ramps in their right-of-way so that they are theirs to maintain. John Champagne said those

ramps were going to have to happen. Dave McCorquodale asked if the larger radius would put the driveway on Houston Street closer than what TxDOT would allow. Mayor Jones said that no matter what they do, it will not make it easier for big trucks to turn onto Houston Street. Mr. Fleming said that he did not think that intersection would ever be designed for big trucks, but what it will do when they add additional paving and widen Houston Street, it will make it more of a true two lane road and facilitate traffic. Mayor Jones asked to confirm that they would not need a turning lane. Mr. Fleming said that was correct, Houston Street would be strictly a two lane road that will taper down as they move north.

Rebecca Huss said that she would like to see an escrow account for this development if they do decide to move forward and allowing construction. Rebecca Huss said she thinks that it would give the City certainty that it will happen in a time that suits the City as opposed to what the developers finances will allow when TxDOT finally gives their blessing. Rebecca Huss said the escrow account would give the City the confidence that the construction completion will occur at the time it is scheduled. John Champagne asked if that was a motion. Rebecca Huss said that she did not know if they needed to make a motion for this because Mr. Fleming said that this was a discussion. John Champagne said that he felt that it was open for recommendations and motions.

Mr. Foerster said that the agenda states “consideration and possible action regarding construction plans” so he felt that it was appropriate to have a motion. Mr. Foerster said that Mr. Cheatham was present and could speak to anything that Mr. Fleming has referred to and might have issue with. Mr. Foerster said that it was their understanding that Mr. Cheatham was prepared to submit \$75,000 for the Houston Street. Mayor Jones asked if those funds were to be held in escrow or just promised.

Mr. Cheatham stated that they have proper permits and they have offered to make improvements to Houston Street, so they don't need to have escrow agreements. Mr. Jonathan White, with the developer, advised that at the end of the day everybody wants the driveway off of SH 105. Mr. White said that they have had the discussion regarding how dangerous it would be to leave a medical facility and having to turn left onto SH105 into oncoming traffic. Mr. White said that they are wanting to guarantee this project and they

are willing to contribute as much. With contingencies, the project will cost up to \$100,000. Mr. White said that once they can finalize the plans and get bids, hopefully they will be able to bring that cost down to hopefully what Mr. Cheatham is willing to contribute. Mr. White said that this is a pretty large improvement and it is going to set a precedence for every intersection moving forward. Mr. White said that they are not really willing to do a financial guarantee at this time. Mayor Jones asked if they were willing to operate the development without the driveway in perpetuity. Mr. White said that was correct.

Mr. Yates said that the reason this was before City Council was because he felt that he needed City Council direction on this matter rather than having it made at staff level. Mayor Jones said that the direction is to allow them to continue construction with the resolution of a future Houston Street driveway still pending. Mayor Jones said that would allow the developer to keep working.

Mr. Fleming said that the developer was certainly free to construct with unapproved plans, solely at their own risk, which is one option. Option two would be to have the City Engineer sign the plans with them, as approved, so that they can move forward with construction onsite with approved drawings, with the understanding and the hope being that it they can work out Houston Street. Option three would be to continue to hold the plans as not approved at this time.

Mr. Fleming said that, he would defer to legal counsel on this, strictly according to the Code of Ordinances, they are almost to a point where all requirements have been met from the design standpoint. Mr. Fleming said if they remove the driveway to Houston Street from their plans then it removes the original variance request for the driveway. Mayor Jones asked if that was what the developer was asking. Mr. Fleming said that the developer wants to show the driveway on Houston Street as being phased in at a later date, effectively stalling the variance request right now and allow the developer to move forward with their site work and construction.

Mayor Jones asked if City Council could vote tonight on the construction drawings without the driveway on Houston Street. Mr. Fleming said that the City Council had already

approved the construction drawings, they were just pending resolution of the design of Houston Street.

John Champagne said that he was a little confused and asked if the developer had met all the requirements that the City has in place. Mr. Fleming said that if the driveway on Houston Street is shown as being phased in at a later date, yes they have. John Champagne asked if the approval of this be contingent upon when the driveway is phased in, that it has to meet the requirements that might be in place at that time. Mr. Fleming said that the contention is that the developer has some financial obligations related to them moving forward with the development on the site, and stated yes to the question.

Rebecca Huss said that she would still like to see what type of guarantee they are going provide, because the traffic control structure on Shephard Street still has not been installed. Rebecca Huss said that she would like to have the funds in escrow, and she understand the point that if it does not happen then it would not make sense for the City to have the funds. Rebecca Huss said that there could be some language in the escrow agreement that would return the funds if TxDOT denies the developer's request. Mr. Yates said that if they remove the variance request, staff would have no other choice but to approve the construction plans because they have met all the obligations.

John Champagne moved that the developer be allowed to begin construction, and at a later date if they want to phase in the Houston Street driveway that the requirements would be met at that time.

Mr. Foerster asked Mr. Fleming if he was comfortable with that motion. Mr. Fleming said that he was comfortable with the motion. Rebecca Huss asked if the motion would rescind the variance request for Houston Street that City Council granted previously. Mr. Fleming said that he would say that it would place it on hold.

Mr. Foerster said, for clarification of the record, there is no commitment on the part of Mr. Cheatham or the City, with respect to that access on Houston Street. Mr. Yates said that was correct. John Champagne said that as far as he was concerned the motion, the driveway is a non-issue until there is a commitment to phase it in at a later date. Mayor Jones asked

to confirm that the construction drawings have been approved. Mr. Fleming said that the construction drawings have been approved by City Council, they just have not been signed and returned by the City Engineer. Mr. Foerster said that the grant for the variance is now being withdrawn and asked if that was correct. Mr. Fleming said that as he had stated, the variance request was being placed on hold because the variance request was approved, pending resolution of the driveway on Houston Street.

Rebecca Huss said that she felt that the variance should be stricken, because in two or three years or in the future, City Council might have a completely different perspective, and you would not want to have a variance based on historical circumstances. John Champagne said that his motion did not include the variance. Rebecca Huss said that the variance was granted at a previous date. John Champagne said that the variance would be addressed with the proposed phased in driveway at that time. Mayor Jones said that the variance is only applicable if there is a driveway on Houston Street, and there is no driveway.

Mr. Fleming said that he would hate to jeopardize the partnership between the developer and the City to see some improvements to Houston Street through completion. Dave McCorquodale asked about phasing in a driveway and what would be required to be done. Mr. Fleming said that the driveway would be shown on the construction plans, with a note that it would be phased in at a later date, with a qualifier that they would have to notify City staff. Dave McCorquodale asked if the TxDOT request would be impacted at all or was that a separate issue. Mr. Fleming advised that was really a separate issue for improving Houston Street as the City feels it needs to be done, it will be the widening of the intersection at SH105.

Mayor Jones asked to confirm that everyone knows what the motion is and what they are voting on. Rebecca Huss asked the City Secretary, Susan Hensley, to read back the motion.

Ms. Hensley advised that the motion read "John Champagne moved to approve allowing the developer to continue, and if at a later date phase in the driveway, and put the requirements of the variance on hold until a later date when it would be reissued."

John Champagne said that there was consternation on the “hold of the variance” and asked if City Council would rather see the variance separate. Mr. Fleming said that his cause for concern, which City Council might want to weigh in on, because the variance was already approved pending resolution of the Houston Street issue.

John Champagne amended his motion, and moved to make the variance a non-issue.

Mayor Jones asked whether the variance on the driveway was approved, and what happens when the driveway does happen to come up. John Champagne said that the variance has been approved and is not contingent upon anything. Mayor Jones said that it was not contingent, but when the driveway part happens. John Champagne said that the variance has already been approved.

Ms. Hensley confirmed that reference to the variance would be stricken from the motion. John Champagne said that was correct. Mr. Foerster asked that the motion be repeated.

Ms. Hensley stated “John Champagne moved to approve allowing the developer, Mr. Cheatham, to continue construction, and, if at a later date, phase in work on the Houston Street driveway.” Dave McCorquodale seconded the motion.

Discussion: Dave McCorquodale said that any improvements to that intersection will no doubt be a benefit to this parcel of land, but there is a whole lot of the City on the north side of SH 105 that will also benefit. Dave McCorquodale said that he believed that the developer bought the tract of land with his eyes wide open because he lives and works right at that intersection. Dave McCorquodale said that our governments, either local, state or regional, made that intersection, so if the developer is willing to help solve the problem he thinks that is great. Dave McCorquodale said that the situation was created by government and, to him, the burden ultimately seems like it would fall on the government to solve. Dave McCorquodale said that as was said before, everybody wants a successful resolution. John Champagne said that he agreed. Dave McCorquodale said that, it seems to him, that TxDOT and the City should be the ones to take the lead in solving this matter. Mayor Jones said that TxDOT won’t and does not have as much interest in Houston Street as the City does, unless there are people getting killed at the intersection.

Mr. Foerster said that he agrees with what is being said, and said that he did not want City Council to forget one of the points that Mr. Fleming made, that whatever the City does here will set a precedence for other streets coming off of SH105, and said that he wanted to make sure that City Council was aware of that. Mayor Jones said that it may depend on the circumstance. Mr. Foerster said that was correct. John Champagne said that was assuming they have another street with a driveway coming off of SH 105. Mayor Jones said that they do.

Mr. Fleming said that most of the secondary and minor streets that are tying into SH 105, both north and south, are in his opinion under designed for what they are getting right now and what they are about to get in traffic volumes over the next few years. Mr. Fleming said that at some point, in the relatively near future, he felt that they would be addressing every one of these streets that will probably involve commercial development. Mr. Fleming said that the majority of SH 105 will develop commercial and is already zoned for that use.

The motion carried unanimously. (4-0)

6. Presentation of the Police Lifesaving Awards to the following officers for their actions above and beyond to save the life of Bill Webb:

Sergeant Todd Barrow, Montgomery ISD Police

Deputy Tim Shackelford, Montgomery County Precinct 2 Constables Office

And recognizing Montgomery Police Officers for assisting during this event, as follows:

Officer James Bracht

Office Tim Bauer

Chief Napolitano thanked everyone, family, friends and City Council, for being present. Chief Napolitano recognized Precinct 2 Constable Gene DeForest and his Chief Deputy Steve Roper, who he has worked with for over 30 years in law enforcement.

Chief Napolitano said that April 8, 2016 was a beautiful day in Montgomery, and one of our residents decided to go for a bike ride to Dobbin. In the meantime, the law enforcement officers were out patrolling the area. As, Mr. Webb was making his way back from his

bike ride, he suffered a massive heart attack on SH 105. Sergeant Todd Barrows, with Montgomery ISD, and Deputy Tim Shackelford, with Precinct 2 Constables Office, were coming at each other on SH 105 when they saw Mr. Webb in the middle of the street. Both officers immediately stopped to assist Mr. Webb and find out what happened. Chief Napolitano said that he blocked traffic at the scene. Officer James Bracht and Officer Tim Bauer came to scene assist. Deputy Shackelford immediately began CPR and Sgt. Barrows got an AED from his patrol vehicle. Sgt. Barrows administered the AED on Mr. Webb, and continued CPR. Officer Bracht, as a bike rider, checked the bike and was able to locate identification for Mr. Webb on the bike. When EMS showed up on the scene they took over and transported Mr. Webb to the hospital. Chief Napolitano said that he and Sergeant Becky Lehn took Mrs. Webb to the hospital. Chief Napolitano said that teamwork pays off, and it does not matter if they are Pct. 2 Constable or with Montgomery Police Department, they work as a team. Chief Napolitano said that the teamwork works very well, especially out here in the City of Montgomery.

Chief Napolitano said that he had to thank all the citizens, because lately in the last 4-5 days with the things that are happening around the state and country, the people have been great to the department. Chief Napolitano when they go to get something to eat, they can't even pay for the food, someone has already paid the bill anonymously.

Chief Napolitano said that these officers did their job, and they did an extraordinary job. Chief Napolitano awarded the Life Saving Medal to Sergeant Todd Barrow, Montgomery ISD Police and Deputy Tim Shackelford, Montgomery County Precinct 2 Constables Office. Chief Napolitano presented plaques of appreciation recognizing all the officers.

Chief Napolitano invited everyone to a reception following the meeting to mingle and talk with the officers.

Chief Napolitano thanked the City of Montgomery and said that it was an extreme honor to work here and be part of this team from top to bottom. Chief Napolitano said that the City has hired a great bunch of kids that will be out there fighting for them.

7. Consideration and possible action regarding adoption of a Proclamation of Appreciation to the Webb Family for their contribution of five (5) AED's (Automated External Defibulators) to the City of Montgomery.

Mayor Jones invited Sergeant Lehn to speak regarding this item. Sergeant Becky Lehn said that they went to the Webb residence and picked up Mrs. Rhonda Webb and took her to the hospital. Sgt. Lehn said that they did not know that her daughter is a doctor in Oklahoma. Sgt. Lehn said that when they were discussing the fact that if Sgt. Barrow had not had an AED on the side of the road, Mr. Webb would not be alive right now. Sgt. Lehn said that the City of Montgomery did not have any AED's in their patrol cars or in the department. So it was by the grace of God that Sgt. Barrow and Deputy Shackelford were on the scene.

Sgt. Lehn said that after talking with Mrs. Webb's daughter, her daughter Shannon put on a Go Fund Me page regarding AED's. Her goal was to get at least 2-4 AED's for the City. They ended up raising \$8,000 and purchasing 5 AED's for the City. The City also purchased 5 more units. Sgt. Lehn said that now they have 10 AED's, all officers have availability of the units, two units are here inside City Hall and the public works guys are now carrying AED's. Sgt. Lehn said that had it not been for Mrs. Webb and her daughter putting this all together, we still would not have these AED's. Sgt. Lehn then expressed her appreciation and thanked the Webb family.

Mrs. Rhonda Webb, with Mr. Webb, said that it might have been their idea, but it was the people that just flooded in with funds, including their church, other churches and all their friends and family that did so much.

Mayor Jones then read the Proclamation of Appreciation to the Webb Family, into the record as follows:

To recognize the Webb Family for their contribution of five (5) Automated External Defibulators (AED's) to the City of Montgomery:

WHEREAS, the Webb Family faced a fateful event that occurred on April 8, 2016 when Mr. Webb suffered a heart attack on the side of SH 105; and

WHEREAS, the Webb Family feels strongly that the City of Montgomery should have AED's readily available when someone else is suffering a cardiac emergency.

Now, therefore, the City Council of the City of Montgomery, Texas hereby Proclaim:

Their heartfelt appreciation to the Webb Family for their generous donation of the AED's to the City of Montgomery, providing someone else the lifesaving opportunity should they be in need of the service.

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

Mr. Webb said that he wanted to say that there were so many people involved in this. Mr. Webb said that his church was very involved and he appreciated all their wonderful support. Mr. Webb thanked the entire community of Montgomery, which has been their family home for years and years. Mr. Webb said that they are very proud to be members of this community and said thank you very much.

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.

8. Convene into Closed Executive Session pursuant to the Texas Open Meetings Act at Sections 551.071 of the Texas Government Code to meet with the City Attorney to receive confidential legal advice.

Mr. Foerster advised that he did not think there was any need to go into Executive Session. Mayor Jones said that City Council has the opportunity to go into Executive Session, but he is being advised that there is no need. City Council did not go into Executive Session.

Mayor Jones invited everyone to stay after the meeting for a little celebration with cookies and refreshments.

9. Reconvene into Open Session and take possible action resulting from deliberations made during Closed Executive Session.

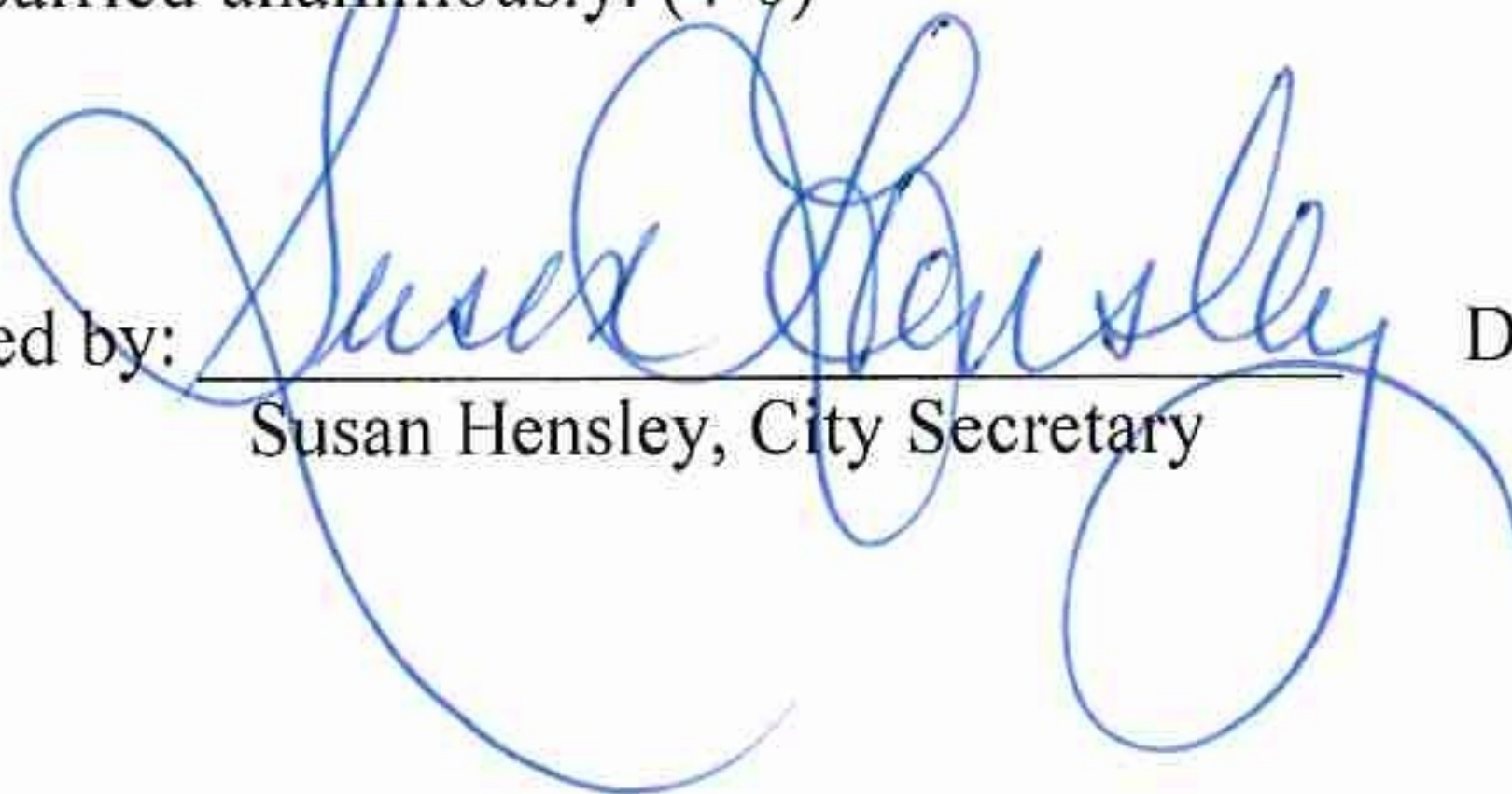
COUNCIL INQUIRY:

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.

ADJOURNMENT

John Champagne moved to adjourn the meeting at 7:25 p.m. T.J. Wilkerson seconded the motion, the motion carried unanimously. (4-0)

Submitted by:



Susan Hensley, City Secretary

Date Approved:

07/26/16



Mayor Kirk Jones

