

MINUTES OF REGULAR MEETING

February 9, 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
 Jon Bickford City Council Position # 1
 T.J. Wilkerson City Council Position # 3
 Rebecca Huss City Council Position # 4
 Dave McCorquodale City Council Position # 5

Absent: John Champagne City Council Position # 2

Also Present: Jack Yates City Administrator
 Larry Foerster City Attorney

INVOCATION

T.J. Wilkerson gave the invocation.

PLEDGE OF ALLEGIANCE TO FLAGS

John Champagne arrived at the meeting at 6:02 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.

There were no comments made.

CONSENT AGENDA:

1. Matters related to the approval of minutes for the Regular Meeting held on January 26, 2016.

Dave McCorquodale moved to approve the minutes as submitted. Rebecca Huss seconded the motion, the motion carried unanimously. (5-0)

CONSIDERATION AND POSSIBLE ACTION:

2. Consideration and possible action regarding approving a revised Community and Business Agreement for Texas Capital Fund Infrastructure Project #7215102 with Kroger Texas Limited Partnership.

Mr. Foerster advised the City has a Texas Capital Fund Agreement with Kroger and an underwriting in effect, where if something happens in the way of the obligations that the City has with the Texas Capital Fund regarding the provision for employees and so forth, Kroger will indemnify the City. Mr. Foerster advised that the language had some slight revisions made, with nothing substantial that he could tell when he reviewed the document. Mr. Foerster said he was recommending that this document be signed. Mr. Foerster said that Kroger has already submitted two (2) signed copies of the document. Mr. Foerster said that the wording revision had to do with who was the correct entity that the City would be dealing with, so his recommendation would be to sign the document and send it to the Texas Capital Fund people.

Dave McCorquodale asked if the revision originated from Kroger. Mr. Foerster said that it originated from Nic Houston with Public Management. Mr. Foerster said that they had to make a revision to the name of the Kroger Company to Kroger Limited Texas Partnership that they would be dealing with because Kroger has several layers.

Rebecca Huss asked whether Kroger Limited Texas Partnership has the assets to cover the indemnification. Mr. Foerster said that he had not checked that information, but he would assume, with the nature of the company and since they are constructing the facility that they do have those assets, but he has not confirmed that. Rebecca Huss said that she would hope that would be the company that owned the Kroger, so that if they had to they could put a lien on them. Mr. Foerster said if Kroger were to default on the agreement, suing them would be the first step. Rebecca Huss said if they did not have any assets in the partnership. Mr. Foerster said that they could pass the ordinance subject to confirmation of the company's assets, he would check on that information

tomorrow. Rebecca Huss said that she did not think that it would hurt to check. Mr. Foerster said that it was a good question and he would check on the information.

Rebecca Huss moved to adopt the Resolution as discussed, with the provision that the company's financial assets and size is confirmed. Dave McCorquodale seconded the motion.

Discussion: John Champagne said that he just noticed that on job creation, the company shall create 52 permanent new jobs at the grocery center, of the 52 new jobs, 51% percent or 27 new jobs shall be held by low and moderate income. Mr. Foerster said that he thought that was consistent with the original Texas Capital Fund ("TCF") Grant. John Champagne asked for a definition of the term low and moderate income. Mr. Foerster said that he was not sure he could answer that question. Mr. Yates said that there was a Federal definition and a statistical demarcation for Montgomery County. John Champagne said that was something that was not subjective. Mr. Yates said that was correct. Mayor Jones said that the numbers came from a formula. John Champagne said that the 52 permanent jobs does not necessarily have to be full time jobs. Mr. Yates said that he thought that they were supposed to be full time jobs. John Champagne said that the documentation did not state that. Mr. Foerster said that he would have to review the original TCF Agreement that they have, but his understanding was that this agreement indemnifies the City. John Champagne asked whether it would fulfill the City's obligation to the State. Mr. Foerster said that the City's obligation is to the State, and Kroger's obligation is to indemnify the City if Kroger fails to meet that quota. John Champagne asked whether this text in the document covers that. Mr. Foerster said that he believed that it did.

Mr. Foerster said that the motion was that this would be reviewed in terms of establishing that Kroger Texas Limited Partnership is in fact the company that is doing the work and owning the site. John Champagne said that he did not want to make a mountain out of a molehill.

The motion carried unanimously. (5-0)

3. Consideration and possible action regarding adopting the following Resolution:

A RESOLUTION OF THE CITY OF MONTGOMERY, TEXAS SUPPORTING THE PROPOSED HERITAGE SENIORS DEVELOPMENT LOCATED AT 325 FLAGSHIP BLVD., MONTGOMERY, MONTGOMERY COUNTY, TEXAS TDHCA APP. #16174, AND

AUTHORIZING THE CITY ADMINISTRATOR TO CERTIFY THE RESOLUTION TO THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS.

Mr. Yates advised the Heritage Seniors is seeking a 9% percent allocation of a housing tax credit from the Texas Department of Housing and Community Affairs, and they are asking for the City's support in the form of a Resolution. Mr. Yates said that this action does not involve any financial support, it is just a resolution of support that will be submitted when they file for the grant. Mr. Yates said that it was the same type of Resolution that City Council approved for the first phase of this project.

Mayor Jones stated that this Resolution would be for Phase II of the Heritage Apartments. Rebecca Huss asked whether Phase I would not be seniors' specific, but Phase II would be.

Mr. Nathan Kelly, with Blazer Building/Nantucket Housing, LLC, gave an overview of their project, stating that they are well underway with Phase I. Mr. Kelly advised that this Resolution would be for Phase II of the project, which would be restricted to fully active independent seniors. Mr. Kelly stated that in addition to the age restriction, there will be some income restrictions that will be put in place for a full 35-year term.

Mr. Kelly advised that they are in the process of submitting all their paperwork to the Department of Housing & Community Affairs on March 1, 2016. Mr. Kelly said that if City Council votes to support their project by adopting the Resolution this evening, they believe that they would be successful in obtaining enough allocation credits for the second phase of the project. Mr. Kelly said that the development would be similarly designed as the first phase, they will change up some of the color schemes and interior finishes to give it a separate identity.

John Champagne asked whether there were similar requests made for Phase I of the project for tax allowances for certain things that they implemented into the business model. Mr. Kelly said that Phase I was in fact financed with an allocation of tax credits. John Champagne asked whether that was based on the same criteria that they are requesting today. Mr. Kelly advised that was correct, except in this instance the development will be restricted to 55 years of age and older. Jon Bickford said that they tried in Phase I and they did not make it, and then came back a year later and said they were not going after the 55 years of age and older market. Mr. Kelly advised that the rules of the program change year in and year out depending on how the State Legislature modifies the

program. Mr. Kelly said that the Legislature this year put senior housing on an equal footing so the opportunity to submit this site as an elderly senior only living facility would be a competitive application this year. John Champagne asked whether the State Legislature was considered 55 years of age and older as elderly. Mr. Kelly said that was correct. Mr. Kelly said that their average age is 72.

Mr. Kelly said that they are competing against four or five other applications for the tax credits in this particular region. Dave McCorquodale asked what would happen if they did not get the tax credits. Mr. Kelly said that from a scoring perspective, if they are successful in getting the City's support, they will get the tax credits for this development. Mr. Kelly said that the alternative would be to develop the property as a straight market rate multi-family development. Dave McCorquodale said that the tax credits were more for the reduced income than the seniors. Mr. Kelly advised that was correct.

Rebecca Huss asked whether they were choosing seniors because of the marketing aspect and longevity. Mr. Kelly said that they are choosing seniors because they have an existing general deal right next door, so they are trying to balance their targeted approach. Mr. Kelly said that they want to compliment the other side of the development with a more active senior development. Rebecca Huss said that it was her understanding that as part of the City's support and application, Mr. Kelly's company committed to a long term ownership of the property, and asked if that would be attached to the second application as well. Mr. Kelly said that was correct.

Mr. Kelly said that their general length of ownership with these properties is a little over 15 years, with some instances it has gone to 18 years, which would be the case with this property. Rebecca Huss asked if they generally did it that way, or would this actually be a legal part of the document that they had worked out with the City in order to get the City's support. Mr. Kelly said that time frame was part of their track record, which they have not negotiated or set in stone with the City, but that is how they operate their business and what they have done on the 22 deals of this nature that they have developed. Mayor Jones stated that they are developers and manager. Rebecca Huss said that she was just wondering what would happen if they were bought out of the project by a larger company. Mr. Kelly said they have financial obligations to uphold for a minimum of 10 years, with a guarantee to their partners for an additional 5 years, which dictates the initial 15 year period before the guaranteed obligations expire. If there is a failure in operations or a client's perspective, then they are obligated financially to make their partner whole for an extremely sizable

penalty at that point, so they choose to own the assets for that 15 year plus time period to allow those obligations to be satisfied and make sure that their partners are happy with their performance.

John Champagne asked whether this Resolution would go with a transferal of this asset to another entity. Mr. Foerster said that he could not answer that question without getting behind the scenes to see how that is done. Mr. Kelly said that he could answer that question. Mr. Kelly advised that when construction of the facility is complete, they put a land use restriction agreement in place that runs for 35 years. Mr. Kelly said that the agreement will say that it will be age restricted residents, 55 years and older at certain thresholds of income. Mr. Foerster said that the Resolution states that the City is merely confirming the City's support for the proposed Heritage Seniors development and the concept of the senior citizen development. Rebecca Huss said that she thought that once Mr. Kelly receives the confirmation from the State it would be between the developer and the State. Mayor Jones reminded Council that Phase II was always in the developer's plans.

John Champagne asked if the elderly concept was because it would be less volatile in terms of tenant turnover and currently being the largest demographics in the Country. Mr. Kelly advised that was correct. Mr. Kelly said that senior tenants generally move out for one of three reasons, 1) higher level of care required, 2) moving to be closer to their children or 3) they pass away while living on site. Mr. Kelly said that the turnover was quite low, which helps on the maintenance perspective.

Mayor Jones asked about the status of Phase I. Mr. Kelly advised that they had received their first Certificate of Occupancy for their Clubhouse and a handful of additional units this past Friday. Mr. Kelly said they are in the process of leasing that phase of the development. Mr. Kelly stated that they are doing a building a week that will be turning from construction to the management team. Mr. Kelly said that hopefully, sometime in April, they hoped to have everyone over to see the completed project. Mr. Kelly advised that they are currently about 20% percent leased and they expect to get the 80 units leased quickly.

John Champagne moved to adopt the Resolution supporting the proposed Heritage Seniors Development located at 325 Flagship Blvd., Montgomery, Montgomery County, Texas, TDHCA APP. #16174, and authorize the City Administrator to Certify the Resolution to the Texas Department of Housing and Community Affairs. T.J. Wilkerson seconded the motion, the motion carried unanimously. (5-0)

4. Consideration and possible action regarding accepting the conveyance of the following easements from Ogorchock ATH, LLC:
- a. Combination Utility Easement – Being a 0.07 acre tract of land in the Owen Shannon Survey, Abstract 36, Montgomery County, Texas, being out of Reserve “F” as graphically depicted on the Montgomery Summit Business Park Final Plat;
 - b. Combination Utility Easement – Being a 0.38 acre tract of land in the Owen Shannon Survey, Abstract 36, Montgomery County, Texas, being out of a Reserve “E”, Restrictive Reserve “D” and Restricted Reserve “C”, as graphically depicted on the Montgomery Summit Business Park Final Plat;
 - c. Access Easement – Being a 0.35 acre tract of land in the Owen Shannon Survey, Abstract 36, Montgomery County, Texas being out of a Restricted Reserve “E” and Restricted Reserve “D” as graphically depicted on the Montgomery Summit Business Park Final Plat;
 - d. Lift Station Easement – Being a 0.01 acre tract of land in the Owen Shannon Survey, Abstract 36, Montgomery County, Texas, being out of Restricted Reserve “E”, as graphically depicted on the Montgomery Summit Business Park Final Plat; and
 - e. Combination Utility Easement – Being a 0.06 acre tract of land in the Owen Shannon Survey, Abstract 36, Montgomery, County, Texas, being out of a Reserve “E” as graphically depicted on the Montgomery Summit Business Park Final Plat.

Mayor Jones asked if City Council approved a plat, wouldn't that cover this information. Mr. Fleming advised that one of the items guarantees access to the lift station on the property, and since he was not involved in the plat review process he could not say why it was not addressed. Mr. Fleming said regarding the other three items he was involved in the process, and advised that they are necessary and he has no objection to them.

Mr. Foerster said that he likes to make the easements combination utility easements to allow the flexibility to place other utilities within the right of way. Mr. Foerster said that Mr. Ogorchock said that he was fine with that action.

Jon Bickford asked to confirm that the owner is granting the City access to these pieces of property as an Easement. Mr. Fleming said that was correct. Mr. Foerster said that it would allow the City to do future maintenance. Jon Bickford asked whether the City would have any obligation to put

up fencing or anything else. Mr. Foerster said that the only obligation he knew of was the property would need to be returned to the way that they found it. Jon Bickford said that was a great rule.

Jon Bickford moved to accept the official conveyances for the easements for the Ogorchock ATH, LLC property, as proposed. John Champagne seconded the motion, the motion carried unanimously. (5-0)

5. Consideration and possible action regarding Memory Park improvements.

Mr. Yates reviewed the improvements being presented, which includes bridge and landscape improvements that would happen on an existing island at Memory Park. Mr. Yates said that the improvement consists of landscaping and benches on an existing island with a new bridge leading to the island. The improvement is not on the existing master plan of Memory Park. The cost of the improvement is \$53,530.97, which will all be paid by the Rotary Club of Lake Conroe.

Don Carter and Peter Wakefield with the Rotary Club were present to discuss the project. Mr. Wakefield advised that they were going to stabilize the soil on both sides of the island. Mr. Wakefield said that there is a considerable water flow that comes through that area so they are going to do a rock bulkhead across that area. A footbridge will be constructed across to the island with a sitting area and water feature. Mr. Wakefield said they would not be removing any of the major trees, but will remove a couple of tallow trees.

Rebecca Huss asked if there will be room for the turtles. Mr. Wakefield advised that there would be room.

Mr. Carter advised that the stone problem and the adjoining garden will be addressed at the same time. Mayor Jones asked whether all costs would be paid by the Rotary Club. Mr. Carter stated that the only cost they are asking the City to assume for the electrical work, which includes changing the sprinkler system.

Mr. Yates advised that they had a quote for the electrical work from Solomon Electric for \$1,430 and they use the funds from the line item for Memory Park maintenance, which has \$10,000 budgeted. Mayor Jones said that they might be able to get funding from Montgomery EDC.

John Champagne asked which City budget line item was covering the cost to keep the pond at Memory Park full. Mr. Yates advised that it was in the Memory Park maintenance line item. John Champagne asked if there would be enough funds to cover the electric work, which was not accounted for at budget time and might not be the wisest thing to do. Mayor Jones asked if this project would cause Memory Park to use more water. Mr. Carter stated that if it did it would be a very minimal amount for the irrigation on the small island. John Champagne said that his issue was the ongoing cost of water that has been unaccounted for up until now. John Champagne said that he just wanted to confirm the line item that was going to be used for maintenance. Mr. Yates said that it was the same line item for both expenditures, which he felt that they would be able to afford.

Mr. Yates advised that they had started billing for the water usage this past month.

Jon Bickford moved to approve the changes to Memory Park, contingent upon the Montgomery EDC paying the \$1,430.50 for electric and sprinkler work. Rebecca Huss seconded the motion.

Discussion: Dave McCorquodale asked what type of wood would be used for the bridge. Mr. Wakefield advised that it would be pressure treated wood and the decking of the bridge will be Trek to match the other areas.

Dave McCorquodale asked about whether there was enough water that they did not have to worry about scouring. Mr. Wakefield advised that had between 18 inches to two feet of water and there was soil being added to that area and not so much scouring, which was taking place on the sides as the water travels through that area. Mr. Wakefield said if they did not do this work it probably would not be a problem for another ten years, but sooner or later it will be a problem so they wanted to address the matter now so they do not have to retroactively take care of a problem. Mr. Wakefield said that it would be a lot cheaper to do the work now versus later.

Rebecca Huss said that she would like to say "thank you" for everything that Mr. Wakefield and Mr. Carter do for the park. Rebecca Huss said that she knew they had discussed the matter of the water usage, but as a user of the park, it is beautiful and she is proud to take her family there and people from out of town are amazed that little Montgomery has all this.

The motion carried unanimously. (5-0)

6. Consideration and possible action to establish Wade Street as a public street.

Mr. Yates stated that he was contacted by Mr. L.A. Washington regarding his claim that he owned and was paying taxes on what is now Wade Street. Mr. Yates said that Wade Street ties Worsham Street to Old Plantersville Road. Mr. Yates said that he confirmed the fact that Mr. Washington was being taxed with Montgomery Central Appraisal District and then he contacted Mr. Foerster regarding the matter.

Mr. Yates said that over the years the street probably started out as a trail and at some point the City paved the street and it became known as a City street. Mr. Yates said that Wade Street has been used for access to the homes along the street for more than ten years. Rebecca Huss advised that only Mr. Washington's home is located on Wade Street. Mr. Yates said that when he stated homes, he was thinking in terms of a central bypass or thoroughfare, not necessarily how many homes, because they can access homes on Worsham and Old Plantersville. Rebecca Huss stated that if you look at what happens in the City of Montgomery, there is no reason for the people on Worsham Street to go south, unless they are going to buy eggs, because everyone else is going north on Worsham Street. Rebecca Huss said that if you need to go to Old Plantersville, you would turn left on Rankin, which would be the same distance as you would travel on Wade Street.

Mr. Yates said that when he contacted the City Attorney he described this as a prescriptive easement. Mr. Yates said that he met with Mr. Washington at the site on Wade Street and the more or less agreed to the right-of-way that could be surveyed off and put into a document that the City Attorney could prepare for Council to dedicate the street as a public street. Mr. Washington stated that there are conditions to that occurring. Rebecca Huss said that Mr. Washington has several comments, noting that she had met with Mr. Washington as well as Mr. Yates. Rebecca Huss said that there is an issue with the way that the location shows up on the Appraisal District map.

Mr. Washington said that he did not know how Wade Street ever came about or how the City came about paving it or having any type of possession of the property for the water and sewer lines. Mr. Washington said that he thinks that over the years somebody owed somebody a favor so they paved this road. Mr. Washington said that there has only ever been one family house on that street, which has been his family. Mr. Washington said that not many people come through that street, but now the kids come from the high school to try and avoid the signaled intersection to get back onto SH

105. Mr. Washington said that traffic is more of a nuisance than a help. Mr. Washington said that his deal is because the City thinks that they feel a need to possess this street, he felt that it should be done with some conditions because he paid a sum of money for that property. Mr. Washington said that for the City to come and take that property away from him he felt that some tradeoff should be put in place. Mr. Washington said that the street is there and the City has been using it for water and sewer right of ways, which cannot be undone so it will have to continue.

Jon Bickford asked Mr. Washington to advise Council what he wants. Jon Bickford said that he takes issue with the City taking the property if it was not done correctly. Mayor Jones said that it could have been done with verbal permission in the past from his family. Mr. Washington said that was not the case.

Jon Bickford said that he wanted to know what Mr. Washington wanted, would he prefer that the property be all in one piece or would he prefer that the road not be there, or get paid for it. Mr. Washington said if it was up to him, he would take the road out, but that would not be feasible for the citizens with the water and sewer lines that are in place. Mr. Washington said if it was up to him and the utility lines were not there, he would put a sign at the end of Worsham Street saying "dead end" and put stripes on the end of it so people would not go through it and be left in peace. Mr. Washington said that on the other hand if they leave the road and it is consistently used by the City it will leave two or three little pieces of property that you can't do anything with. Jon Bickford asked whether those pieces of property were Mr. Washington's. Mr. Washington said that they were his property. Mr. Washington said if the City decides to utilize the street as it is, then he would like the name "Wade" changed to "L.A. Washington" as a trade-off and then dealing with the small pieces of property on the easement side that are unusable, which is approximately 7/10 of an acre.

Rebecca Huss said that there was also the complication that Mr. Washington, Sr., believes his property to be one size but does not match what it is that they own, so they need to verify the actual metes and bounds. Rebecca Huss said that her suggestion would be to name the street "L.A. Washington Street" and then maybe step by step the City works with Mr. Washington to establish first what they are dealing with in terms of the size of the property and the actual location of Mr. Washington, Sr.'s property and making sure that the family is agreeable.

Jon Bickford proposed the following:

- a) Conduct either a financial or engineering study that would show how much it is going to cost to peel up the street and re-plumb whatever they have installed, if it is water and/or sewer, and return the property to its original condition before it was commandeered.
- b) Get the fair market value for Mr. Washington for not only that strip of property, but also the impact for the side strips that are there; and
- c) Determine what Mr. Washington has been paying for taxes on that property.

Mr. Washington said that he has been paying on 0.756 acre of land \$67 per year. Jon Bickford asked how long he has been paying on that property. Mr. Yates advised that the street has been there since the 1960's. Mayor Jones stated that they do not know how that road came to be, it might have been a verbal agreement with somebody.

Mr. Washington advised that when he purchased the property the title search came back clear. Mayor Jones said that there are at least two other streets that are the same way as Wade Street, which includes Mason Street and Cemetery Street. Mayor Jones said that the property has changed hands, with the street there, but was always platted as part of the property. Mayor Jones said that they resolved the issue on Cemetery Street and now they are trying to resolve Mason Street, and now Wade Street has come up. Mayor Jones said they do not know how the streets came to be, he does not know, but they are there and used as a City street, so therefore they are a City street. Mayor Jones said that they can undo it. Mayor Jones said that the survey for his property would not even show the street as being there. Jon Bickford said that if he bought a piece of property and there was no street on his survey, guess what he would assume, there would be no street on his property.

Rebecca Huss said that Mr. Washington sounds like he is willing to do what is best for the City, and she thought that they could look at the tradeoffs that make him feel like he is getting a good deal. Jon Bickford said that Mr. Washington needed to be made whole and they need to find out what Mr. Washington wants.

Mr. Yates said that they need to survey the property, and any unusable remnants of property they will need to come up with a price or do an appraisal or do an agreement for the unusable property. Rebecca Huss asked when they do that would they replat the property so it would be a contiguous piece of property that would show the street on it and his property value would increase because it would be an accurate survey and has road frontage. Rebecca Huss said that might be something

that they look at adding onto the survey. Mr. Yates said that they could create a plat for the property. Mayor Jones asked the City Attorney for his input on the matter.

Mr. Foerster said that he had two concerns for the City, they have a road and underlying utilities. Mr. Foerster said that there are probably properties all over the City that have underground utilities that are still functioning and the people that own the property are paying taxes on the property with the underlying utilities. Mr. Foerster said if the road is not necessary and if it can be removed and that is what Mr. Washington wants, he felt that City Council has the authority to take this prescriptive road that has been used by the public, adverse to the rights of the property owner for ten or more years, and if they want to they could choose to abandon the road and remove the asphalt from the property and let Mr. Washington have the road.

Mr. Foerster said that he felt that they still have the prescriptive right to the underground utilities, which might be a pretty expensive cost to remove and does not sound what Mr. Washington is asking for. Mr. Foerster said that he did not think that Mr. Washington had a problem with the utilities, he thought he had a problem with the road. Mr. Foerster said that he felt that Mr. Washington would like to have access to the entire piece of property or have a survey carving out the road so that he would no longer have to pay taxes on the road. Mr. Foerster said that apparently the City is willing to do whatever Mr. Washington is wanting to do.

Mr. Foerster said that if Mr. Washington wanted to have the road removed he felt that was fairly easy to do if the only individual that is really served is Mr. Washington's family. Mr. Foerster said that he would suggest that since there has been some public access to the road, if they do remove the road, he felt they should treat it like they would any abandonment of a road by having a public hearing before it is ordered by the City Council. Mr. Foerster advised that the fee simple title would be owned by either Mr. Washington or the party next to him, because apparently the road runs across two tracts of land. Mr. Foerster said that by removing the road, which would fix Mr. Washington's problem and he would have access to his entire tract of land, subject to the underground utilities that would not be in his way to use the property.

Mr. Foerster asked if Mr. Washington wanted the road to remain there and removed from the tax roll, or would he rather have the road removed entirely. Mr. Washington asked if he could wait until they come up with a study and then come back and ask that questions. Mayor Jones said that it did not cost anything to pull the road up. Rebecca Huss said that either way, Mr. Washington

would like time to consider his options, which she thought that would be something that they could grant since the road has obviously been there long enough and it is not going to go anywhere. Rebecca Huss asked Mr. Washington if he would like some time to consider his options. Mr. Washington said that would be fine with him.

Mayor Jones said that they would have to build a turnaround if the road was abandoned for traffic.

Dave McCorquodale asked whether there was a third tract of land with that third owner, because according to the County's GIS map where Wade and Worsham meet it looks like there is a tiny parcel. Rebecca Huss said that he was asking about the tract numbered R124032. Mr. Washington said that they would have to get an accurate plat from the Appraisal District for a true measurement of who owns what. Dave McCorquodale said that there is a potential third owner involved right near where Wade and Worsham meet. Mr. Washington said that it would take some investigating.

Mayor Jones asked what if they left the road, resurveyed and replatted the property, along with any other dealing that they have to do with other property owners, to align the property, would that solve things. Mr. Washington said that would if they can find out who the owners are, because he doesn't believe they are going to be able to find out about that one little piece of property. Mr. Washington said that the City might be able to locate the owner by doing some deep searching, because he has not been able to find out the information.

Mr. Yates said that the surveyor can work with the title company to find out who owns that piece of property. Mr. Washington said that if all else fails, the name change would be okay and some type of compensation for the little pieces of property that are left in the easement.

Jon Bickford retracted his previous motion. John Champagne moved to table action on this item. John Champagne stated it will be hard for him to vote to do anything but take up the road and have Mr. Washington's property back to the way it was, which is going to be his position. Rebecca Huss said unless Mr. Washington decides that he wants it to be a road because he has access frontage and he can subdivide. John Champagne said that he personally did not want the road. John Champagne said that the decision is up to Mr. Washington. John Champagne said that the road is not utilized except for people that are cutting through to do whatever and there is only one home that it is serving. John Champagne said to have a small turnaround at the dead end would be nothing and it would be one less piece of street that they would have to maintain.

John Champagne said that he felt that it would be best for Mr. Washington, to make him whole, that the acreage he owns be made what it was before. John Champagne said that he is not saying that the City came in under some kind of eminent domain and took the road, he thinks that it just happened the way that was described. John Champagne said that the fact is, legally, this is one piece of property and the road just happens to be there. John Champagne said that if Mr. Washington wanted to keep the utilities there, that would be great and unless something happens and he has an epiphany, his vote is going to be for that road to be pulled up and Mr. Washington gets his property back, and then he is done with it.

John Champagne restated that he moved to table the item.

Mayor Jones said that if the road was not there Mr. Washington would be able to define his property. Mr. Washington said if the road was not there then his property would be whole and every piece that he paid for would be solely accessible to him.

Mr. Foerster said that if City Council tables action on this item it will not give staff any direction as to where to go. John Champagne said that was true.

John Champagne moved to supplement Jon Bickford's motion to conduct either a financial or engineering study that would show how much it is going to cost to peel up the street, which would be zero, and then stated he did not want the road.

Mr. Washington said that if City Council decides to abandon the road he asked that they leave the road and he will put up a gate in the front side. Jon Bickford asked to confirm with Mr. Washington that he wanted the road left on his property, and that he just wanted his property whole. Mr. Foerster said that they can still abandon the road and leave it on Mr. Washington's property. Mr. Washington said that he would take care of the road. Jon Bickford said that he wanted to know what Mr. Washington wanted, because if he wants to use the road and have it remain, then that is fine. Mr. Washington said that he could take the road up when he was ready. Mayor Jones asked if Mr. Washington would allow it to be used as a turnaround. Mr. Washington said that would take more of his property away. John Champagne said that he is envisioning a three point turn at the end of the road so they can get out. Mayor Jones said that people are going to end up down there accidentally and will need to turn around.

Dave McCorquodale said that the City ordinances would require them as a City to do something at the end of the street, such as a cul-de-sac.

Jon Bickford moved to conduct an impact study or impact cost regarding whether they leave the road or take the road up, and if they block access to the road from Worsham Street how much would it cost to block the access and would the City have to put a cul-de-sac in place and would that require more property. Jon Bickford said that Option A would be that the City gives Mr. Washington the street back and make a cul-de-sac at the end of the street, or Option B where the City makes an offer to Mr. Washington to purchase that strip of land.

Mr. Foerster stated that every City and every County in the State of Texas, including this City, has prescriptive right utilities and prescriptive right roads that have developed over time, and nobody knows the history. Mr. Foerster said that presumably at some time somebody said that they could put a utility line across their property, and they failed to get a recorded easement. Mr. Foerster said that by "prescriptive right" simply means public use adverse to the property owner. Mr. Foerster said that he wanted City Council to understand that if they go down this road, where as a matter of principal and precedent, if you start compensating every property owner for some prescriptive utility or prescriptive road, where does it end. John Champagne said that he agreed with Mr. Foerster.

John Champagne stated that there were two different motions hanging in the air, because Jon Bickford had pulled his original motion, and then revised his motion.

John Champagne said that he did not want the road, and asked that City Council do what is necessary to abandon the road and let Mr. Washington do what he wants, and make provisions for a small turn around, then City Council would done with the matter.

Mr. Foerster said that the fair thing to do, would be what Mr. Yates had said originally, since Mr. Washington is paying taxes on something that he can't use other than when he is driving up and down the road, which has become a public road at the fault of nobody in this room. Mr. Foerster said that either the City removes the road and stop using it by placing a gate up, or the City pays for a survey to find out the width of the road and remove that piece of property from Mr. Washington by City Council action so that he gets at least that portion of his property no longer

subject to taxes. Mr. Yates said that he would add to pay Mr. Washington for the unusable remnants of land on the north side of the road.

John Champagne said that he had a motion on the floor and Jon Bickford had pulled his motion back.

Dave McCorquodale said that if the City is going to keep the road they need to have a very clear understanding of what is exactly being given up, because it is not just the 18 feet of asphalt it is also the 12 feet of right of way, which could change his mind on whether or not he would want to keep the road there or not. Mr. Yates advised that he and Mr. Washington had both looked at the dimensions, and it is a good 6-7 feet on either side. Dave McCorquodale said that they would get down to property that would be very unusable, especially on the south side.

Mr. Shackelford said that City Council had authorized them to work with Montgomery County Precinct 1 and Precinct 2 to work on a Thoroughfare Study for the City, and asked whether it would be worthwhile to determine if this road would be part of the City's network system before a decision is made. John Champagne said that in his mind it would not. Mayor Jones said that he disagreed and felt that the road adds mobility to the area. Mr. Shackelford said that they would look at what traffic patterns exist and consider that information, and if the street was not there where would traffic go instead. John Champagne said that a bunch of high school kids use the road from time to time and asked how many developments have cul-de-sacs for the very same reason. John Champagne said that this is residential area and the road is only needed by the people that are living there, and the connection between Worsham and Old Plantersville Road is totally useless, except for Mr. Washington.

Rebecca Huss said that she wanted to go back to her original thought.

Rebecca Huss moved to table this action with instruction to staff. John Champagne said that there were already two motions on the table. Rebecca Huss stated that the motions died for lack of a second. Mayor Jones asked if anyone wanted to rescind their motion. John Champagne stated he did not want to rescind his motion. Jon Bickford stated that he had already rescinded his motion. Mayor Jones asked John Champagne to restate his motion.

John Champagne had originally moved to table the action, and wanted to modify his motion.

John Champagne moved to relinquish the road back to the original owner, so that Mr. Washington can have his property back, in total, we abandon all maintenance and anything to do with the road, and Mr. Washington will take care of putting up a fence or gate on either side to impede access to that road, and the City will work out something at the end of Worsham Street for a turnaround.

Mr. Fleming advised that there were functioning City utilities on either side of the road currently. Mr. Fleming said that they would have to establish some sort of access for maintenance.

John Champagne amended his motion to include access to the utility easements.

Mayor Jones restated the motion, advising that the motion was to abandon the road, and to allow Mr. Washington to block off both ends of the roadway for private use, and the City retains the right to the utilities. Mayor Jones asked if anyone wanted to change the motion.

Mr. Washington stated that City Council must understand that majority of the road runs through his property, but there are other little pieces that are outside his property. Mr. Washington said that it was important that some type of survey is done, but if the City abandoned the road that would work because nobody would be going through it. Mr. Washington said that the City would have access to the utility lines, just like the light company has access to their lines.

John Champagne retracted his motion.

Rebecca Huss moved to table this item with the request that staff meet with Mr. Washington and the City Engineers and potentially hire a surveyor, if necessary, to resolve all the outstanding questions, then allow Mr. Washington to make a decision and come back to City Council with the City's position in terms of costs and benefits on one hand, and the other Mr. Washington's desires, and hopefully those two things will meet up. John Champagne seconded the motion.

Discussion: Mr. Foerster said that when the City moves forward, if they abandon a road City Council will have to have a public hearing and give public notice. Mr. Foerster said even if 50 people come in and complain about the road, which he did not think that they would, City Council could do it. Mr. Foerster said that they needed to have a public hearing on abandoning the road. Jon Bickford said that made sense, if the residents don't want the road abandoned and Mr.

Washington gets what he wants out of it, they might choose to leave it. Rebecca Huss said that she did not think that abandonment is necessarily the end of all this, it is coming with more information so that everyone can make a decision and a better discussion. Mr. Yates said that his approach to Mr. Washington would be different than what he has done so far, and he thought that between the two of them and the engineers they could work something out that would be to everyone's agreement.

Mr. Washington asked if the public hearing would be all the citizens of Montgomery, not just the people that live on that road. Jon Bickford said that it would be open to the public, it does not mean they have to come. Rebecca Huss said that it was not a popularity contest but a legal process. John Champagne said that he could assure Mr. Washington that he could care less what they think about his property, what he cares about is what Mr. Washington thinks about his property.

Dave McCorquodale said, for clarity, he would like to know the cost for moving the utilities that are located on that property versus putting an easement right through the middle of someone's property. Mr. Foerster said that as part of the process that staff will be going through, they will be talking to Mr. Washington about agreeing on an easement across his property and to define where those utilities are located, so both Mr. Washington and the City know where they are located, and the easement will be recorded. Rebecca Huss said that it would be a subsurface easement so it would not impair his use of the top soil as long as he does not dig. Mr. Foerster said that it would be like what they did with the Summit Business Park.

The motion carried unanimously. (5-0)

7. Consideration and possible action regarding adoption of an Election Services Agreement by and between the City of Montgomery, Texas and Montgomery County, Texas, by its County Election Officer.

Mr. Yates presented the information to City Council. Dave McCorquodale asked whether any of the costs had increased substantially this year. Mr. Yates advised that they had not. Mayor Jones asked if they had an approximate cost. The City Secretary advised that they would not know until they determined how many entities would be participating in the Election.

Dave McCorquodale moved to adopt the Election Services Agreement by and between the City of Montgomery, Texas and Montgomery County, Texas, by its County Election Officer. Jon Bickford seconded the motion, the motion carried unanimously. (5-0)

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

AN ORDINANCE OF THE CITY OF MONTGOMERY, TEXAS, PROVIDING FOR THE HOLDING OF A GENERAL ELECTION TO BE HELD ON MAY 7, 2016, FOR THE PURPOSE OF ELECTING A MAYOR AND TWO (2) CITY COUNCIL MEMBERS, PLACES 2 AND 4; APPROVING ELECTION SERVICE AGREEMENTS WITH MONTGOMERY COUNTY, TEXAS; AND PROVIDING DETAILS RELATING TO THE HOLDING OF SUCH ELECTION.

Jon Bickford moved to adopt the Ordinance. Dave McCorquodale seconded the motion, the motion carried unanimously. (5-0)

9. Consideration and possible action regarding approval of the Joint Election Agreement for the May 7, 2016 Election.

John Champagne moved to approve the Joint Election Agreement for the May 7, 2016 Election. Jon Bickford seconded the motion, the motion carried unanimously. (5-0)

10. Consideration and possible action regarding naming of the street on SH 105 approaching the Montgomery High School Sports Complex.

Mr. Yates advised that this is the street immediately east of the First United Methodist Church that approaches the parking lot east of the football stadium. The street is public from SH 105 north to the entrance of the parking area for the football stadium and the natatorium area of the school's athletic field area.

Becky Huss asked who owned the lands that dedicated these roads. Mayor Jones advised that the school owned it as a driveway, and when they annexed they made some agreements about the school moving their gate up and the City taking over the road to have access to a lift station.

Mr. Foerster said that regarding a letter from Mr. Cheatham discussing naming of another road, he states that the City may not know both the east and west driveways are City rights of ways pursuant to the development agreement, which he has not seen, dated September 27, 2011 between the City,

Montgomery ISD and Mr. Cheatham. Mr. Foerster said that he is reading into the letter that there is something in that development agreement that allows Mr. Cheatham to participate in the naming of the street. Mr. Foerster said that since he has not seen the agreement, he would not know what that would be.

Rebecca Huss said that makes it very hard to make a decision not knowing whether there is a legal issue. Mayor Jones said that City Council had a right to pick a name. Mayor Jones said that Mr. Cheatham is putting his case forward for a name and the school also has a preference. Jon Bickford said that they had a problem in the past with developers naming their streets, and he felt that they should stick to naming them related to people from the City's history using the last name only. Mayor Jones said that Mr. Cheatham names his streets after his grandchildren. Jon Bickford said that he had no problem with developers naming the streets in their development, but for public roads he felt that they should stick with the spirit of the historical names. Mr. Foerster said that he would be happy to work on getting a list of names. Rebecca Huss said that she would not even mind recent people.

After discussion, Jon Bickford moved to table action, and asked staff to come up with five names to choose from, based on the history of Montgomery, along with a one sentence explanation of their history. Rebecca Huss seconded the motion, the motion carried unanimously. (5-0)

11. Consideration and possible action regarding electrical work at the Montgomery Community Center.

Mr. Yates advised that Mr. Muckleroy had obtained three quotes for the work, with Solomon Electric being the low bidder because of charging for only the actual time on the project.

Mr. Yates advised that the funding for the project would come from "street contract labor" in the budget, and if approved, it will be transferred to the Public Works line item "Community Center improvements".

Jon Bickford asked if this was a safety must do. Mr. Muckleroy said that the wiring is not properly done, and they did not use any wire nuts.

Jon Bickford moved to accept the bid submitted by Solomon Electric, including the LED lights. Dave McCorquodale seconded the motion, the motion carried unanimously. (5-0)

Mr. Foerster stated that there was a new law that requires when City Council votes on a contract, the vendor must submit a Form 1295 Certificate of Interested Parties. Mr. Foerster advised that he and the City Secretary were working on this information right now, because the Kroger contract will have that requirement. Mr. Foerster said that the vendor has to submit a sworn to statement identifying any interested parties they might have with people on City Council. Mr. Foerster said that Form 1295 is on file with the City and the City Secretary has to also file electronically with the Texas Ethics Commission. Mayor Jones asked what constituted an interested party. Mr. Foerster advised that if the person owns 10% percent or more of the business would be an interested party. Rebecca Huss stated that being an interested party would not make it impossible to do business with the City. Mr. Foerster said that they would just have to disclose the information for ethics purposes.

12. Consideration of proposed schedule for City Council Workshop Sessions.

Mr. Yates presented the information for three potential workshop meetings to be held with three different topics:

- Meeting #1 topics – Water/Sewer Analysis Reports, Water/Sewer Fee Review, and an ordinance regarding connection charges to the City to reflect the cost to the City.
- Meeting #2 topics – Master Plan discussion (suggested by Randy Moravec/Montgomery EDC), and an issue regarding Chamber of Commerce/Antiques Festival.
- Meeting #3 topics – review of 2015-2016 Operating Budget, and borrowing plan for the remainder of the fiscal year.

Mr. Yates suggested the following dates for the meetings: February 16, March 15 and April 12, 2016.

Rebecca Huss asked if it would be possible to move the March 15 date since it is Spring Break week and she would like to attend the meeting. Mayor Jones asked if they could meet before that March meeting. Rebecca Huss said that would be fine.

Jon Bickford asked what time the meetings would be held. Mr. Yates said that they were being proposed to be held at 6:00 p.m.

Mr. Yates said that the other items the he felt could be worked into the Planning and Zoning Commission Meetings, the regular City Council Meetings were:

- Animal Ordinance

- Tree Ordinance
- Dark Sky Ordinance
- Repairs made to Buffalo Springs Bridge resulting from the failure
- Changes to Zoning and Subdivision Ordinance as recommended by the City Engineer
- Traffic and Speed Limit issues
- Landscaping Design
- Park Memorandum of Understandings
- Annexation of property north of the City

John Champagne asked that staff send meeting invites along with the proposed meetings.

Mayor Jones asked if the Mobility Study or preliminary discussion on the list of items. Mr. Yates said that he did not have that information, but did have the street improvements. Mayor Jones said that they had enough information for a bullet point and he might want to work it into the schedule.

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. (No current items at this time.)

COUNCIL INQUIRY:

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

ADJOURNMENT

Jon Bickford moved to adjourn the meeting at 7:44 p.m. Rebecca Huss seconded the motion, the motion carried unanimously. (5-0)

Submitted by:

Susan Hensley
Susan Hensley, City Secretary

Date Approved:

02/23/16

Kirk Jones

Mayor Kirk Jones

