

# MINUTES OF REGULAR MEETING

December 8, 2015

## MONTGOMERY CITY COUNCIL

### CALL TO ORDER

Mayor Kirk Jones declared a quorum was present, and called the meeting to order at 6:01 p.m.

Present:       Kirk Jones               Mayor  
                  John Champagne       City Council Position # 2  
                  T.J. Wilkerson           City Council Position # 3  
                  Rebecca Huss            City Council Position # 4  
                  Dave McCorquodale    City Council Position # 5

Absent:         Jon Bickford            City Council Position # 1

Also Present:  Jack Yates            City Administrator  
                  Larry Foerster         City Attorney

### INVOCATION

John Champagne gave the invocation.

### PLEDGE OF ALLEGIANCE TO FLAGS

### VISITOR/CITIZENS FORUM:

Ike Fluellen, candidate for Constable in Precinct, introduced himself and announced that he was running for office.

Judge Mike Seiler, 435<sup>th</sup> District Court Judge for Montgomery County, introduced himself and announced that he was running for reelection.

### CONSENT AGENDA:

1. Matters related to the approval of minutes for the Regular Meeting held on November 10, 2015.

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

**CONSIDERATION AND POSSIBLE ACTION:**

2. Recognition of Appreciation for service on the Planning and Zoning Commission to be presented to Sonya Clover and Harriette Cummings.

Mayor Jones presented a plaque of appreciation to Mrs. Sonya Clover in recognition of her years of dedicated service on the Planning and Zoning Commission. Mrs. Clover thanked the City and said that this was an enjoyable Committee to be on and they did some serious things. Mrs. Clover said that they feel like they did their best for the City and everybody involved. Mrs. Harriette Cummings was not present to receive her plaque.

3. Consideration and possible action on department reports.

- A. Administrator's Report – Mr. Yates presented his report to City Council. Mr. Yates advised that Ms. Marjorie Cox, developer in town, brought in a service request and application along with the \$5,000 fee. Mr. Yates advised that Ms. Cox request came in after the agenda had been posted, so he advised City Council he would go ahead and deposit the check and instruct the engineer to perform the feasibility analysis.

- B. Public Works Report – Mr. Yates advised that he would present this report because Mr. Mike Muckleroy, Public Works Foreman, was in the hospital. Mr. Yates advised that Mr. Muckleroy has been in the hospital since last week, but said that he was feeling better. Mr. Yates reviewed the activities that occurred during the month. Mr. Yates noted that the pump had been replaced at Lift Station No. 8 at Buffalo Springs. Mr. Yates also advised that Mr. Muckleroy had built a street sign and pole rack at the Public Works Shop.

John Champagne asked how things were going at Memory Park and Fernland Park. Mr. Yates advised that the lighting project at Fernland is expected to be finished this

Thursday. Mr. Yates said that Mr. Mike Newman has been inspecting the work on that project. Mr. Yates stated that all three Boy Scout projects have been completed and they all were very nice. Mr. Newman has recommended that at the next Council Meeting they introduce pictures of each of the projects and have City Council publicly thank the Boy Scouts for their work. Mayor Jones said that there was a lot of Boy Scouts that they need to thank so they will get them on the Agenda soon.

- C. Police Department Report – Lt. Belmares presented the report to City Council. Rebecca Huss stated that on Saturday night she had called dispatch and reported that the gates to the construction site, behind Brookshire Bros., was wide open and the lights were flashing. Rebecca Huss said that some convoluted message got passed through patrol that she had a dispute over property, like someone had stolen something from her, and she was wondering if she just happened to get the bad call or was there a problem. Lt. Belmares said that he thought it was probably a bad call because normally everything comes from the caller to the dispatcher to the officer. Lt. Belmares said that Saturday they will have a parade and so there will be multiple units on duty, along with reserve officers. Lt. Belmares reported that both he and Sergeant Lehn attended officer training for Officer Involved Shooting Course Investigations. Mayor Jones asked if the Police Department was fully staffed. Lt. Belmares advised they were fully staffed.
  
- D. Court Department Report – Rebecca Lehn, Court Administrator, presented her report to City Council. Ms. Lehn advised that they are \$200,000 higher than they have ever been in collections. Ms. Lehn stated that the January Report would show a full year calendar review of the past year. Ms. Lehn said that warrants were also up this month, which is unusual during the holidays. Ms. Lehn advised that the Court will have one clerk out on maternity leave beginning in January.
  
- E. Utility/Development Report – Due to the absence of Ashley Slaughter, Utility Billing Clerk Mr. Yates presented the report to City Council. Mr. Yates said that the billing was right on track for this month. Mr. Yates stated that the Community Building had only \$130 in rentals for the month. Mr. Yates advised that Mrs. Slaughter does an excellent job of keeping track of the utilities and inspections during the month.

Rebecca Huss asked about page 3, Buffalo Springs Sewer Plant that shows zero water consumption for November, and asked if that was because that figure had not come through yet. Mr. Yates said that he would check on that information. Mayor Jones asked if the numbers in the report were for thousands of gallons. Mr. Yates advised that was correct. Mayor Jones said that the information was requested by City Council at the last meeting so Mrs. Slaughter is on top of things. Rebecca Huss noted that the water usage at Fernland doubled from October to November. Mayor Jones said that might be due to the Texian Heritage Festival.

- F. Water Report – Mr. Mike Williams presented his report to City Council. Mr. Williams advised that they responded to 14 district alerts and Lift Station 8 was pulled and cleared six times. Mr. Williams noted that they have not had any calls at the plants in two weeks. The Buffalo Springs flow meter was calibrated and found to be inaccurate on the low end. The flow meter at Lift Station No. 2 was also calibrated to get a second account of flow in the system.

Mr. Williams advised that they had gone out for chemical bids and they went with AOS Treatment Solutions for a savings of \$2,154.71.

Mr. Williams advised that a contractor boring a cable line down SH105 hit the force main leaving Lift Station No. 5. Repairs were made the same day, the area was cleaned, disinfected and reported to TCEQ for an unauthorized discharge. Rebecca Huss asked if the contractor was paying for the repairs. Mr. Williams said that he was not sure. Rebecca Huss asked whether it was an expensive cost. Mr. Williams advised that he would check on the cost. Mayor Jones said that they need to make sure that the right party pays for the costs. Mr. Williams reported that 88% percent of the water pumped had come out of the Catahoula Well.

Rebecca Huss asked about the accountability, stating that in the last few months the accountability has fallen and asked if that was because they are doing a better job of measuring. Mr. Williams advised that was correct, because now they are comparing apples to apples, which is allowing for a more accurate count of water. Mr. Williams

said that when they get the new meters and they can be read all in one day that will give a better account of the water. Mr. Williams stated that 95% percent is the best range for accountability. Mr. Williams stated that his company also offers online payments.

Mayor Jones asked what the schedule was for installation of the new meters. Mr. Yates advised that it looked like they will be in mid-January 2016. Rebecca Huss asked if they were going to be pro-active about people that want to get landscape meters or is there really no difference in price to have that done later. Mr. Yates said that there would be no difference in the cost. Mr. Yates said that if someone wants to get a landscape meter they should not be passed up.

John Champagne asked how many data points they have for the year on the return rate. Mr. Williams advised that data was on page 14 of the report.

- G. Engineer's Report – Mr. Glynn Fleming, Associate Engineer, presented the report to City Council and detailed some of their ongoing projects. John Champagne asked about the total expenditure for both Capital Projects 1 and 2 being recommended. Mr. Fleming advised that it was \$200,000 - \$235,000.

Mr. Fleming advised that the Sanitary Sewer System Analysis and Master Plan was expected to be delivered to City Council in January. The Texas Capital Fund Grant (Kroger) kickoff meeting was held this afternoon and they expect to comment with the site survey work within the next week.

The Pizza Shack kickoff meeting was held and they have wrapped up their initial site survey, and they are underway with the preliminary drafting. Mr. Fleming advised that he had included an extensive time line for Council to review. Mr. Fleming said that they anticipate construction sometime in the spring.

Rebecca Huss asked if the Kroger project was making any effort to save the old trees. Mr. Fleming advised that with the magnitude of dirt work that would be done at that site, most of the trees would be removed.

Mayor Jones asked whether Pizza Shack would start any sooner than spring on their dirt moving. Mr. Fleming said that he would assume that they would, but he has not heard what their final timeline is. Mr. Fleming said that he has reviewed their final plat and plan submission, but did not know when their construction would begin.

Mr. Fleming stated that the Hills of Town Creek is moving forward and the final review of the construction drawings has been completed for submission to Planning and Zoning Commission. Mr. Fleming also advised that Kroger's rough grading was completed, the civil site drawings are being reviewed and will be returned within the next month and Pizza Shack has submitted their revised drawings.

Mayor Jones asked if there were any plans within the 67-acre development to connect SH105 to Lone Star Parkway through that development. Mr. Fleming said that there were no plans to do that at this time. Mr. Fleming said that he would take that information under advisement to consider as they move forward. Mr. Fleming said that the developer has indicated that they will probably come before the Planning and Zoning Commission at the end of the month to make an introduction and review preliminary land plans for comment.

John Champagne said that he remembered discussion in the past regarding variances and possibly changing the ordinance, and asked if the ordinance had been changed regarding lot sizes. Mr. Fleming advised that it had not changed. Dave McCorquodale commented that in the past City Council had discussed changing the way they classify zones where they would not allow multi-family in the R-1 Single Family zone. Dave McCorquodale asked if they would have to come before Council for a zoning classification change for multi-family use. Mr. Fleming advised that they had discussed that information during their meeting and they were advised that they would have to request a zoning classification change from City Council for multifamily use.

Rebecca Huss asked if they would be like the townhomes by the library, where there are two land pieces that were given a variance and they are smashed together with a common wall. Mr. Fleming said that their initial thinking is a free standing structure with a single unit townhome, but those are some of the things that they will discuss when they present their land plan to the Planning and Zoning Commission prior to coming to City Council.

Mr. Fleming stated that as directed by City Council last month, they had retained the services of a structural engineer and a general contractor to address the Town Creek bridge emergency repairs. The repairs have been completed and the bridge is stable and structurally sound.

Mayor Jones asked Mr. Fleming to speak to City Council regarding the fact that they had found that the paving of the bridge had not been done according to the engineered drawings. Mr. Fleming advised that when they first noticed the problem with the bridge, they went back to the existing City archives that he has been compiling over the last year, where he was able to find some engineered drawings for the sloping that had washed out. They did not have drawings for the bridge, but they have since been able to come by with those. Mr. Fleming said that the engineered drawings for the slope paving on the surface looks just fine, however after having been on site, as they were taking out the slope for repairs, and it was nowhere close to what was in the engineered drawings, and probably went a long way in precipitating that failure.

Rebecca Huss said that Mr. Muckleroy had advised her about the missing part of the toe wall, which would not be something that they would have been able to see when the City accepted the bridge, so she does not accept the fact that it is too late to do something about the bridge failure. Rebecca Huss said that the bridge was supposed to have been built as per the engineered drawings, she felt that the responsibility for that should be whoever was supervising and representing that the bridge was built as drawn. Rebecca Huss said that it should not be the City's responsibility just because the City owns the bridge. Rebecca Huss stated that they presented the drawings saying that was how the bridge was built and the City accepted the bridge because it looked

good on the top and the drawings were correct. Mr. Fleming stated that was a valid point, but he could not speak regarding the level of City oversight or the amount of inspections that occurred at that time. Mayor Jones asked Mr. Fleming how they would inspect a bridge or buried sewer line. Mr. Fleming said that they would conduct inspections as construction is underway, including excavation, form work and steel placement. Mr. Fleming said that there was a minimal amount of reinforcement steel on the bridge, not what was specified in the drawings. John Champagne asked who the engineering firm of record for the bridge was. Mr. Fleming advised that it was DPK Engineering, Inc. Mr. Fleming stated that the inspections would have been done by City staff or the former City Engineer. Mr. Shackelford said that currently the City requires that the City Engineer is out there during the installation of water and sewer lines and paving at the developer's expense. Mr. Fleming noted that this is required by the City's Code of Ordinances, and with the current projects that are ongoing they have a field inspector that makes daily site visits.

John Champagne asked who the developer for Town Creek Bridge was. Mr. Fleming advised that it was also Waterstone.

Rebecca Huss said that she felt they could make a legitimate case for the bridge, because the bridge was not as they had represented it would be in the technical drawings. Rebecca Huss said if they are presenting the technical drawings as facts, and it turns out that those are not the facts, then she feels that the liability lies somewhere in the drawings.

Mayor Jones asked the City Attorney for his opinion regarding the bridge. Mr. Foerster stated that he was inclined to agree with Rebecca Huss. Mr. Foerster said that they just need more information to find out exactly who did the inspections, if there was an inspection done. Mr. Foerster stated that he felt that whoever did the inspection would be responsible to the City for representations that the inspector, or the company the inspector works for, that the bridge was satisfactory and built in accordance with the engineering design.



John Champagne asked if the bridge information was available. Mr. Fleming stated that he has signed and sealed engineering drawings, no record of field inspections, and no record so far of the City's acceptance of the bridge. Mr. Shackelford said that they are also missing the letter of representation from the developer that states everything was built according to plans, but they are continuing to look for that information. Mayor Jones said that the City might have accepted the bridge when they accepted the road.

Mr. Fleming said that the Annual Water Well Performance Reports were received and are enclosed for City Council's review. Mr. Fleming advised that there were no real items to note or any recommended actions that need to be taken at this time.

Mr. Fleming advised that West Side at the Park, located by Cedar Brake Park, has indicated that they are ready for their final walk through, which he will do tomorrow afternoon.

Financial Report – In the absence of Mrs. Cathy Branco, Mr. Yates presented the report to Council, advising that the report covered the previous month. The Utility Fund is at \$19,000. Mr. Yates stated that the City has \$2,048,017 in various funds in the bank. Mayor Jones said that the department heads that had projects in mind for the new fiscal year, have already begun their projects. Mayor Jones also noted that the sales tax for that month might be alarmingly high, because sometimes the City gets taxes that do not belong to the City and it has to be returned.

John Champagne asked about the cost for providing water to the parks within the City, and whether any advancement has been made. Mr. Yates advised that he has advised Memory Park not to use metered water to fill the pond, instead they are to use drainage water or get permission from the City to fill the pond. John Champagne said that he was talking about all their water for the park, including irrigation. Rebecca Huss said that in Mrs. Slaughter's report on page 3, it shows the gallons used for the Parks. John Champagne said that he wanted the cost for the water to show up on the profit and loss statement, because it is not being reflected in the maintenance cost for the Parks. John

Champagne said that the water is a cost to the City that needs to be accounted for. John Champagne said that it is very misleading to show that Memory Park has an annual budget of \$2,000 and not show the cost of the water being provided. John Champagne said that there needs to be more clarity in the costs for the Parks. Mayor Jones said that in order for it to show up on the financials, there would have to be a check written to pay for the cost. John Champagne said that would be fine with him. John Champagne said that the Parks are a department maintained and funded by the City, and for anyone to look at the costs, it is a misleading representation of the cost to maintain the Parks. John Champagne said that he would ask that they attempt to put something in place that would be more indicative of the water costs for the Parks.

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

4. Consideration and possible action regarding Cedar Crest Manufactured Home Park License Renewal – Marcy Bennett/Pat McCarty.

Mr. Yates advised that he had conducted an inspection today of the property. Mr. Yates said that there is one speed bump on the north side, and they had done substantial repairs made in September and October, which helped several of the potholes. Mr. Yates said that if it was considered, it would be one of the worst streets in town. Mr. Yates advised that the following items were also noted on his inspection:

- Lots 18 and 28 had loose skirting panels for a combined length of two feet;
- Lots 29 and 11 could stand to be power washed, otherwise the other homes were in fairly good condition;
- Lots 29 and 7 have trash in the front yard;
- Lot 14 has clutter on the front porch; and
- Lot 10 has building materials in the front.

Mr. Yates advised that none of these items would be a litter nuisance if they were at a single-family home in the City. Mr. Yates said that his overall opinion was that it is a clean mobile home park with few police or welfare incidents, but that the roads do need to be repaired. Mayor Jones asked Mr. Yates if he was recommending approval of the

permit. Mr. Yates said that he was recommending approval of the permit, and said that he had communicated the items that needed attention to Ms. Bennett.

Ms. Bennett said that she went through the Park and made notes of just about everything that Mr. Yates commented on. Ms. Bennett said that she has started eviction proceedings on Lot 29. Ms. Bennett said that the road was in such bad condition because the man in Lot 25 was driving his tractor trailer rig and parking it to eat lunch, which destroyed the road. Ms. Bennett said that she has spent \$10,000 on the road, and still has a little more to complete. Ms. Bennett advised this that man in Lot 25 has been sent a letter to cease and desist. Ms. Bennett said that she will continue to get everything completed.

John Champagne asked if they had an HOA or a restriction document. Ms. Bennett said that she has a lease with the requirements that each tenant is required to sign. John Champagne asked what Mr. Yates's inspection was based on. Dave McCorquodale said he would imagine that it would deal with health, safety and welfare. Ms. Bennett said that her intention is to keep the road drivable.

Mr. Yates said that his recommendation would to not make the approval conditional on getting the items listed corrected because they are very minor.

John Champagne moved to approve the renewal of the annual license renewal regarding Cedar Crest Manufactured Home Park as recommended by the City Administrator. Dave McCorquodale seconded the motion, the motion carried unanimously. (4-0)

5. Report regarding new Firearms Rules by the City Attorney, Larry Foerster.

Mr. Foerster briefed City Council on the new open carry policy that will go into effect January 1, 2016, which allows someone with a concealed handgun license ("CHL") to display their weapon in a hip or shoulder holster. Mr. Foerster said that there has been a lot of concern and confusion on this law and the purpose of his report and outline addresses some of those issue.

Mr. Foerster said that the two new laws of note are the Open Carry Law – House Bill 910, which allows a licensed holder to have on his hip or shoulder holster a weapon that is openly displayed. They cannot have the weapon in their hand or display the weapon in such a way that it could be considered threatening. Mr. Foerster said that City employees or other persons, such as employees in stores are not allowed to ask that person if they have a CHL, but a police officer could ask.

Mr. Foerster said that there were also provisions in Senate Bill 713 that prohibits posting a Penal Code 30.06 notice sign in the wrong place. Mr. Foerster stated that it is not illegal for a CHL holder to have a firearm at a public park, which was effective September 1, 2015, so posting a notice not allowing the firearm in the park is illegal.

Mr. Foerster said that CHL are valid except for certain exceptions, such as, polling places on Election Day, court rooms and court offices, even after hours, such as when public meetings are held, including City Hall if that is where you hold court.

Mr. Foerster advised that they are waiting for a ruling from the Texas Attorney General regarding clarification regarding municipal offices under the same roof as a municipal court, and whether the policy of excluding firearms in the municipal court apply to the entire building or only to the portion that is used for municipal court. Mayor Jones said that if someone came in to pay their water bill and they are carrying they could be breaking the law. Mr. Foerster said that could be challenged, because some of his cities have a totally separate office for their court, so they could have a properly posted sign there at that location. Mr. Foerster stated that Montgomery City Hall has City offices to the right and Municipal Court offices to the left. Mr. Foerster said that was a close call, but he was inclined to think that a sign at the front door of the building would be okay. CHL holders are not prohibited from carrying in any City building.

Mr. Foerster said that the law allows City Council, by ordinance, to prohibit firearms during City Council Meetings. Mr. Foerster said that he has also prepared ordinances for two of his cities, with the finding that the City Hall and court officers are all under one roof. A non-firearm policy is still valid for someone without a CHL.

Mr. Foerster said that one thing that comes up is that a City can forbid employees from carrying a firearm open or closed in a City building, if it passes a City ordinance to do

so. Mr. Foerster said that he has drafted an ordinance for one city that chooses to prohibit their employees from carrying firearms, and then he has another city that is debating whether or not they should do that.

Mr. Foerster said that many City Secretary's carry their own weapons along with City Clerks. They have a CHL and prefer to have their weapons with them at City Hall. Mr. Foerster said that there are other City Secretary's that are uncomfortable carrying a weapon. Mr. Foerster said that nobody receives a CHL unless they are fully qualified.

Mr. Foerster said that would be a determination that this City Council would have to make as to whether or not they will allow City employees to have firearms on their person, either in the City Hall building or a City vehicle or not at all. Rebecca Huss asked to clarify that whatever they have to do, they have to do the same for both open carry and concealed weapons. Mr. Foerster said that he believed that they could make the distinction and prohibit a firearm either open or concealed or you could allow one or the other. Mr. Foerster said that the problem that some cities are concerned with is if the City Hall does not have municipal court proceedings or a court office in it, then anybody can walk in with a shotgun or rifle, or if they are a CHL holder a firearm open carry or otherwise, and come in and conduct business.

Mr. Foerster advised that is a no immunity waiver for an intentional tort of a City employee if a City employee has a gun and shoots somebody there is no immunity from that employee doing something on City time and shooting somebody. For instance, they get into a squabble and lose control and shoot someone, and the City has no policy prohibiting the employee from having a weapon, then arguably the City would have some immunity. Mayor Jones asked if that same immunity would follow suit if they used a baseball bat. Mr. Foerster said that it would depend on the circumstances. Mr. Foerster said that if the City had a policy that allowed someone to have a weapon and that person uses it irresponsibly, including driving a vehicle, and intentionally hurts someone, there could be some liability on the part of the City.

Mr. Foerster said that typically a CHL holder can carry a weapon in an ambulance and police stations, except in secured areas where the public is not allowed without permission. Mr. Foerster said that it was his opinion that if the City had a sign on a

door that said “public not permitted beyond this point”, they might have a CHL and be able to walk up to the door, but they are not permitted past that point, without an employee letting them in.

Mr. Foerster advised that he had presented the information so that City Council could discuss and ponder the details, and if they would like, at the January City Council Meeting they can present an ordinance for them predicated by whatever their feelings were regarding City employees having weapons. Rebecca Huss said that she felt this information needed to go through a Workshop Meeting.

Mayor Jones said that as of January 1, 2016, you can conceal or open carry in this building at any place and any time except during Court or where Court is being held. Mr. Foerster said that they did not need to post notice for the Court room because it was a matter of law, but he felt that the notice should be posted anyway. Mayor Jones said that without a policy, anyone with a CHL can go anywhere in this building. Mr. Foerster said that has been the law since 2003, but the open carry goes into effect on January 1, 2016. Rebecca Huss said that she would like to have a separate discussion of this matter.

Mr. Foerster advised that one of his cities is going to their staff and discussing it with them to find out how they feel about the matter and get some feedback from them. Mayor Jones said that it affects them more than anybody. John Champagne said that the community in his mind was more prevalent in terms of consideration than City employees, and to him they are part of the community. John Champagne said that he thought what was being said was during the regular work day, they might want to consider talking to the employees as to whether they would be more comfortable with or without a weapon, and would that not apply to the community as well. Mr. Foerster said that if the community wants to walk into the building with a concealed weapon, they have the right to do that. John Champagne asked what the difference was between a City employee and a person that works in the City that is not a City employee, because the only difference is one works for a municipality. Mr. Foerster said that the employer is allowed to direct their employees not to carry weapons at work. John Champagne said that the CHL holder can make the decision to stay or go. Mr. Foerster said that if he wanted to walk down the street with a long gun he has the right as a citizen to do

that even without a CHL. Mr. Foerster said that a Workshop Meeting would be a good idea.

Rebecca Huss said that there are four or five different issues that could be discussed during a Workshop and it needs to be done as a group. Rebecca Huss said that she thought that input should be obtained from staff.

John Champagne said that he could remember a time 40-50 years ago what is common place now in terms of cosmetic tattoos and piercings on people's bodies would have been startling, but it is not anymore. John Champagne said that he contends when responsible people that are licensed to carry guns exposed it will become more routine. John Champagne said yes it will make some people uncomfortable, but if something happened you would pray that somebody with an exposed gun was somewhere around to protect you. Rebecca Huss asked if it would be like the people chasing after a shoplifter and some lady unloaded on the shoplifter and had bullets ricocheting all over the parking lot. John Champagne said sure, and it is called liberty in the Second Amendment. Mr. Foerster said that he asked the City of Conroe what their policy is with respect to City employees, and they do not allow their employees to have weapons on their person while they are working. Mr. Foerster said that other cities don't seem to have a problem with it, so he felt that is just depended on the employees, City Council and the community.

Mayor Jones announced that no action would be taken at this time and maybe after the holidays they could rethink the matter to see if there is anything that they need to do.

6. Consideration and possible action regarding the 2008 Development Agreement with Waterstone Development.

Mr. Foerster advised that he had received a call from Mr. Steve Weisinger, Attorney for Steve Bowen, and they have agreed to request that City Council table this action so that they have a chance to review the Agreement. Mr. Foerster said that in the meantime Mr. Weisinger had assured him that Mr. Bowen wants to move forward with the line extension, which is another item on the agenda tonight that Mr. Bowen has committed to finance. Mr. Foerster said that there are other details that neither he nor Mr. Yates or maybe the engineers are privy to concerning the long term of this

Agreement that goes back to 2008. Mr. Foerster said that he had conferred with Mr. Yates and he agreed that they could table any action on this item, which they might bring back at the January Meeting. Mayor Jones asked Mr. Foerster to tell Mr. Weisinger to advise Mr. Bowen, which he thought somebody already has, that they need to get on with this action that has been dragging out way too long. Mr. Foerster said that he understands that. Mr. Foerster said that his suggestion is to table the action.

Dave McCorquodale moved to table the item. John Champagne seconded the motion, the motion carried unanimously. (4-0)

Rebecca Huss said to advise Mr. Bowen that this has dragged on way too long, and the longer it takes the less likely she will be inclined to entertain his other ideas. Rebecca Huss said that she would never entertain the idea of a MUD either. John Champagne said that he would agree with that. Mayor Jones said that was well said by Rebecca Huss.

7. Consideration and possible action regarding authorization for construction of Capital Projects 1 and 2 of the Water System Analysis.

Mr. Fleming made the presentation to City Council. Capital Project 1 involves work at Water Plant No. 2 and Capital Project 2 is completion of the waterline that they were just discussing in the previous item. Mr. Fleming said that they would be coming back before City Council in the coming months for authorization to approve contracts. Mayor Jones stated that this item was what they had thought was kind of an emergency item. Mr. Fleming advised that the timing being what it is regarding Capital Project 1, it is a very necessary high priority item. Mr. Fleming advised that there was a minimum of 60-90 days of engineering design work before they are ready to move forward with bidding and construction.

John Champagne moved to proceed with approving the funds for construction of Capital Project No. 1 - Water Plant No. 2 backfill connection, and construction of Capital Project No. 2 – Buffalo Springs waterline bridge crossing. Dave McCorquodale seconded the motion.



Discussion: Mr. Williams stated that he would like to go into further detail with the City Engineer over some operational issues regarding the GST backfill line, if City Council will allow it. Mr. Shackelford stated that could be accomplished within the design time frame. Rebecca Huss stated that would make sense to do that.

Rebecca Huss stated when they ordered the pump for Lift Station 8 it had a six week plus lead time. Rebecca Huss asked whether some of the controls and equipment that they know specifically will have a long lead time and they know they will have to order, should they be moving some of those items ahead and ordering them ourselves instead of having it be part of the RFQ and having to wait for delivery. Mr. Fleming stated that they are prepared to do that regarding Water Plant No. 2, which is 40-50% percent modifications of electrical controls and additional controls. Mr. Fleming said that as soon as those items become available during the engineering design process they will do so.

Rebecca Huss stated that she did not see any building included in the pricing and asked whether that would be happening. Mr. Fleming said that it could certainly happen, but was not included in the scope of the project or the budget allotted to this project. Mr. Fleming advised that they had a member of their electrical team come up and look at the existing structure there, and that was one of the questions that he posed to him. Rebecca Huss asked whether it was worth doing repairs to the structure, because it was her understanding that the structure was not compliant as far as hurricane preparedness. Mr. Fleming stated that the building itself is not in the greatest of shape and is certainly something that they could look at including in this project. Rebecca Huss said that she was wondering if they were wasting money having an electrician come in and install everything, then in two years they need to have a new building. Then they would have to pay someone else to come and move everything that they just had installed. Mr. Fleming said that as he had already stated, he had that conversation with his design team and if she would like him to do so, he would be glad to go back and relay that concern to his design team. Rebecca Huss said that she did not know how much a cinder block building costs, but she could imagine that the cost of the building now, versus in two or five years plus moving all the controls would cost more. Mr. Fleming said that structure was not an insignificant expenditure by any means. Mr. Fleming

said that he would be happy to put together some numbers on what it would take to do so and they could discuss the information. Mayor Jones asked Mr. Fleming to prepare that information, and then they could always add that on to the information if they needed to.

Mr. Shackelford said that if City Council would allow them to, he would suggest having an alternate bid to add the building. Mr. Shackelford advised that then they could get the prices in and City Council could decide if they were ready to move forward with that expenditure. Rebecca Huss said that they could also prepare what the wide range cost would be to move the equipment from one building to another so that they can access the cost of the building versus the cost of moving it later. Mr. Shackelford said that could get pretty pricy, because essentially you are rewiring. Rebecca Huss said that it was not wrong to be concerned about the building. Mr. Fleming agreed. Mayor Jones asked if they could reinforce the existing building to make Council feel more comfortable. Mr. Fleming stated that they could make some improvements to the existing building. Rebecca Huss said that Mr. Muckleroy stated that there is not enough room in the building to hang a calendar.

T.J. Wilkerson asked if they could build around the existing building. Mr. Shackelford said that they could probably build around it and dismantle from the inside, but the tricky part would be how attach onto the existing slab so that if something were to shift later on, such as foundation problems. Mr. Shackelford said that in some cases they have used pre-fab buildings that are delivered to the site and set in place.

Rebecca Huss said that she would be comfortable at least having an idea of what the extra cost would be even if it is not necessary now. Rebecca Huss stated that it is one of those maintenance issues, which if they know is coming, you would be throwing good money away knowing that you will have to spend more to move everything three or four years from now. Mayor Jones asked to confirm that these two projects are about to deplete whatever is left in the Capital Water Projects Fund and there won't be much left. Mr. Yates stated that this project is actually \$16,000 more than what is left in the bond fund.

John Champagne apologized for being absent and asked how the building relates to these two proposals. Mr. Fleming advised that the majority of the work at Water Plant No. 2 is electrical modifications, modifications of existing controls and additional controls, which are housed in that building. John Champagne said that obviously Mr. Fleming did not think it was a priority to include the building in the proposal. Mr. Fleming said that he just did not ask them to include it in that number. Mr. Fleming said that the original inspection that they completed a year ago, rehabilitation or possible replacement of that building was included in that inspection assessment. Rebecca Huss said that it might warrant a field trip to see what the building looks like in person. Mr. Fleming said that it was not in the best shape. Mr. Fleming said that as they begin the design phase within the next month, before the next Council Meeting, he will look into some numbers about what they can do out there as far as modification or replacement of the building. Mr. Fleming said that if City Council so desires, they could prepare an alternate bid item. John Champagne asked if that would supersede these two items. Mr. Fleming advised it would not. Mr. Shackelford stated that it would be included in Capital Project No. 1 as an addition. John Champagne said he understood, but asked whether it was included now. Mr. Fleming advised it was not.

Mayor Jones stated to clarify, the first project, Capital Project No. 1 will somewhat remedy the lack of volume and pressure from the west side of town. Mr. Fleming said that it will somewhat remedy the pressure. Mayor Jones said that they still have a project that will replace an 8 inch bottleneck with a 12 inch waterline. Mr. Fleming said that the waterlines in the downtown area serve as limiting factor to service on the west side of town. Mayor Jones said whether that might be tied into the TxDOT project. Mr. Fleming said that it would not necessarily be tied into the TxDOT project from a fund standpoint, but it is affected by the timing of that waterline construction or utility relocation will coincide with the TxDOT project.

Mr. Fleming stated that Capital Project No. 1 does a couple of things for the City, it will allow them to alleviate some of the concerns on the west side and provide better service from a pressure standpoint on the west side. Mr. Fleming said that it will also allow them to use Well No. 4, the Catahoula Aquifer, to supply water to Water Plant No. 2. Well No. 2, which is the existing well there, will remain on line and while still

in service, will have a significantly reduced capacity. John Champagne said that they had actually thought through this project, which is why they pay them. Mr. Fleming advised that they had modeled the project extensively. John Champagne asked if Mr. Fleming had spoken to Mr. Yates about the project. Mr. Fleming advised that he had, and in fact had a lengthy conversation this afternoon, along with the Utility Foreman and Operator. John Champagne said that he had no doubt.

Mayor Jones said that he was under the impression that the remedy for this building could be done for \$15,000 and asked whether something had changed. Mr. Fleming said that there was some minor piping modifications to be made. Mr. Fleming said that the electrical controls to be put in place are more involved. Mr. Shackelford said the reason for the electrical controls is so the backfilling could occur automatically. Mr. Shackelford said that if they do not use the electrical controls that will mean that Gulf Utilities or staff will have to go out there every night to turn a valve to allow the backfill and then in the morning they will have to go back and close that valve to keep it from backfilling and reducing pressure in the system during the day. Mayor Jones said that sounds cheaper. Mr. Shackelford said it would not be cheaper regarding manpower. Mr. Shackelford said that by doing the process manually, you could end up overfilling the tank and wasting water during the evening, which is the advantage of the electrical controls. Mr. Fleming said that it also alleviates some of the topographically induced pressure issues between the two facilities, because one is significantly a higher elevation than the other and prevents the water from sort of endlessly cycling through the system. Mr. Fleming said that it actually presses it out from the Water Plant to the west side of town.

John Champagne asked Mayor Jones to take a vote on the motion that he had made.

Rebecca Huss asked whether they needed to add additional work to get the bulkhead and all of that fixed at the same time, or would those be separate projects. Mr. Fleming stated that would be separate.

The motion carried unanimously. (4-0)

8. Consideration and possible action regarding exemption from bidding of Capital Projects 1 and 2 of the Water System Analysis Report.

Mr. Yates advised that both he and the City Engineer are recommending that they do not waive the bidding process for both of these projects because there is enough time and interest in both projects for the process. John Champagne asked if Mr. Yates felt that the City Engineering firm had enough experience to know whether or not this would be a competitive bid. Mr. Yates said that he did. Mr. Champagne said he did too.

After discussion, no action taken on this item.

9. Consideration and possible action regarding calling a public hearing regarding establishing a zoning district to newly annexed area between Lone Star Parkway and Stewart Creek Road along State Highway 105.

Mr. Yates advised that our Code does not provide zoning for newly annexed property, that action has to be performed separately. Mr. Yates said that they have gone back to previous annexations and it is called an Initial Zoning Ordinance. Mr. Yates stated that the Planning and Zoning Commission has reviewed the information and is recommending a B-Commercial zone for the property. Mr. Yates said that tonight City Council is scheduling the public hearing for the initial zoning.

Dave McCorquodale moved to schedule the public hearing for the initial zoning classification for the newly annexed property on the east side town to be held on first meeting in January, which would be on January 12, 2016 at 6 p.m. Rebecca Huss seconded the motion, the motion carried unanimously. (4-0)

10. Report regarding pro-rata payment for City utility line extensions.

Mr. Ed Shackelford advised that during a recent Workshop Meeting City Council had discussed pro-rata reimbursement or payment to the City for people to buy into utilities that have been extended. Mr. Shackelford said that City Council had asked Mr. Foerster to make some adjustments, which he has done along with some recommendations. Mr. Shackelford said that there was also some conversation about how this could be structured.

Mr. Shackelford presented three different Exhibits to City Council. The first Exhibit was a hypothetical concept map showing hypothetical development along Lone Star

Parkway, where a developer has put in utilities along Lone Star Parkway, and spent \$1 million dollars on waterlines and \$1.5 million dollars on a gravity sanitary sewer line. Mr. Shackelford discussed different reimbursement schedules as new people bought into the project to tie into the utilities that have been installed by the developer.

Mr. Shackelford said the draft ordinance puts a ten year limit on the reimbursement schedule. Mr. Shackelford said that at no time would the developer make more money than he paid. Mr. Shackelford said that City Council could set up the pro-rata reimbursement schedule however they wanted to, for example, if within the first three years five more people tied into the utilities, they could run an analysis and pay the first installment for reimbursement. Mr. Shackelford said that they could also get down to ten years, with no additional people tying into the system, which would just be the risk that the developer would have taken. Mr. Shackelford said that he did not see the City being the developer or paying to install utilities to this order of magnitude.

Dave McCorquodale said that they were talking about developments like Kroger, where they would pay the pro-rata cost to the developer. Mr. Shackelford said that the City could be the intermediary to insure that the funds are being moved in a timely manner. Mayor Jones asked where the funds would come from. Mr. Shackelford advised that the funds would come from the developer, who goes out and borrows the money and takes the risk. Mayor Jones stated that he was talking about the people paying it back. Mr. Shackelford said that the people buying to tie into the system know their costs up front. Mayor Jones said that as a developer he could come here with a pro-rata share or go down the road and have no pro-rata share. Mr. Shackelford said that no matter where the developer would go he would have to pay something no matter where they go to tie into the utilities going out to an undeveloped territory.

Rebecca Huss said that what had predicated this was the idea that the City should not be using governmental funds to enrich private property owners, i.e. Pizza Shack extension that goes by land that is not currently developed. So if the developer to that undeveloped land ties into the system with just a tap fee, they have essentially made hundreds of thousands of dollars from their property just being located where it is. Rebecca Huss said that public funds are essentially adding that value to that undeveloped property. Mr. Shackelford said that what they have not figured out,

because similar questions have been asked, and in the case of Pizza Shack or Kroger/Milestone utility extensions, where both are being done with Texas Capital Grant Funds. Mr. Shackelford said that in the case of Pizza Shack they have not quite figured out how to charge a pro-rata share and where would that money go back to. Mr. Shackelford said that as long as the Pizza Shack project meets the qualifiers of the grant application there is nothing to pay back. Mayor Jones said that there will be because the Montgomery EDC will be paying toward the project. Rebecca Huss said they could end up paying the entire amount back to the State, because they refused to indemnify so the City is on the hook if they do not have the job creation that they promised and all the risk is the City's. Mayor Jones said that the City accepted the risk for the Pizza Shack project. Mr. Foerster said that he could not speak to the Pizza Shack project, but the Milestone Agreement they have an obligation to provide certain employment and certain goals have to be reached, but they are the obligation of Milestone not Kroger. Rebecca Huss said that Pizza Shack was not going to sign the agreement, so the City agreed to take the risk.

Mr. Foerster commented on the section of the Code of Ordinances, that he worked on revising that deals with the calculation of the pro-rata costs per connection, and he found the existing language very cumbersome and convoluted. Mr. Foerster said that they would have to check with Public Management to see what the rules were regarding the grant funds. Rebecca Huss said that she viewed Milestone to be different than the Pizza Shack project, because the City did not take the burden of the \$750,000.

After discussion, Mr. Foerster said that there should be an easier way of deciding the pro-rata funds versus what is in the Code, and people want to be able to understand what they are reading. Mr. Shackelford said that the calculations are based on equivalent to single-family connections, and there is an easy way to calculate it based on the type of use. Mayor Jones said if they are just trying to get reimbursed for a certain amount of linear feet for water and sewer line it would not matter what is attached to the lines, so the formula should be associated with linear feet. Mr. Shackelford said that he would respectfully request differently and the reason is a 4 acre tract could have a hundred hotel rooms, a McDonald's restaurant or office space, and those properties would all use different volumes and it is not a volume per linear

feet. Mayor Jones said that would be a usage of the product and not linear feet. Mr. Shackelford said that was correct because the usage is going to dictate the size.

Rebecca Huss asked if she lived on 20 acres and she got 1/3 of the frontage and she had her house, if there is City water would she have to pay a third of the cost of that extension. Mr. Shackelford stated that it would be more based on usage. Mayor Jones said that they have the Apache project that dead ended, so whoever ties onto that line could reimburse the City for the line upsizing charges that were paid, plus the extension.

Mr. Shackelford said that if City Council is comfortable with the concept, basing the pro-rata cost on usage they can work toward modifying the ordinance and bring it back to City Council. Mayor Jones asked if this would simplify what is there today. Mr. Shackelford said that it would.

Mr. Foerster said that they just wanted to get a sense of what City Council wanted, and if they liked what was presented they would prepare the ordinance. City Council concurred that they liked the concept and to move forward.

11. Consideration and possible action regarding increasing the number of members on Planning Commission.

Mayor Jones said that he had requested that this item be placed on the agenda for discussion, because they had started with seven members and then switched to five members.

John Champagne asked what the motive for considering this action was. Mayor Jones said that he was in favor of seven members on the Planning and Zoning Commission because he felt it would be easier to get a quorum for the meetings.

John Champagne said that he felt it would be counter intuitive and harder to get a consensus of the Commission with seven members versus five members. Dave McCorquodale said that he had served on the Commission when it had seven member and also with five members, and it seemed to be more difficult getting points across with seven members. Dave McCorquodale said that it seemed to go very well when they went to five members. John Champagne asked to imagine how it would be with



seven members on City Council. Rebecca Huss asked if there was any specific problem with five members at this time.

Nelson Cox, Chairman of the Planning and Zoning Commission, said that there had been no problem with the five members serving on the Commission. Rebecca Huss said that she felt that they should leave the Commission as it is, unless there is a specific problem. John Champagne said that he understood the motivation, and he hoped that they get more committed servant minded people to serve. John Champagne said that it was more the commitment than the number of people.

After discussion, there was no action taken on this item.

### **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.

12. Convene into Closed Executive Session pursuant to the Texas Open Meetings Act at Section 551.071 of the Texas Government Code to meet with the City Attorney to receive legal advice about pending or contemplated litigation.
13. Convene into Closed Executive Session pursuant to the Texas Open Meetings Act at Section 551.072 of the Texas Government Code to meet with the City Attorney to receive legal advice about real property.
14. Convene into Closed Executive Session pursuant to the Texas Open Meetings Act at Section 551.087 to meet with the City Attorney regarding Economic Development Negotiations.

Mayor Jones moved to convene into Closed Executive Session at 8:07 p.m.

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

Mayor Jones reconvened into Open Session at 9:23 p.m.

No action was taken 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.

No comments were made.

**ADJOURNMENT**

Rebecca Huss moved to adjourn the meeting at 9:25 p.m. Dave McCorquodale seconded the motion, the motion carried unanimously. (3-0)

Submitted by:

  
Susan Hensley, City Secretary

Date Approved:

01/12/2016



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Mayor Kirk Jones

