

MINUTES OF REGULAR MEETING

July 28, 2015

MONTGOMERY CITY COUNCIL

CALL TO ORDER

Mayor Kirk Jones declared a quorum was present, and called the meeting to order at 6:00 p.m.

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

Absent: Jon Bickford City Council Position # 1
 Rebecca Huss City Council Position # 4

Also Present: Jack Yates City Administrator
 Larry Foerster City Attorney

INVOCATION

John Champagne gave the invocation.

PLEDGE OF ALLEGIANCE TO FLAGS

VISITOR/CITIZENS FORUM:

Any citizen with business not scheduled on the agenda may speak to the City Council. Prior to speaking, each speaker must be recognized by the Mayor. Council may not discuss or take any action on an item, but may place the issue on a future agenda. The number of speakers along with the time allowed per speaker may be limited.

- Mr. L.A. Washington, Jr. addressed City Council regarding the rates for the Community Center, which is listed as Agenda Item 3. Mr. Washington advised that the rates should not go any higher because, in his opinion, they are already too high. Mr. Washington said that he was there to represent a few people that use the building. Mr. Washington said that he would like to see the rates lowered.
- Ms. Annell Simpcoe also spoke about the rates for the Community Center. Ms. Simpcoe stated that, at the current rate, several people using the building said it is expensive. Ms. Simpcoe asked how much of the budget is for the building, and if citizens of Montgomery have to pay

to use it, would that be double taxation. Ms. Simpcoe asked City Council to consider lowering the rate rather than raising the rate to get more business and money.

- Mr. Milam Mabry stated that his comments involved an agenda item, and he would wait to comment at that time.

CONSENT AGENDA:

1. Matters related to the approval of minutes for the Public Hearing and Regular meeting held on July 14, 2015.

Dave McCorquodale moved to approve the minutes as submitted. John Champagne seconded the motion, the motion carried unanimously. (3-0)

CONSIDERATION AND POSSIBLE ACTION:

2. Consideration and possible action on department reports.

- A. Administrator's Report – Mr. Yates presented his report. Mr. Yates advised that he has been working on the dilapidated buildings, and junk vehicle removal. Mr. Yates stated that the removal and moving vehicles to behind fences has been going quite well.

John Champagne asked about the developmental planning of the projects, such as Summit Business Park and Milestone Development, and whether everything was going according to schedule. Mr. Yates advised that everything was on schedule, and said that he had received the executed Milestone 380 Agreement this morning.

John Champagne asked about the Memorandum of Understanding (“MOU”) for Cedar Brake Park and asked Mr. Yates to elaborate on the focus of the document. Mr. Yates advised that the focus was to get a Memorandum of Understanding from each of the parks, Cedar Brake Park, Fernland Park and Memory Park, to get an understanding of who does what. John Champagne asked if there were committees in place for each of these parks. Mr. Yates advised that there were committees. John Champagne asked for a list of the people that have been appointed to those committees. Mr. Yates advised that he would ask each of the committees for a list. John Champagne said that the City needed to have that list. Mayor Jones said that he did not think that City Council appointed the members. John Champagne asked whether the City had any involvement or representation on the committees. Mr. Yates advised that was the reason for the MOU's, to get the City formally involved with the parks. John Champagne stated that they had discussed getting one or two Council Members on these committees.

- B. Public Works Report – Mr. Yates advised that Mr. Muckleroy was attending a training class, so he would present the report. Mr. Yates stated that the heavy trash weekend was successful. The manhole rehabilitation was completed at Lonestar Parkway. Mr. Yates said that Mr. Muckleroy had met with the Entergy rep performing an energy study on water and wastewater facilities that will perhaps save some money on

electricity. John Champagne asked whether Mr. Muckleroy had initiated the study with Entergy. Mr. Yates stated that he had initiated the study, and had Mr. Muckleroy meet with him. John Champagne said that was very good.

John Champagne asked whether filling the cracks in the roads had been scheduled. Mr. Yates advised that he had not scheduled that with Mr. Meador. John Champagne asked whether it could be delegated and maybe Mr. Muckleroy could get it done. Mr. Yates advised that he and Mr. Muckleroy would be going out to determine where the cracks needed to be filled, which was part of the reason that he had not contacted Mr. Meador yet.

- C. Police Department Report – Chief Napolitano presented his report. Chief Napolitano said that the Department was out in the City working very hard. Chief Napolitano stated that they had “Coffee with Cops” where they entertained citizens that showed up at McDonalds where they had coffee with the citizens. Sergeant Lehn, Lieutenant Belmares, 2-3 patrol officers and himself were there to speak to the citizens regarding any concerns that they might have in the community. Chief Napolitano advised that they had also held a Blood Drive with a nice turnout.

Mayor Jones asked about “towed vehicle with no driver’s license and no insurance”, which seems to be very prevalent on the report. Chief Napolitano advised that they are getting a lot of people that are not citizens of the State of Texas and/or the United States that have no driver’s license or insurance, or both, that are driving through the City. When they commit a violation and they are pulled over, they take the car from them and it is towed to Stowe’s. They can go and get their vehicle with a licensed driver. Chief Napolitano stated that the officers actually ask whether they have a driver’s license at all, from another country or state, and most of them don’t. So they not only don’t have a driver’s license from the State of Texas, but they don’t have a formal education on how to drive a car safely. John Champagne asked whether they were allowed to do any type of immigration reporting. Chief Napolitano said that they can, and he has spoken to INS, but they do not arrest them because the jail does not have the room, so they have to release them. Chief Napolitano said that they release them with a ticket. John Champagne asked if that would happen to a citizen as well. Chief Napolitano said that it would be the same procedure. Chief Napolitano said that he has spoken to the State Representatives for Districts 15 and 16, to try and get some legislation passed possibly in the next legislature, where they can provide them with a little more teeth regarding that violation. Chief Napolitano said that the biggest thing is if they let the person go, and they drive down the street and hit someone, the City would be liable. Mayor Jones asked what the chances are of collecting on those tickets. Chief Napolitano said that he would defer to the Court for that question.

Dave McCorquodale asked about the number of arrests and whether they were all taken to Conroe. Chief Napolitano advised that they have to be transported to Conroe Central Jail. Chief Napolitano said that by adding one more officer on the street during peak times, they would keep someone in the City at all times.

- D. Court Department Report – Court Administrator Lehn presented her report. Ms. Lehn stated that last month was the largest month that the Court has ever had in both citations and revenue. Ms. Lehn said that in response to John Champagne’s question, the illegal residents usually pay, it is the ones that have suspended licenses and reside here that do not pay. The people with a suspended driver’s license do not want to come in because it will be another conviction for driving while their license is suspended. John Champagne said that it is amazing to him that the citations and warnings always run at about 50 percent, which is great to him. Ms. Lehn said that it is showing good discretion.

Mayor Jones stated that they had included another clerical person for the Court in the 2015-2016 proposed budget. Mayor Jones asked if they were going to wait until October 1 to start looking for that person. Mr. Yates said that they can start looking for that person now, and he was hoping that they could possibly hire that person in September. Ms. Lehn said that would be good to get them trained. Mayor Jones stated that he thought that was a good idea if they could afford it. Chief Napolitano said that he had to give credit to the team, the officers are getting out there and doing their job and this is a good team. Chief Napolitano said that Lt. Belmares and Sgt. Lehn have been very helpful in getting the right people for the team. Mayor Jones said that they have made some good hires.

- E. Utility/Development Report - Billing Clerk Slaughter presented her report. Mrs. Slaughter said that June was a busy utility month. They also had a record breaking month with 12 reservations of the Community Center. They had 41 permits during the month. John Champagne commented that one resident got charged \$38,000 for their water bill. Mrs. Slaughter advised that there were two that went out like that, where they went from the builder to the homeowner, and it was an error that was corrected.
- F. Water Report – Mr. Garcia introduced Mr. Michael Williams, with Gulf Utility and Chuck Peterson, CEO Gulf Utility and H2O. Mr. Garcia advised that things are going so fast in the City of Montgomery, so they decided to expedite the process and Mr. Williams will take over operations. Mr. Garcia stated that he would present the report tonight and Mr. Williams will give the reports in the future.

Mr. Garcia advised that the City was in compliance with the requirements of TCEQ. Mr. Garcia reported that Well No. 2 pumped 328,000 gallons, Well No. 3 pumped 4,560,000 gallons and Well No. 4 pumped 3,918,000 gallons. Mr. Garcia advised that they had to make some adjustments because they were having issues with the disinfection part of the system, where the heat seems to be affecting the chlorine usage, so they have had to run Well No. 3 more than they wanted to. They have made some adjustments to hopefully correct that problem, which they should see in the future. During the last week or so they have had some electrical issues at the water plant, and they seem to have a failed prime switch that is going bad. Mr. Garcia said that they thought that the matter would be resolved today, and they will verify that information

tomorrow. Mayor Jones asked if part of that problem had to do with surges. Mr. Garcia said that was what started the problem that caused the failure.

Mr. Garcia advised that they are working on the numbers that they received from the City for the water report for June. Mr. Garcia advised that the month of June was not included in the report, just the month of May.

Mayor Jones asked if someone was making sure that the Cowboy Church was metering their water use out of the hydrant, because they are using a lot for their road construction. Glynn Fleming said that he will make a note to check on that, but said that Mr. Muckleroy is usually very good about making sure that a meter is placed on the hydrant.

Mr. Garcia said that the auto dialer has been installed at the Lonestar Lift Station, so they will receive an alarm whenever there is a default.

John Champagne asked how many the lift stations have backup generators. Mr. Garcia advised that the City has five backup generators of the twelve lift stations that he checks. Mayor Jones asked if the City were to lose power for days, would they have to get a portable generator to go to temporarily pump some of the lift stations, or do they have enough to be able to push it through with the generators that they have. Mr. Garcia advised that he knows that the generators are strategically placed where the lift stations that have the most impact on the City, so a simple pump could work if it was for a prolonged period. Mr. Fleming advised that was correct. Mr. Fleming stated that with new construction, the State mandates that there must be a generator at the lift station. Mr. Fleming stated that in answer to the Mayor's question, they would have to approach it on an as it happens basis. If they have an advanced warning of a storm in the Gulf, they can put protocol in place on how they are going to address that situation. For isolated incidents, that would turn into an emergency situation, where the operation would have a truck come out and pump it down. Mr. Garcia stated that as he had advised last month, they do have an emergency plan in place, that as things happen they will work with the City to advise where they need to place items, such as spare generators or pumps. John Champagne asked whether a 5K generator would be a sufficient size. Mr. Shackelford advised that a 20K – 25K generator would be required to run a small lift station. Mr. Shackelford said that they might need to have some type of converter on the generator.

- G. Engineer's Report – Mr. Fleming, Associate Engineer, presented the report. Mr. Fleming advised that they had reached completion of the Stewart Creek Watershed, Regional Detention Study and they intend to deliver it to Council within the month for review.

Mr. Fleming noted that the water system and sewer system modeling are both underway. They are largely complete with the modeling on the water side and they are testing it now. The sewer side is nearing completion and they expect it to be tested in

a week or so. Mr. Fleming said that they are scheduled to have people in town next week on Tuesday and Wednesday to conduct some field testing.

Mr. Fleming advised that he expected to finish the Water and Sewer Rate Analysis in a week to ten days and deliver to City Council within the month.

Mr. Fleming said that at a previous meeting they had discussed the proposed Montgomery Ridge development and the cost benefit of them maybe gaining entrance into the City's existing GRP. Mr. Fleming noted that the completion of that study is tied directly to the Water and Sewer Rate Analysis, and they will be delivered concurrent with one another.

Mr. Fleming advised that the Texas Capital Fund Grant (Milestone/Kroger) has been reviewed regarding the engineering side, and comments were made to both the administrator and the attorney. Mr. Fleming stated that the administrative side of the contract is moving largely on schedule. Mr. Fleming advised that there have been some delays regarding the construction schedule, due to an environmental review and archaeological review of the site. Mr. Fleming stated that they will probably add another four to six weeks delay to the construction schedule.

Mayor Jones asked whether they would have done that study of the site if the City had not received the grant. Mr. Shackelford said that they would have encouraged it, but they would not have required the study. Mr. Fleming stated that when a piece of property is funded by an entity such as this, they will initiate it on the front end of the project. Mr. Fleming said that if they go out there and find something significant, the State will come and shut the job down.

Mr. Fleming advised that the City is currently waiting to receive a copy of the Texas Capital Fund Agreement regarding Pizza Shack.

Mr. Fleming noted that plat reviews that they have received and completed included Heritage Plaza, Phase II, Kroger rough grading and civil site work.

Mr. Fleming updated City Council on their meetings and activities, including a meeting with Gulf Utility to discuss operations issues and protocol within the City. They also met with the representative for Hills of Town Creek Sections 2-5 to discuss utility availability to the tracts.

Mr. Fleming reported that as requested, they have received the as-built drawings for Lake Creek Village, Section 1, and the statement of completion from their Engineer of Record. Mr. Fleming stated that the only item that remains outstanding is the decommissioning of the Berkley Drive Lift Station, which is underway at this time. Mayor Jones asked if they would be removing the pump mechanism and replacing it with a pipe. Mr. Fleming advised that the pumps have already been removed, and the electrical service has been disconnected. Mr. Fleming said that anything that remains above and underground will be taken away. The incoming gravity main will remain and be grouted, and the force main will be cut and grouted on both ends. Mr. Fleming

advised that the wet well will be taken down. Mr. Fleming advised that they should wrap the project up in the next two to three weeks.

Mr. Fleming advised that the Montgomery Summit Business Park had largely wrapped up construction. They held a walk through on July 8, 2015 and identified some punch list items, which they will be working through in the next few weeks.

Mr. Fleming said that they met with the representatives from Municode to discuss recodification and upgrades to the City's records maintenance.

Mr. Fleming stated that they had some ongoing issues with the Lone Star Parkway Lift Station regarding deragging. John Champagne stated that they have an ongoing process of upgrading these lift stations to a more satisfactory operational level. Mr. Fleming said that was correct, and he advised that they had initially inspected two or three of the higher priority lift stations as lacking, and requiring maintenance. Mr. Fleming said that there is a plan to address the issue in the future. John Champagne asked if there were any wires exposed on any of them. Mr. Fleming stated that there was not to his knowledge. Mr. Fleming advised that all the sites were fenced and not made to be accessible.

Mr. Fleming said that they have had ongoing issues with the Lone Star Parkway Lift Station and over the past two weeks they have come to the agreement that they might have exhausted some of the early options of trying to alleviate the problems with public education. Mr. Fleming said that they might be at the point that they will have to consider potential upgrades to that lift station. Mr. Yates said that it might be on the next agenda to consider an upgrade to the lift station, and to decide if they want to do impellers or pumps. Mr. Fleming stated that they had completed the installation of the auto dialer, which will alert the operator.

Mayor Jones asked whether upsizing the pumps would allow the problem to pass through the pump. Mr. Fleming stated that was not necessarily upsizing the pumps as improving them and putting a pump in that is capable of moving the solid debris that is coming in and clogging it. Mayor Jones asked whether the solids would be digested or cause problems further down the line. Mr. Garcia said that would go down into the next pump and either makes it through there or go to the bar screen and be removed from the system, but it would not get digested. Mr. Shackelford said that is part of the solids that are removed from the plant and taken to the landfill. Mr. Shackelford said that the disposable towels are not biodegradable and have to be removed. Mr. Shackelford said that there was a town in Wyoming that has filed a lawsuit against the manufacturer of the flushable products. Mr. Shackelford said that he thought it had become a class action suit. Mr. Fleming said that this is not a problem that is unique to the area, it is global.

H. Financial Report – Mrs. Branco was not present at the meeting.

John Champagne moved to accept the department reports as presented. T.J. Wilkerson seconded the motion, the motion carried unanimously. (3-0)

3. Consideration and possible action regarding adjusting rates for Community Center Use.

Mr. Yates stated that the reason this is an issue is because in the new budget they have \$4,400 budgeted in revenue for rental of the Community Center, and they have \$5,000 in expenses for utilities and repairs. Mr. Yates said that last year they had \$4,500 in revenue and spent approximately \$8,000.

Mr. Yates said that what is being proposed is two things: 1) dividing up the day into three shifts, 6am-noon, noon – 6 pm, and 6 pm to midnight for rental of the Community Center, and 2) increase the rate of \$65 for each of those shifts to \$75. Mr. Yates said that another alternative would be to determine whether it is a wedding, or a community meeting of ten people sitting around a table. Currently the cost is the same for different types of events. Mr. Yates said that they could consider charging \$125 - \$150 for family reunions or weddings, making the charge for the event rather than just renting the facility, and keep the rate for the smaller groups at \$65.

John Champagne asked if there was a maximum number of people that can be in the Community Building for a function, such as by the Fire Marshal. Mr. Yates asked Mrs. Slaughter if she knew that number. Mrs. Slaughter advised that they had seating in the building for 75 people, but she believed that she had seen that it would hold up to 100 people. Mr. Yates said that with the larger groups there is more cleanup afterwards, and more hard use of the buildings. Mayor Jones said that with a large group, people tend to go in and out of the building more and the air conditioner runs harder. Mr. Yates said that there is a lot of local nonprofit groups that use the facility. John Champagne asked how they would quantify the number of people attending the events. Mr. Yates said that they could either have the Police go by or someone from the City verify the number of people in attendance.

Mayor Jones said that he knew there were some residents that had expressed their concerns about the City raising the rates, and he did not know if they had tried to rent other facilities in the area, but even with the proposed rate change, this is still very inexpensive. Mayor Jones recommended that they go and try to rent the other Community Center for the same period of time. Mayor Jones said that it does cost money to operate the facility. Mayor Jones said that out of the 800 residents that they have in the City, he would bet that 90 percent of the usage comes from outside the City, just because it is a great location and a great price.

John Champagne said that most governments are not run like businesses, and our expenses exceed the revenue being taken in, so it is either they cover the expenses or they modify the ability to let people use it. John Champagne said that these proposed rates are quite modest relative to the usage, type of facility and grounds, because it is really a nice place. John Champagne asked Mr. Yates what his proposal included. Mr. Yates said either to increase the rate to \$75 per six hour unit, or to base the rental on the number of people in the group. John Champagne said that in six months he would be asking Mr. Yates if the rate is covering the expenses. Mr. Yates said that it would, especially if they go up to \$150 for any use by a group of 30 people or more. John Champagne said that he was trusting Mr. Yates's judgement. Mr. Yates said that they do rent the facility fairly often to groups of 30 plus people. John

Champagne said that he noticed the security deposit was going from \$200 to \$150, and asked if this was a generic form. Mr. Yates advised that was his suggestion, because the current deposit is \$100. Mayor Jones said that the wording "return to the County" should be corrected.

Mayor Jones asked about the requirement for two security guards that are certified peace officers. Mr. Yates said that was if there was alcohol served at the event. Lt. Belmares advised that for any event with alcohol, there is a minimum of two officers required. Lt Belmares stated that requirement is also in their Department policy. Mayor Jones asked if two officers had always been the rule. Mr. Yates advised that was correct.

John Champagne moved to create three (3) time rental periods of six (6) hours, and to increase the rental of the facility to \$150 for groups that exceed 30 people for each six (6) hour unit. Dave McCorquodale seconded the motion.

Discussion: Mayor Jones asked about the provision that nonprofit organizations may have the use fee waived by the City Administrator, but they would be required to pay a deposit, and asked if that was something new. Mrs. Slaughter advised that had been the rule since she has been at the City. Mayor Jones asked if the Chamber wanted to have a breakfast meeting, would the City require them to pay a deposit. Mrs. Slaughter stated that the City does not get charged to use the facility. T.J. Wilkerson asked if the expenses for the facility included the remodeling of the kitchen. Mr. Yates advised that expense would be part of the 2014-2015 budget.

The motion carried unanimously. (3-0)

Mayor Jones said that Mr. Yates' suggestion alleviates the residents comments made earlier in the meeting. Mrs. Simpcoe stated that she felt that the number of people should have been more than 50 people.

4. Consideration and possible action regarding adoption of the following Ordinance:
AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, AMENDING SECTION 110.1 OF THE INTERNATIONAL BUILDING CODE AS ADOPTED BY THE CITY; REQUIRING A NEW CERTIFICATE OF OCCUPANCY BE ISSUED BY THE CITY BUILDING OFFICIAL FOR ANY CHANGE OF USE, OWNERSHIP OR OCCUPANCY OF ALL COMMERCIAL BUILDINGS OR STRUCTURES IN THE CITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; PROVIDING A SAVINGS CLAUSE; DECLARING COMPLIANCE WITH TEXAS OPEN MEETINGS ACTS; AND PROVIDING AN EFFECTIVE DATE AFTER PUBLICATION.

Mayor Jones advised this matter was discussed during the last City Council Meeting. Mr. Foerster advised that this ordinance would require a certificate of occupancy for any change of use or ownership in a building. Mr. Foerster stated that currently it is limited to those circumstances where there is a change of use, and this ordinance expands it to ownership and occupancy. Mr. Foerster said that any change would require the City to issue a certificate of

occupancy, which would require the building to be inspected to make sure that it is in compliance with the Codes.

Dave McCorquodale moved to adopt the ordinance as presented. John Champagne seconded the motion.

Discussion- Mayor Jones said that the ordinance affects a lot of people, and he asked Mr. Yates to find a way to communicate the existence of the ordinance to property and/or business owners. Mayor Jones said that folks are often in noncompliance from ignorance, and if the City can prevent that from happening, it would be good. Mr. Yates advised that he would take care of that.

The motion carried unanimously. (3-0)

5. Consideration and possible action regarding the Final Plat of Buffalo Springs Shopping Center, Phase 2, and accompanying variance request pertaining to submission of construction drawings.

Mr. Fleming advised that they had reviewed the plat and aside from a few minor corrections and detail corrections, they find the plat to be in good order and in keeping with the Code. Mr. Fleming stated that the recommendation to the Planning and Zoning Commission yesterday was provisional approval pending those issues being satisfactorily addressed, and they approved that action.

Mr. Fleming said, that as a second item with this plat, there is a variance request for Section 78-62(a) of the City Code of Ordinances mandating that approved construction plans for all public facilities are to accompany final plat submissions. Mr. Fleming said this is a public utilities infrastructure being funded by the Texas Capital Fund Grant. Mr. Fleming advised that there is a stipulation in the Grant that mandates that the City can't incur any expenses or undertake any activity until the Grant contract is fully executed. Mr. Fleming said that there are two procedural items, being the archaeological and environmental reviews. Mr. Fleming said that the Grant will fund public utility extensions to serve water and sewer, which prevents them, as the Design Engineer, from moving forward without the final construction drawing with the final plat. Mr. Fleming stated that they do not feel that should place an additional delay on the developer, in terms of their plat submission, with that in mind that is why they are requesting the variance.

Dave McCorquodale stated that this was not related to anything that had to do with what Mr. Fleming just brought up, but he is serious about the Milestone Boulevard. Dave McCorquodale stated that they have a great partnership with Milestone Development, but they also have a very sensitive spot in the history of Texas. If you look at other developers who have developed around the area, they have been very sensitive to Texas and the history this region has played. Dave McCorquodale asked if the City could ask them if they would not mind looking at the street name. Mayor Jones said that he has been meaning to ask them himself. Mr. Fleming said that there are a few minor corrections to be made on the plan, and before it is approved,

he would be happy to relay that information. Dave McCorquodale said he would not deny the plat over the name. John Champagne asked if they should table the action. Dave McCorquodale said that he did not want to table the item. Mr. Fleming stated that the Planning and Zoning Commission has agreed to hold a Special Meeting on August 10, 2015, and if that meeting were to take place and they resolved the minor corrections on Buffalo Springs plat and the naming of the road, then they could possibly get it back before the Planning and Zoning Commission on August 10, 2015 and City Council on August 11, 2015.

Mayor Jones asked if they could put another provision regarding the naming of street. Mr. Fleming said that he was very comfortable in speaking on the City's behalf regarding the details and the minor corrections on the plat. Dave McCorquodale said that he did not want to make a provision about the street name, because he felt that they had the direction and it won't be the end of the day if they end up with the street named after the developer. Dave McCorquodale said he would be remiss if he did not bring the matter up. Mr. Shackelford said he would think that if the developer did have some potential names the City would want to see them before the plat was final. Mr. Shackelford said that they would talk to the developer. Dave McCorquodale said that anything they could do would be great. Mayor Jones said that they would not be picky as long as it was related to Texas history, or the previous property owner.

John Champagne moved that they approve the final plat and accept the variance request pertaining to the submission of construction drawings for Buffalo Springs Shopping Center, Phase II, and make the corrections required by the City Engineer. T.J. Wilkerson seconded the motion, the motion carried unanimously. (3-0)

6. Consideration and possible action regarding the Final Plat of Waterstone on Lake Conroe, Section Two.

Mr. Fleming asked for provisional approval with minor text and detail corrections. Mr. Fleming said that the plat seems to be in keeping with the Code and in good order. Mr. Fleming advised that the Planning and Zoning Commission did concur with that action.

Dave McCorquodale moved to allow provisional approval of the Final Plat of Waterstone on Lake Conroe, Section Two, and pending clarification of the Engineer's comments. John Champagne seconded the motion, the motion carried unanimously. (3-0)

7. Consideration and possible action regarding the Final Plat of Terra Vista at Waterstone, Section One.

Mr. Fleming advised that they had previously received a preliminary plat submission from Terra Vista, which was approved by the Planning and Zoning Commission late in December 2014, and then approved by City Council. During the construction review phase, the adjacent property owner raised some concerns about the grading and excavation activities underway on Waterstone Development, and the potential effect that they are having on the drainage flows across their property, and subsequently traverses this tract. Mr. Fleming provided an aerial map with the area in question.

Mr. Fleming stated that yesterday evening they presented the information to the Planning and Zoning Commission indicating that once this concern had been raised they had approached the developer about some potential revisions to their construction plans. Mr. Fleming said to be fair, they were willing to work to some degree to correct this issue. The developer requested that the Planning and Zoning Commission offer provisional approval of the plat pending resolution of the drainage issue. Mr. Fleming advised that the property owner, Mr. Mabry, was there to speak on his behalf, as well as Mr. Toland, engineer of record for the development.

Mr. Fleming advised following that discussion, the Planning and Zoning Commission elected to table this matter, pending the City Engineer and the parties involved coming to a collective agreement about how to best resolve the matter. Mr. Fleming said that Mr. Mabry raised the concern that this was a grave enough issue, from his point of view, that he thought it required full consideration and possibly a third party review of the drainage calculations. Mr. Toland, engineer for Waterstone, has settled on one number for the incoming flow. Mr. Love, Mr. Mabry's engineer, settled on another number for the incoming flow. Mr. Fleming said there was a degree of discrepancy between those numbers, and so the Planning and Zoning Commission thought it best to take some time for Jones and Carter or another third party to collectively review the information. Mr. Fleming stated that all the parties involved agreed to meet next Monday, and the Planning and Zoning Commission has scheduled a Special Meeting to be held on August 10, 2015.

Mayor Jones asked if this was something that the City should have caught on the preliminary plat, or was the Mabry's bringing up the concern the only reason they are looking at this issue. Mayor Jones also asked if the City was in the position to referee this dispute, or help resolve the matter.

Mr. Fleming said that he thought the answer to each of the questions is yes. Regarding the first question, should the issue have been caught early on, and the answer is yes it should have. Mr. Fleming said that noticeable drainage features or water courses that cross major roads or thoroughfares in town, or basically anywhere that he has to be in the course of his daily travels to the City would be something that he would catch pretty easily. A water course that traverses private property, or a potential water course that traverses private property in a case such as this, is a little bit harder to catch. Mr. Fleming said that at some point you have to rely on professionals.

John Champagne asked whether the topographical outline or schematic could have been skewed. Mr. Fleming said that he did not know if he would use the word skewed, but the opinion could be raised that it does not accurately depict what is currently there or what was recently there. Mr. Fleming said that the aerial photo that is being shown does appear to show some sort of depression there. If you look at Hodge Mason Maps or other maps of recent history, it does appear to be a depression and a drainage channel of some sort. Mr. Fleming said that he did not know if that depression was depicted on the preliminary plat drawings that City Council received.

Mayor Jones said that it sounds like somewhere in here the creek or depression has a name. Mr. Fleming said he would term it a tributary of Atkins Creek, but he was not sure if it had a given name.

Mr. Mabry addressed City Council and thanked them for giving him an opportunity to speak on behalf of his mother, Sarah Mabry. Mr. Mabry said that he did want to clarify for the record that the property is owned solely and independently by his mother, Sarah Mabry, who was raised here in Montgomery, Texas. Mr. Mabry said that while he was not raised here in Montgomery and did not go to school here, he was certainly raised by this community and his grandparents. Mr. Mabry said that he very much appreciated the comments about the unique heritage and history of Montgomery, Texas, which certainly helped make him who he is today. Mr. Mabry thanked City Council for their service. Mr. Mabry said in his professional career, when he is not defending his mother and her land, he has served either in or for all levels of government, whether that be municipal, county, state or federal. Mr. Mabry said this is where the rubber meets the road and is the hardest to do.

Mr. Mabry also extended a thank you to the City Administrator. When they brought this issue to the City Administrator, following a friendly visit with their neighbor, he was very gracious to give them the time along with the City Engineer, Jones and Carter. Mr. Mabry said that their engineers are represented by Jonathan White, who is a part of a two man team of L Squared Engineering, and Levi Love serves as their professional engineer. Mr. Mabry said that they had a very positive meeting that basically said that version number one was not very accurate to start with, so they went back to the drawing board for version two. Version two, while they were very grateful to have that opportunity to work with their neighbor, did not comply with the Montgomery County Drainage Manual, so they had the opportunity to work with Jones and Carter to address that matter. Mr. Mabry said that version three unfortunately was delivered to the City just moments before the Planning and Zoning Commission Meeting last night.

Mr. Mabry said that it was very important for him and for his mother that City Council understand that they are not antidevelopment in any way whatsoever. Mr. Mabry said that they believe that Montgomery's future is bright and they hope to be a part of it. Mr. Mabry said that his mother was recruited to join the City's ETJ some years ago, when issues between the City's limitations and Conroe's were expanding. Mr. Mabry said that they are not asking for the City to do anything special for them, but they do ask that they comply with City ordinance and the Montgomery County Drainage Manual, and most importantly the Texas Water Code 11.086, which simply says you can't flood me and I can't flood you; you can't impede my water, and I can't impede your water.

Mr. Mabry said that regardless of how the issue may or may not have been addressed originally, it is being addressed now and they are very grateful. Mr. Mabry said that they are hopeful that City Council will follow the Planning and Zoning Commission's sage decision. Mr. Mabry thanked Mr. Cox, Planning and Zoning Commission Board Member for being present. Mr. Mabry said if City Council wanted to pull up Google Earth they could see the tributary, and he could also show them the aerial photographs back to 1957 that show the tributary has been

there. Mr. Mabry said that it does not impact just them, there are other landowners on the north side of FM 1097 where the tributary starts. Mr. Mabry said that the tributary is not only on private property, it does flow under FM 1097, and TxDOT has two 36-inch culverts to carry that current undeveloped capacity. Mr. Mabry said that they are asking Council to table this item so that they can work things out with their neighbor. Mr. Mabry said that that they feel, and they certainly got that indication after the meeting last night that their neighbor's engineer has been instructed to do that, and is willing to do so. Mr. Mabry said that they appreciate all consideration. Mr. Mabry said if anyone has any questions, he would be happy to answer them. John Champagne said that he was pretty concise.

Mr. Foerster said that Mr. Mabry references 11.086, which is just the standard language in the Texas Water Code that says you can't impair or divert water, so to that extent, there is a concern. Mr. Foerster said that he talked to the engineers and they need to address that issue properly. Mr. Mabry said that his concern is not theoretical, they have documentation from both survey perspective and his mother has spent \$10,000 of her teacher retirement in defense of her land. Mr. Mabry said this is the right thing for her to do for herself, and it will benefit her neighbor in the long run, the future citizens of Montgomery who move into Terra Vista and the community at large.

Mayor Jones thanked Mr. Mabry for his comments. Mr. Fleming stated that one question that the Mayor had asked earlier, which he might not have answered, regarding whether this fell under our permitting to mediate these issues. Mr. Fleming said that to a certain degree it does, and the Code of Ordinances does address this specifically, as does the County Drainage Criteria. John Champagne said that ultimately they need to support the existing ordinance, which is pretty simple. Mr. Fleming agreed.

John Champagne moved to table the agenda item. T. J. Wilkerson seconded the motion.

Discussion: Mayor Jones said that the matter would probably be resolved when the Planning and Zoning Commission meets on August 10, 2015.

The motion carried unanimously. (3-0)

8. Consideration and possible action regarding a Texas State Flag Memorial at Lone Star Parkway and SH 105.

Mr. Yates advised that last night the Planning and Zoning Commission reviewed the two plans for this item, as requested by Council. Mr. Yates stated that the Planning and Zoning Commission recommended the sign and the double arches on Plan 2, and the star concrete pad on Plan 1. They also liked the size of the printing and appearance of the sign on Plan 2, with the double arches and presentation of the flag.

Mayor Jones said that he suspected that there would not be a lot of pedestrian traffic at that location. Dave McCorquodale said that he liked the first plan and felt with a single wall there would be a bigger impact, but he did like the layered look of Plan 2. Dave McCorquodale

stated that he thought the star looked neat in Plan 1, but he did not think that anyone in a car driving by would know that it is a star. Dave McCorquodale asked whether they are asking City Council to approve one of these plans to move forward or to determine if they are on the right track. Mr. Foerster said that in talking to Patrick Barry with Milestone, these two designs were derived by his architect, and he did not think that they were set, but they wanted to give City Council something to look at. Mr. Foerster said that he has prepared a Gateway Monument Agreement, which he has sent to the City. Mr. Foerster said that the only limitation that Mr. Barry was concerned about was that the cost did not exceed \$50,000. Mr. Foerster stated that he was guessing that the merging of the two sign concepts would still be under the \$50,000, so he did not think that would be a problem. Mr. Foerster advised that they would be bringing the proposed Gateway Monument Agreement to City Council at the next meeting.

Mayor Jones said that he would suggest that Council pick an acceptable design and go with it, because in a way it is their monument for the City. Mr. Yates stated that he felt there would be a more detailed plan that would come before Council once the decision is made. Dave McCorquodale said that they just needed to make sure that nothing was amiss with the sign, without getting too heavy handed, and he felt that there were more important things to be considered in the agreement. Mayor Jones said that Council needed to select one of the sign Plans. Mr. Foerster stated that he felt they wanted Council to give them guidance on which Plan they would prefer. Mr. Foerster stated that he can speak to Mr. Barry and advise what City Council liked about the designs.

Dave McCorquodale moved to accept the recommendation of the Planning and Zoning Commission to approve the star concrete base in Plan 1, and the sign and double arch in Plan 2. John Champagne seconded the motion, the motion carried unanimously. (3-0)

Rebecca Huss arrived at the meeting at 7:28 p.m.

9. Consideration and possible action regarding Adoption of Montgomery County Emergency Operations Plan.

Mr. Yates advised that every five years Montgomery County sends the Plan out for re-adoption. Mr. Yates noted that the only changes are the name of the new elected County Judge and other officials, but it is the same Plan. Chief Napolitano concurred with what the City Administrator stated.

John Champagne moved to adopt the Montgomery County Emergency Operations Plan as requested. T.J. Wilkerson seconded the motion, the motion carried unanimously. (4-0)

EXECUTIVE SESSION:

The City Council reserves the right to discuss any of the items listed specifically under this heading or for any items listed above in executive closed session as permitted by law including if they meet the qualifications in Sections 551.071(consultation with attorney), 551.072 (deliberation regarding real property), 551.073 (deliberation regarding gifts), 551.074 (personnel matters), 551.076 (deliberation

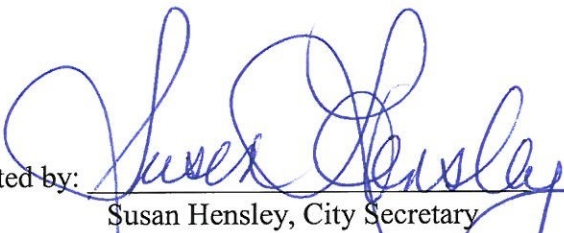
regarding security devices), and 551.087 (deliberation regarding economic development negotiations) of Chapter 551 of the Government Code of the State of Texas. (No current items at this time.)

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

Rebecca Huss moved to adjourn the meeting at 7:30 p.m. Dave McCorquodale seconded the motion, the motion carried unanimously. (4-0)

Submitted by:  Date Approved: 08/11/2015
Susan Hensley, City Secretary



Mayor Kirk Jones

