

REGULAR CITY COUNCIL MEETING MINUTES

The City Council of the City of Kyle, Texas met in Regular Session on February 7, 2017 at Kyle City Hall with the following persons present:

Mayor Todd Webster
Mayor Pro Tem Damon Fogley
Council Member Travis Mitchell
Council Member Becky Selbera
Council Member Shane Arabie
Council Member David Wilson
Council Member Daphne Tenorio
Scott Sellers, City Manager
James Earp, Assistant City Manager
Frank Garza, City Attorney
Molly Solis, Assistant City Attorney
Meghan Murphy, KAYAC
Jerry Hendrix, Chief of Staff
Jennifer Vetrano, City Secretary
Leon Barba, City Engineer
Diana Torres, Economic Dev Director
Perwez Moheet, Finance Director
Kayleigh Soukup, IT Technician
Kerry Urbanowicz, PARD Director
Howard Koontz, Community Dev Director
Jeff Barnett, Chief of Police
Pedro Hernandez, Police Captain
Briana Brecher, Animal Control Officer
Harper Wilder, Director of Public Works

Adam Moore
Patricia Randow
Calbert Marcantez
Ward Davison
Jon Snyder
Tripp Davenport

I. Call Meeting To Order

Mayor Webster called the meeting to order at 7:01 p.m. Mayor Webster asked the secretary to call roll.

Present were Mayor Webster, Council Member Mitchell, Council Member Arabie, Council Member Wilson, and Mayor Pro Tem Fogley. Council Members Selbera and Tenorio arrived late. A quorum was present.

II. Citizen Comment Period with City Council. The City Council welcomes comments from Citizens early in the agenda of regular meetings. Those wishing to speak are encouraged to sign in before the meeting begins. Speakers may be provided with an opportunity to speak during this time period on any agenda item or any other matter concerning city business, and they must observe the three-minute time limit.

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Mayor Webster opened citizen comments at 7:02 p.m.

Adam Moore with Walton was called to speak on Agenda Item No. 11. Mr. Moore stated that Walton is concerned with some of the language in the proposed amended PID Policy, and has provided feedback to City Staff.

Patricia Randow with Hays County Historical Commission and Chair of the Kyle Railroad Depot and Heritage Center was called to speak. She invited the Council to a celebration for 100 years at the Train Depot this Saturday from 1:00 - 3:00 p.m. Ms. Randow shared that this week she received notification that the Kyle Depot was chosen as one of 19 restoration and rehabilitation projects that Preservation Texas will recognize later this month in Waco, Texas. She also stated that the Kyle Railroad Depot and Heritage Center is open every Sunday from 1 - 5.

Calbert Marcantez was called to speak for Agenda Item No. 6. He commended PGI and Council for coming up with a viable alternative use of the property. He stated that with the change of use, he believes the merchants will receive much support from the community.

Rush Louch was called to speak on Agenda Item No. 6. He expressed gratitude for the development coming to the PGI location.

With no one else wishing to speak, and no objections to closing citizen comments, Mayor Webster closed citizen comments at 7:08 p.m.

III. Presentation

1. Lehman Road low water crossing update. ~ *Harper Wilder, Director of Public Works*
Item No. 1 Attachments

Mayor Webster stated that Council Member Tenorio wanted to be here for this presentation and asked if there were any objections to postponing for her arrival. There were no objections.

IV. Consent Agenda

2. Approve a Resolution of the City Council of the City of Kyle, Texas authorizing the filing of a grant application to the Office of the Governor, General Juvenile Justice and Delinquency Prevention Program to continue to fund a full-time Juvenile Specialist Officer at Kyle Police Department for FY 2018. ~ *Jeff Barnett, Chief of Police*
Item No. 2 Attachments
3. Ratify the award of a Purchase Order to ALSAY INCORPORATED, Houston, Texas, in the amount of \$19,703.25 from the Water Utility Fund for emergency repairs made to Well No. 2 for the Public Works Department. ~ *Harper Wilder, Director of Public Works*
Item No. 3 Attachments
4. A Resolution of the City Council of the City of Kyle, Texas accepting the Bunton Creek, Phase 6C subdivision improvements; finding and determining that the meeting at which this Resolution is passed was noticed and is open to the Public as required by law. ~ *Leon Barba, P.E., City Engineer*
Item No. 4 Attachments

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5. Authorize award and execution of a Purchase Order to BLUEBONNET MOTORS, INC., New Braunfels, Texas in an amount not to exceed \$33,884.31 for the purchase of a new 2017 Ford F-150 4x4 work truck through the Buy Board Purchasing Co- operative for the Public Works Department. ~ *Harper Wilder, Director of Public Works*
Item No. 5 Attachments

Mayor Webster asked if there were any items to be pulled from the Consent Agenda. There was none. Mayor Webster brought forward Item Nos. 2, 3, 4, and 5.

Council Member Wilson moved to approve Consent Agenda Item Nos. 2, 3, 4, and 5. Mayor Pro Tem Fogley seconded the motion. All votes aye; motion carried 5-0.

V. Consider and Possible Action

6. (First Reading) An Ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of rezoning approximately 47.74 acres of land from Agriculture 'AG' to Warehouse District 'W' for property located at 24800 IH 35. (PGI Investment, LLC - Z-15-021). ~ *Howard J. Koontz, Director of Planning and Community Development*
The applicant has amended their request to Retail Services 'R/S'.

- PUBLIC HEARING

Item No. 6 Attachments

Mayor Webster brought forward Item No. 6 for discussion. Mr. Koontz presented the item. Council Member Selbera arrived at 7:12 p.m.

Mayor Webster opened the public hearing at 7:13 p.m. With no one wishing to speak, and no objections to closing the public hearing, Mayor Webster closed the public hearing at 7:13 p.m.

Mayor Webster opened the floor for discussion. Mayor Pro Tem Fogley commended Mayor Webster for opening up the options and for addressing concerns. He expressed support for the item. Council Member Wilson commended PGI for staying with the project rather than selling. He is pleased that they arrived with a project that would be amenable to everyone. Council Member Selbera thanked Mayor Webster, the City, and the County for coming together on this project. She said she was glad to see something on the table for this location. Mayor Webster thanked staff for their work on this long process and to the property owner for showing faith in the City.

Council Member Wilson was recognized for a motion; however, he withdrew. Mr. Sellers stated that if the item was postponed for Council Member Tenorio's arrival, and was approved 7-0, it may not need to come back for second reading.

Council Member Wilson moved to table the item until Council Member Tenorio's arrival. Mayor Pro Tem Fogley seconded the motion. All votes aye; motion carried 6-0.

7. (Second Reading) Approve an Ordinance Granting Michael J. Blevins, d/b/a On Tyme Taxi & Courier Service, a Franchise to Provide Taxi Services within the Boundaries of the City of Kyle, Texas; providing an agreement prescribing conditions, terms, and

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regulations governing the operation of the taxi services; providing penalties for noncompliance with franchise; providing for codification; providing for severability; providing for public notice pursuant to the open meetings act; establishing an effective date; and making such other findings and provisions related hereto. ~ *Jerry Hendrix, Chief of Staff*

- PUBLIC HEARING

Item No. 7 Attachments

Mayor Webster brought forward Item No. 7 for discussion. Mr. Hendrix presented the item and mentioned that the owner is here if there are any questions for him.

Mayor Webster opened the public hearing at 7:19 p.m. With no one wishing to speak, and no objections to closing the public hearing, Mayor Webster closed the public hearing at 7:19 p.m.

Council Member Arabie moved to approve an Ordinance Granting Michael J. Blevins, d/b/a On Tyme Taxi & Courier Service, a Franchise to Provide Taxi Services within the Boundaries of the City of Kyle, Texas. Council Member Mitchell seconded the motion. All votes aye; motion carried 6-0.

8. [Postponed 1/17/2017] (Second Reading) An Ordinance of the City of Kyle, Texas Code of Ordinances amending Chapter 5, Animals, Article III. Animal Protection and Article IX. Animal Care and Control; providing a repealing clause; providing a savings clause; providing a severability clause; providing for publication; and setting an effective date. ~ *Jeff Barnett, Chief of Police*
Item No. 8 Attachments

Mayor Webster brought forward Item No. 8 for discussion. Chief Barnett presented the item. Animal Control Officer Brecher was available for questions as well.

Council Member Wilson stated that the council member with the most comment on this is not here. He suggested tabling the item until Council Member Tenorio's arrival. Mayor Webster stated if the item is tabled and she does not arrive by the end of the agenda, the Council would have to move forward.

Council Member Wilson moved to approve an Ordinance of the City of Kyle, Texas Code of Ordinances amending Chapter 5, Animals, Article III. Animal Protection and Article IX. Animal Care and Control. Mayor Pro Tem Fogley seconded the motion.

There was discussion on the motion. Council Member Selbera asked if there would be an event for all citizens to register their pets. Chief Barnett stated that currently animal control holds several events in the city, in neighborhoods, and even at a local pet store where people may register their pets, in addition to being able to register year-round at the Police Department. Council Member Mitchell asked what implications there are when substantive changes are made between first and second reading. Frank Garza, City Attorney stated that the second reading option allows the Council to consider those changes. Mayor Webster clarified that the final passing on a first reading with a unanimous vote is subject to objections to not

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having a second reading. Council Member Mitchell expressed his support for the ordinance as revised to allow citizens to purchase their own traps for use on their property.

All votes aye; motion carried 6-0.

9. (Second Reading) An Ordinance to assign original zoning to approximately 4.01 acres of land from Agriculture 'AG' to Warehouse District 'W' for property located at 1381 Goforth Road. (John R. and Gayla Simon - Z-16-013). ~ *Howard J. Koontz, Director of Planning and Community Development*
Applicant is requesting that the second reading be postponed until the February 21st meeting.
City Council voted to assign original zoning of 'R/S' on January 17th.
Planning and Zoning Commission and City Council voted to assign original zoning of Retail Service District 'R/S'.
Item No. 9 Attachments

Mayor Webster brought forward Item No. 9 for discussion.

Council Member Wilson moved to postpone this item until February 21, 2017. Mayor Pro Tem Fogley seconded the motion.

There was discussion on the motion. Council Member Mitchell asked for an explanation. Mayor Webster stated that he believes it is related to a transaction taking place, but cannot discuss further. Ward Davison spoke on behalf of the applicant. He stated that the request is due to the change from W to R/S, they are having a feasibility study done which will be completed by February 13th.

All votes aye; motion carried 6-0.

10. Approve a professional services agreement with PIDWORKS, LLC, Austin, Texas, to provide Public Improvement District (PID) formation and administration services to the City of Kyle in association with the Blanco River Ranch Development. All costs incurred for services under this agreement will be paid through future PID assessments collected.
~ *J. Scott Sellers, City Manager*
Item No. 10 Attachments

Mayor Webster brought forward Item No. 10 for discussion. Mr. Sellers presented the item and introduced Jon Snyder of PIDWorks. Mr. Snyder addressed Council Member Mitchell's concerns regarding payment from PID Bonds. Council Member Tenorio arrived at 7:35 p.m. Council Member Tenorio stated that she wants to be cautious that Council does not tie the hands of developers by our choosing the PID Administrator.

Council Member Wilson moved to approve a professional services agreement with PIDWorks, LLC, Austin, Texas, to provide Public Improvement District (PID) formation and administration services to the City of Kyle in association with the Blanco River Ranch Development. Mayor Pro Tem Fogley seconded the motion. Motion carried 6-1 with Council Member Tenorio dissenting.

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11. Consider a Resolution of the City Council of the City of Kyle, Texas Amending Resolution 1033, Adopted by the City Council on August 24, 2016 by Revising the Public Improvement District Policy provided herein as "Exhibit A"; Making Findings of Fact; and Providing for Related Matters. ~ *J. Scott Sellers, City Manager*
Item No. 11 Attachments

Mayor Webster brought forward Item No. 11 for discussion. Mr. Sellers presented the item. Jon Snyder with PID Works spoke to address Walton's concerns. Tripp Davenport with FMSbonds spoke regarding the bond language in the proposed PID Policy Amendment.

Council Member Mitchell moved to amend the PID Policy Bond Limitations, page 5 of 10, Item No. 2, striking 2.5:1 and inserting 3:1. Mayor Pro Tem Fogley seconded the motion.

There was discussion on the motion. Mayor Webster asked whether this change would jeopardize the commercial development portion of Blanco River Ranch. Mr. Sellers responded that it would be too hard to say. There was further discussion with Mr. Snyder regarding the ratios of other cities.

Mayor Webster called for a roll call vote. Council Member Selbera voted nay, Council Member Tenorio voted nay, Council Member Wilson voted aye, Council Member Arabie voted aye, Mayor Webster voted nay, Mayor Pro Tem Fogley voted nay, and Council Member Mitchell voted aye. Motion failed 3-4.

Mayor Webster moved to amend the PID Policy page 6 of 10, No. 17, strike after the word "to", strike "pay", then add after that "demonstrated committed capital (e.g., cash deposit, proof of bank financing, letter of credit, or bond) in a form acceptable," and strike "a contribution", and add "in an amount". Mayor Pro Tem Fogley seconded the motion.

There was discussion on the motion. Council Member Arabie stated that he would like to strike performance bonds because they are almost not recoverable.

Mayor Webster moved to amend his previous motion to strike the phrase, "or bond" to remove that as an option. Mayor Pro Tem Fogley seconded the motion.

Mayor Webster called for a roll call vote. Council Member Mitchell voted aye, Council Member Wilson voted aye, Mayor Webster voted aye, Mayor Pro Tem Fogley voted aye, Council Member Tenorio voted nay, Council Member Arabie voted aye, and Council Member Selbera voted aye. Motion carried 6-1.

Mayor Webster moved to amend the PID Policy, page 7, No. 18, strike "in the", add "during a material," after PID Agreement, add "by the Developer," and after the word "obligations" add "to the Developer." Mayor Pro Tem Fogley seconded the motion.

Mayor Webster called for a roll call vote. Mayor Pro Tem Fogley voted aye, Council Member Wilson voted aye, Council Member Mitchell voted aye, Council Member Arabie voted aye,

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Mayor Webster voted aye, Council Member Selbera voted aye, and Council Member Tenorio voted nay. Motion carried 6-1.

Mayor Pro Tem Fogley moved to approve a Resolution of the City Council of the City of Kyle, Texas Amending Resolution 1033, Adopted by the City Council on August 24, 2016 by Revising the Public Improvement District Policy provided herein as "Exhibit A" as amended. Council Member Mitchell seconded the motion.

Mayor Webster called for a roll call vote. Council Member Tenorio voted nay, Council Member Selbera voted aye, Council Member Arabie voted aye, Council Member Wilson voted aye, Council Member Mitchell voted aye, Mayor Pro Tem Fogley voted aye, and Mayor Webster voted aye. Motion carried 6-1.

6. (First Reading) An Ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of rezoning approximately 47.74 acres of land from Agriculture 'AG' to Warehouse District 'W' for property located at 24800 IH 35. (PGI Investment, LLC - Z-15-021). ~ *Howard J. Koontz, Director of Planning and Community Development*
The applicant has amended their request to Retail Services 'R/S'.

- PUBLIC HEARING

Item No. 6 Attachments

Mayor Webster brought forward Item No. 6 for discussion. Council Member Tenorio was given an opportunity to speak on the item. She thanked the Greater San Marcos Alliance, the City of San Marcos, Hays County, and all the people who worked so hard to become engaged in this decision.

Council Member Tenorio moved to approve an Ordinance amending Chapter 53 (Zoning) of the City of Kyle, Texas, for the purpose of rezoning approximately 47.74 acres of land from Agriculture 'AG' to Retail Services 'R/S' for property located at 24800 IH 35. Council Member Wilson seconded the motion.

There was discussion on the motion. Council Member Wilson thanked PGI and Mayor Webster for his leadership on this project. Council Member Selbera thanked Council Member Arabie for helping with this project.

All votes aye; motion carried 7-0. Mayor Webster asked if there were any objections for the item to be finally passed. There was none.

1. Lehman Road low water crossing update. ~ *Harper Wilder, Director of Public Works*
Item No. 1 Attachments

Mayor Webster brought forward Item No. 1 for discussion. Mr. Wilder presented the item. No action was taken.

12. An Ordinance of the City of Kyle, Texas, amending the City of Kyle, Texas, Code of Ordinances; Amending Part II, Chapter 26, Article III, Section 26-84: Park Rules, to

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amend the definition of littering; providing for repeal of conflicting ordinance; providing for an effective date and an Open Meetings clause; and providing for related matters.

~ *Kerry Urbanowicz, Director of Parks & Recreation*

Item No. 12 Attachments

Mayor Webster brought forward Item No. 12 for discussion. Mr. Urbanowicz presented the item.

Council Member Tenorio moved to approve an Ordinance of the City of Kyle, Texas, amending the City of Kyle, Texas, Code of Ordinances; Amending Part II, Chapter 26, Article III, Section 26-84: Park Rules, to amend the definition of littering. Mayor Pro Tem Fogley seconded the motion.

There was discussion on the motion. Council Member Mitchell stated the ordinance is almost impossible to enforce. He stated he would not support adding it to the Code of Ordinances. Mayor Webster stated that the ordinance more intends to prevent the release of litter. City Attorney, Frank Garza stated that the ordinance is how to preclude these events from taking place. Mayor Webster stated concern that should the ordinance not pass, it could send the opposite message.

Mayor Webster called for a roll call vote. Council Member Arabie voted nay, Council Member Selbera voted nay, Mayor Pro Tem Fogley voted aye, Council Member Tenorio voted aye, Council Member Mitchell voted nay, Mayor Webster voted nay, and Council Member Wilson voted nay. Motion failed 2-5.

13. Consider and possible action to award MATRIX CONSULTING GROUP, Mountain View, California a contract not to exceed \$45,000.00 for services related to an audit of the Police Department. ~ *J. Scott Sellers, City Manager*
Item No. 13 Attachments

Mayor Webster brought forward Item No. 13 for discussion. Mr. Sellers presented the item.

Council Member Tenorio moved to approve award Matrix Consulting Group, Mountain View, California a contract not to exceed \$45,000.00 for services related to an audit of the Police Department. Mayor Pro Tem Fogley seconded the motion.

City Attorney Frank Garza stated he would like to incorporate Provision No. 18, which would be the governing law. He explained that since the company is out of state, this provision would provide that in the event of a dispute, Texas Law would govern the agreement and the venue would be Hays County. He also recommended that the agreement incorporate their proposal.

Council Member Tenorio moved to amend her motion to incorporate the proposal into the agreement and to add the governing law provision. Mayor Pro Tem Fogley seconded the motion.

There was discussion on the motion. Mayor Pro Tem Fogley offered support for this audit, but also wants citizen input and Council input in the audit. Mayor Webster stated that a provision in

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the agreement calls out the Mayor, but it is his intention that it is the full Council is engaged in the process.

All votes aye; motion carried 7-0.

14. Consider and possible action to approve a letter to be sent on behalf of Council thanking and recognizing Seton Medical Center Hays for the recent Ascension Medical Mission at Home event. ~ *Becky Selbera, Council Member*
Item No. 14 Attachments

Mayor Webster brought forward Item No. 14 for discussion and gave the floor to Council Member Selbera.

Council Member Selbera moved to approve a letter to be sent on behalf of Council thanking and recognizing Seton Medical Center Hays for the recent Ascension Medical Mission at Home event. Council Member Tenorio seconded the motion.

There was discussion on the motion. Council Member Wilson stated that he was stunned by the amount of dental work that was done. They had enough medical staff, and their target was to provide service to 1000 people. He was impressed with the event. He said it was St. David's doing the dental, and was a combined event.

All votes aye; motion carried 7-0.

15. Discussion and possible action to appointment a Council Member to the Hays Caldwell Public Utility Agency (HCPUA). ~ *R. Todd Webster, Mayor*
Item No. 15 Cover Sheet

Mayor Webster brought forward Item No. 15 for discussion. Mayor Webster nominated Council Member Arabie to fill his place.

Mayor Webster moved to appoint Council Member Arabie to the Hays Caldwell Public Utility Agency. Council Member Wilson seconded the motion.

There was discussion on the motion. Council Member Tenorio stated that she is unable to approve any nomination to the HCPUA due to being unable to locate any description or possible qualifications. She also stated that she would like the information distributed to all the Council Members and accept applications from any other interested candidates. Mayor Webster stated that the qualification is that you must be a council member. Council Member Wilson stated that currently the Agency is exploring pipeline and design opportunities and having a member with an engineering background, Council Member Arabie will assist Kyle's group.

Motion carried 6-1 with Council Member Tenorio dissenting.

VI. City Manager's Report

16. Update on various capital improvement projects, road projects, building program, and/or general operational activities where no action is required. ~ *J. Scott Sellers, City Manager*

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- Update on Legislation
- Item No. 16 Cover Sheet

Council Member Tenorio requested an HCPUA legislative item for the next agenda. Council Member Selbera requested a presentation by the HCPUA Outreach person. Mayor Webster stated that requests for agenda items may be sent to him or Mr. Sellers. Mr. Sellers provided an update on a Municipal Utility District (MUD) legislation, which will affect the non-residential area of Kohler's Crossing and FM 1626. Council Member Selbera asked about Center Street repairs. City Engineer Leon Barba stated that staff had planned to meet with a contractor about the repairs, but Mr. Wilder was unavailable. He said they are thinking about paving just the middle lane as soon as possible. Council Member Selbera asked whether the contractor would be providing the paving or it would be at cost to the City. Mr. Barba stated that a portion of it will be dug out and repaved as part of their contract, but if Center Street were widened, the City would pay for the additional cost. Council Member Mitchell asked about the EPA grant. Mr. Sellers stated that on Friday, staff met with TCEQ about the grant, and at that time the funds were safe. Mr. Sellers continued that since that meeting, there were talks about dissolving the EPA entirely, but barring any drastic changes, the funds are reserved for that project. Discussion continued regarding the MUD tax.

VII. Executive Session

17. Pursuant to Chapter 551, Texas Government Code, the City Council reserves the right to convene into Executive Session(s) from time to time as deemed necessary during this meeting. The City Council may convene into Executive Session pursuant to any lawful exception contained in Chapter 551 of the Texas Government Code including any or all of the following topics.
 1. Pending or contemplated litigation or to seek the advice of the City Attorney pursuant to Section 551.071.
 2. Possible purchase, exchange, lease, or value of real estate pursuant to Section 551.072.
 - Property acquisitions for road bond projects
 3. Personnel matters pursuant to Section 551.074.
 4. Economic Development negotiations pursuant to Section 551.087.
 - Potential Incentive for Development
 - Project Just Peachy
 - Project Steel Blue

Item No. 17 Cover Sheet

Mayor Webster moved to convene into executive session. Pursuant to Chapter 551, Texas Government Code, the City Council reserves the right to convene into Executive Session(s) from time to time as deemed necessary during this meeting. The City Council may convene into Executive Session pursuant to any lawful exception contained in Chapter 551 of the Texas Government Code including any or all of the following topics. Possible purchase, exchange, lease, or value of real estate pursuant to Section 551.072 - Property acquisitions for road bond projects; and Economic Development negotiations pursuant to Section 551.087 - Potential Incentive for Development and Project Just Peachy. Council Member Tenorio seconded the motion. All votes aye; motion carried 7-0.

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Mayor Webster moved to convene into executive session on Project Steel Blue. Council Member Tenorio seconded the motion. All votes aye; motion carried 7-0.

The City Council convened into executive session at 9:53 p.m.

18. Take action on items discussed in Executive Session.
Item No. 18 Cover Sheet

Mayor Webster moved to reconvene into open session. Mayor Pro Tem Fogley seconded the motion. All votes aye; motion carried 6-0.

The City Council reconvened into open session at 11:19 p.m. Mayor Webster announced that no action took place in Executive Session but action would be taken now.

Council Member Wilson moved to approve Interlocal Funding Agreement with Hays County to provide economic development incentives to RSI in accordance with the 380 agreement approved by the City. Mayor Pro Tem Fogley seconded the motion. Motion carried 5-1 with Council Member Tenorio dissenting.

VIII. ADJOURN

Council Member Tenorio moved to adjourn. Council Member Wilson seconded the motion. All votes aye; motion carried 6-0.

With no further business to discuss, the City Council adjourned at 11:21 p.m.

R. Todd Webster, Mayor

Attest: Jennifer A. Vetrano, City Secretary

Attachments to Minutes as follows:

1. Walton feedback and Jon Snyder responses regarding proposed PID Policy Amendment

Scott,

I have reviewed the revisions to the PID Policy on behalf of my client, Walton, and have a few concerns and comments that I would like to point out to you. If the City's position is that the revisions to the PID policy do not apply to Pecan Woods since the resolution creating the Pecan Woods PID has already been approved by the City, then we would like to see something in writing that we can rely on acknowledging that. In any event, below is a list of my specific concerns as it may relate to future projects:

- Item 5 right before the PID Administration section provides that in order to issue bonds or collect assessments within a PID the developer needs to provide the City a letter from HCTAC that they agree to collect the assessments. Are you aware of whether or not HCTAC will agree to issue such a letter? I'm not sure whether they will or not. One of the requirements of the letter is that HCTAC agrees to deal with delinquencies. I don't think they will agree to do so. Further, the bond documents specifically provide that the City is required to deal with delinquencies under the PID.

We are the PID administrator for the La Cima PID in Hays County. We have met with both the County Appraisal District and the County Tax Collector and both have agreed to work with us to place the assessments on the tax bill. In terms of delinquencies, unless someone pays the ad valorem portion of the tax bill only (deducts the assessment amount), the County will be pursuing the delinquent parcels already. We will need to verify with bond counsel, but I think the City's covenant to foreclose can be satisfied if the City outsources this function to the County (there might be an exception for large landowners who own more than 5% of the assessed property).

- In Section 15 under the Financing Criteria section, there is a description of a requirement that 10% of the PID proceeds go to the City to fund City improvements. We have a 10% requirement in our resolution creating the PW PID but it is not structured the same way, and we want to verify that the 10% requirement for Pecan Woods will be consistent with what is in the resolution, not the revised PID policy.
- Item 17 under the Financing Criteria requires a deposit for any PID improvements that are seen to be complete by the appraisal and not funded by the PID bonds. This has been a big issue on some of the PIDs we have worked on recently and there is a lot of detail to this that would need to be worked out (for instance the form of deposit, *i.e.* cash, letter of credit or bond). I spoke to James earlier this morning and informed him I had received a call from Becky Collins at Walton. She expressed serious concern over item #17. I spoke to Tripp Davenport, and he agreed that we could soften the language to provide flexibility to the City to determine the security needed on a case by case basis. Walton's attorney sent me over suggested language, which I think is a good compromise (I did add "cash deposit").

“Developer is required to ~~pay~~ demonstrate committed capital (e.g. cash deposit, proof of bank financing, letter of credit, or bond) in a form acceptable to the City on the closing date of the PID Bonds a contribution in an amount confirmed by an engineer’s estimate of probable cost, which represents the difference between the budgeted cost to complete the public improvements assumed to be complete in the appraisal and the net proceeds of the PID bonds.”

- Item 18 under the Financing Criteria says that if there is a default (that remains uncured) under the PID that the City can recapture funds that have already been advanced for improvements constructed. It is our understanding from various underwriters that this would make it very difficult (or impossible) to sell the bonds. Item 18 is intended to serve as the “stick” to ensure developer compliance with the bond documents. Continuing disclosure is one of the biggest risks to the City. If a developer does not meet its obligations, it could negatively impact the City's ability to issue other bonds (GO, WWSS, Sales Tax). At a minimum, it could be a disclosure item in the City's offering document.

Walton’s attorney sent over the following proposed language for Item 18:

In the ~~During a material~~ event of default under the terms of the PID petition or the PID agreement ~~by the developer~~, the City ~~shall~~ may, after providing notice and opportunity to cure, have the right to ~~recapture reimbursements and/or terminate its obligations~~ cease further payment of PID Bond proceeds to the developer.

This provision works if there are additional bond issues or significant funds yet to be released to the developer. However, the developer’s continuing disclosure obligations will likely continue well after all of the PID bond proceeds are spent. If there is no future PID bonds to be issued, the City does not have a “stick” to force compliance with the PID bond documents. Given that the provision provides notice and an opportunity to cure, I don’t think this section should be a problem for any developer that in good faith tries to comply with the bond documents. I would propose the following:

In the ~~During a material~~ event of default under the terms of the PID petition or the PID agreement ~~by the developer~~, the City ~~shall~~ may, after providing notice and opportunity to cure, have the right to recapture reimbursements and/or terminate its obligations to the developer.

After reviewing this email please give us a call or respond so we can discuss how to handle this.

Thanks,

Steve