

CITY COUNCIL MINUTES
REGULAR MEETING

KERRVILLE, TEXAS
MAY 13, 2014

On May 13, 2014, the Kerrville City Council meeting was called to order at 6:00 p.m. by Mayor Pratt in the City Hall Council Chambers at 701 Main Street. The invocation was offered by Pastor John Standridge of Christ Church Presbyterian, followed by the Pledge of Allegiance led by Police Chief John Young.

COUNCILMEMBERS PRESENT:

Jack Pratt	Mayor
Carson Conklin	Mayor Pro Tem
Gene Allen	Councilmember
Stacie Keeble	Councilmember
Justin MacDonald	Councilmember

COUNCILMEMBER ABSENT: None

CITY EXECUTIVE STAFF PRESENT:

Todd Parton	City Manager
Mike Hayes	City Attorney
Kristine Ondrias	Deputy City Manager
Brenda G. Craig	City Secretary
Sandra Yarbrough	Director of Finance
Ashlea Boyle	Special Projects Manager
Jason Lutz	City Planner
Robert Ojeda	Fire Chief
John Young	Police Chief
Stuart Barron	Public Works Director

VISITORS PRESENT: List on file in city secretary's office for the required retention period.

1. VISITORS/CITIZENS FORUM: No one spoke.

2. RECOGNITIONS AND PRESENTATIONS:

- 2A. Resolution of Commendation to Lisa Nye-Salladin for service on the Parks and Recreation Advisory Board.
- 2B. Resolution of Commendation to Aaron Yates for service on the Main Street Advisory Board.

3. CONSENT AGENDA:

Mr. MacDonald moved to approve consent agenda items 3A through 3D; Mr. Allen seconded the motion, and it passed 5-0:

- 3A. Minutes of the city council regular meeting held April 22, 2014.
- 3B. Resolution No. 13-2014 abandoning and terminating a gas pipeline easement located at 741 Water Street; making the abandonment and termination subject to the city's receipt of a wastewater easement; and ordering recording.

3C. Lease agreement with PNC Equipment Finance for lease of Toro equipment for the Scott Schreiner Municipal Golf Course, in the total amount of \$210,029.28 for a 48 month period.

3D. Amendment of a professional services agreement with Freese & Nichols, Inc. to provide professional engineering design services and additional survey for design of the Riverhills/Ridgewood storage tank water transmission line in an amount not to exceed \$30,713.00.

END OF CONSENT AGENDA

4. PUBLIC HEARING AND ORDINANCE, FIRST READING:

4A. Ordinance No. 2014-09 amending Article 10-IV-1 of the City of Kerrville Subdivision Ordinance, known as the city's "Subdivision Regulations," by amending Section 10-IV-1(B)(2) of the ordinance to exempt land owned, controlled, administered, or under the jurisdiction of a federal agency from plat requirements; containing a cumulative clause; containing a savings and severability clause; providing for an effective date; ordering publication; and providing other matters related thereto. Mayor Pratt read the ordinance by title.

Mr. Lutz noted the ordinance would exempt federally owned land from platting requirements of the city's subdivision ordinance; the ordinance would not exempt other requirements, e.g. utilities, sidewalks, etc.

Mayor Pratt declared the public hearing open at 6:09 p.m.; no one spoke and the public hearing was closed at 6:09 p.m.

Mr. MacDonald moved to disapprove Ordinance No. 2014-09 on first reading; Mr. Conklin seconded the motion.

Mr. Parton noted council previously passed a resolution of support for Freedoms Path, a housing project at the Veterans Administration (VA) site that required the developer to meet all development codes and regulations. VA staff felt that the city lacked authority to apply subdivision codes and platting requirements to the project. He requested verification of a statute or legal opinion from VA staff regarding the exemption of land owned by the federal government, but such information had not been provided. VA staff advised that the property was being leased for \$1 a year, and they were not partitioning or dividing the property, only allowing another use; therefore, the project did not trigger platting requirements. Mr. Parton noted the code clearly stated that platting requirements were triggered by development, not by the splitting of land; under the code, the developer would have to comply with platting requirements. VA staff advised him that if they were required to plat the land, they would not approve the project or provide funding. Staff was concerned about setting precedence for future developments and granting a waiver or exemption without justification; staff then considered allowing an exemption for developments on federal land, thus the ordinance was drafted.

Mr. Hayes noted he communicated with a VA attorney in Washington, DC, who provided an opinion that addressed law in the state of Washington; Mr. Hayes

repeatedly requested information that the federal government was exempt from development regulations in the state of Texas; the attorney said he would provide the information, but it had not been received.

The following points were also discussed by council and staff:

- The planning and zoning commission voted unanimously 5-0 on May 1 to deny recommending the ordinance to the city council based on the following points:
 1. Language was too vague and could exempt all properties including those that had floodplains from platting requirements.
 2. Keeping track of boundaries, setbacks, and ownership would become problematic in the future for subsequent owners.
 3. Would create a regulatory loophole for these properties.
- The exemption in the ordinance could create a loophole where a private entity purchasing or leasing property from the federal government could have their project exempted from platting requirements as a condition of the sale or lease.
- Failure to survey and plat the land properly could create problems in the future.
- The federal government should follow the same rules as everyone else. The VA should comply or provide proof of exemption.
- There was a provision in state zoning code that provided the city's authorization; the provision was not broad enough to apply to land in a floodway because such was restricted by FEMA.
- The agreement with Freedom's Path was approved by the developer and they voluntarily agreed to comply with all city requirements and the points listed in the agreement in exchange for the city's support of the project; now the developer, and assumedly the VA, changed their minds and did not want to comply, and state that the project would not continue unless the city changed the rules.
- Consider granting exceptions on a case by case basis as opposed to passing an amendment to the ordinance that might affect the city's ability to require platting on future land developments or could call into question the way the city applied and implemented its codes.
- Waivers and variances allowed under the current city ordinance were based on specific issues and hardships related to the property itself, and not exemptions based on who the property owner was.

Robert Smith, representing Beneficial Communities, the developer of Freedoms Path, noted they were getting close to closing and financing; they had deadlines which affected tax credits. The land at the VA was a federal reserve and as such the VA believed it was exempt and platting would be contrary to what they could and could not do on their land. Freedoms Path was leasing, not dividing the property. The VA wanted the project, but did not want to plat the land; if the VA had to plat, the project would go elsewhere.

The motion to deny failed 1-4 with Mr. MacDonald voting in favor of the motion and Councilmembers Allen, Conklin, Keeble, and Pratt voting against the motion.

Ms. Keeble moved to approve Ordinance No. 2014-09 on first reading as presented; Mr. Allen seconded the motion and it passed 4-1 with

Councilmembers Allen, Conklin, Keeble, and Pratt voting in favor of the motion, and Mr. MacDonald voting against the motion.

Council asked staff to continue to get information in writing from the VA.

5. CONSIDERATION AND POSSIBLE ACTION:

5A. Airport's fiscal year 2015 budget.

Stephen King, President of the Kerrville-Kerr County Joint Airport Board, presented the 2015 budget totaling \$404,064, and noted the following:

- The budget increased \$24,000 over 2014 due to revenue increase of 33%.
- City and county contribution at \$47,478.50 each, a reduction from 2014 which was \$80,401.00; the city and county allocation decreased for the past five years.
- The airport board received three buildings back from Mooney that would require repairs prior to being leased as T-hangars.
- The airport board had a total reserve fund of \$300,000.00, the t-hangars cost \$88,000, and the building consultant for the six Mooney buildings was estimated at \$100,000.00.
- Discussed possible future t-hangar income that may increase revenues and decrease city and county participation; goal was to make the airport self-sufficient.

Mr. King noted the recent storm caused significant damage and severe flooding inside the buildings that were owned by the city and county and leased by the new Mooney International. He opined that the storm damage was an emergency situation, noting that Mooney had to suspend operations in part of the complex due to electric safety issues, and Mooney had 85 employees at an estimated \$16,000 per day in salaries. Mooney rented the buildings in good faith and had also put in over \$1 million into the buildings. The airport board planned to hire a consultant to evaluate the buildings and roof, determine a plan to repair, prepare a request for proposal, evaluate bids, and see the project through to completion. The RFP would be designed with bid options so segments could be accepted or rejected. The estimated cost of the consultant was \$100,000.00; the airport board planned to submit a 2014 budget amendment to use airport reserve funds, but they would like to amend the 2015 budget to include reimbursement of \$50,000 each from the city and county to reimburse the airport reserve fund. He estimated the consultant's evaluation and plan would take approximately 3-4 weeks, and the scope could be expanded to include structural review of the buildings to determine viability before roofing. Once determined, the cost of the repairs to the buildings would be borne by the city and county as the owners.

Mayor Pratt noted that the city had already set aside \$500,000 for repair of the buildings.

County Commissioner Tom Moser noted the county passed a motion to ask that a consultant be hired to decide what needed to be done; the county recognized it owned half of the buildings and was obligated. He noted that Mooney had already invested \$3 million in buildings and equipment and planned to add another \$3 million. The county would come up with their share once that amount

had been determined; however, at this time, the county was constrained by state law as it was not in this year's budget. The county may receive a request from the airport board and Mooney to declare emergency conditions, then the county may be able to declare an emergency which would allow them to also seek other funding avenues; however, that may not be the case and he could not speak for other commissioners.

Airport Manager Bruce McKenzie noted the mowing contract was for five years with a three year renewal option.

Mr. Allen moved to approve the FY 2015 airport budget; Mr. Conklin seconded the motion and it passed 5-0.

5B. Resolution No. 11-2014 denying the rate increase requested by Atmos Energy Corp., Mid-Tex Division under the Company's 2014 annual rate review mechanism filing in all cities exercising original jurisdiction; requiring the company to reimburse cities' reasonable ratemaking expenses pertaining to review of the RRM; authorizing the city's participation with Atmos Cities Steering Committee (ACSC) in any appeal filed at the Railroad Commission of Texas by the company; requiring the Company to reimburse cities' reasonable ratemaking expenses in any such appeal to the railroad commission; determining that this resolution was passed in accordance with the requirements of the Texas Open Meetings Act; adopting a savings clause; and requiring delivery of the resolution to the company and the steering committee's legal counsel.

Mr. Hayes noted the city was a member of ACSC along with 164 other cities served by the Atmos Energy Mid-Tex Division. Atmos filed a rate increase in February seeking a \$45.7 million increase system wide; ACSC attributed \$37 million to the affected cities which were part of the ACSC. The parties attempted but had not reached a compromise. In the absence of a settlement agreement, the ACSC and legal counsel recommended adopting the proposed resolution to deny the increase, in effect keeping rates the same until a resolution could be reached later. If council approves the resolution, Atmos will appeal the decision before the Texas Railroad Commission, which will allow Atmos to increase its requested rates on June 1 while the appeal is pending, but that increase would be subject to the future settlement agreement. The proposed rate increase would be approximately \$2.02 monthly for the average residential customer.

Mr. Conklin moved for approval of Resolution No. 11-2014 denying the proposed rate increase; Mr. MacDonald seconded the motion and it passed 5-0.

5C. Drought contingency plan and water conservation plan.

Mr. Barron reported that the Texas Water Development Board required retail public water suppliers with more than 3,300 connections to update their water conservation plan and drought contingency plan every five years. The city's plan was in good standing with the TWDB, but staff brought this to council's attention to see if any amendments were needed. He did not recommend any changes.

The following persons spoke:

1. Carolyn Lipscomb questioned whether it was the lack of water or an infrastructure problem that required water conservation. She noted that the Region J report identified Kerrville as 3,224 acre feet short of water by 2020. If the city took the amount of water it was allowed to under the permits and stored it in ASR wells, was the water treatment plant adequate to treat the additional water and the infrastructure sufficient to deliver water to customers? She asked that the city consider changing the times for irrigation from 8:00 p.m. to midnight to 6:00-10:00 p.m. and 6:00-10:00 a.m. to 7:00-11:00 a.m. and have a different schedule of hours for those homes that had automatic sprinklers.

Mr. Barron noted the Region J report showed that during a drought of record, Kerrville could have a water deficit in the future. The infrastructure was in good shape but the city did have some concern for infrastructure during peak times of irrigation but nothing critical. He discussed future possibility of amending the water irrigation schedule to a schedule based on a regional map plan in order to better manage the system and smooth out times of peak usage; however, the odd/even address plan was easier for the public to understand. In establishing the current schedule the city considered the overall issues of working within the system's capabilities and allow the tanks to fill during the early morning hours, and having times available for people who worked during the day. He felt that the even/odd schedule also allowed staff to move water more evenly through the system than a regional mapping schedule would, thereby reducing the buildup of total trihalomethanes.

Mr. Barron noted the wastewater treatment plant produced 2.5 mgd of effluent, and during times of drought all effluent water was used.

2. David Lipscomb questioned why, if the city lacked infrastructure for treating water, the city would add another ASR well that would require water to be treated when it went into the ASR and again when it came out, which is more impact on the water treatment plant.

Mr. Barron stated the city had the ability to treat more water than it used under normal flow conditions on an average day in the winter months; if the city had more storage, it could store an additional 2.5-3 mgd. Water stored in ASR wells did not have to be retreated before it was put back into the distribution system, just add chlorine.

3. Jimmie Spradling asked if the plan was passed, would the irrigation schedule remain the same as the current schedule. Mr. Barron responded the schedule would not change.

Mr. Conklin moved to approve the plan as presented; Mr. Allen seconded the motion and it passed 5-0.

5D. Proposal for the City to acquire a 7.964 acre tract of land located on the north side of Holdsworth Drive and immediately adjacent to the western boundary of Section Two of the Keystone Subdivision.

Mr. Parton noted the city received an invitation to submit an offer to purchase 8 acres on the north side of Holdsworth Drive that was the remainder of a 236 acre tract that probably had been deemed as unusable portion of the original Keystone Subdivision. He described the property as unplatte and bounded on the east and south by the Keystone Subdivision; extremely steep with a huge earthen berm and retaining wall; landlocked with no practical access and very steep grade from Holdsworth Drive; no side access into the property from the adjacent subdivision; undeveloped and unplatte areas north and west of the property; no way to secure the property; major drainage and slope easement on the north for the Keystone Subdivision. He recommended the city not purchase the land as it would be a liability to own and maintain; however, at the council's request, staff could evaluate the land more thoroughly.

Council felt staff had more productive projects to focus on at this time and did not direct staff to evaluate the land.

Mr. Hayes noted the broker had expressed a willingness to accept any offer, and the possibility existed that it might be foreclosed on in the future and the bank might try to get a taxing entity to take it over without cost.

No action was taken by the city council.

Mr. Parton suggested staff draft a policy and evaluation process as guidance for accepting property and donations.

5E. Agreement with Tuscany Land, Ltd. to acquire property interests to bury the raw water irrigation line for the Riverhill Golf Course, acquire a recreation easement (river trail), settle claim with Riverhill Country Club, Inc., install a water meter and other matters related to these subjects.

Ms. Keeble noted that some of the land under consideration was owned by her and her husband (Tuscany Land, Ltd.); therefore, she filed a conflict of interest form, recused herself, and left the dais.

Mr. Parton noted that during the design phase of this segment of the river trail, the city's contractor crushed a section of the Riverhill Golf Course irrigation line located under the Hwy. 173 Bridge at the diversion point of the river. The city received money from the contractor equal to the cost of the damages. The city gave a temporary easement for that line to Riverhill in 1988 when the city took over the Kerrville Municipal Utility District; however, the line cannot cross over the river trail and must be buried. Mr. Parton contacted Mr. Keeble to negotiate a permanent easement to bury the irrigation line on the Tuscany property, and he agreed. Mr. Parton contacted Riverhill with the option of burying a new irrigation line in the permanent easement, and Riverhill agreed and provided payment.

Mr. Parton noted discussions with Mr. Keeble about the possibility of a 1,000 foot trail extension from the Birkdale trailhead to the Riverhill Subdivision, if funds were available and construction was authorized by the city council, and Mr. Keeble agreed to dedicate an easement for this section of the river trail. Also, Tuscany had an outstanding water credit of 1,937,000 gallons issued by the city as part of a 2009 settlement agreement that resulted from the construction of the Riverhill water transmission line. Mr. Parton proposed that the city install a 2" meter and vault, and provide a credit for the balance of the unused water, a total value of \$4,400.

Mr. MacDonald moved to authorize the city manager to finalize and execute agreements as proposed:

- Finalize agreement with Tuscany Land, Ltd.
- Negotiate agreement with Riverhill for release of agreements and claims for damages to their water line.
- Establish legal descriptions and execute easements.
- Install 2" meter and set up account with water credit.
- Install irrigation line.
- Construct river trail extension as budget allows.

Mr. Allen seconded the motion and it passed 4-0-1 with Councilmembers MacDonald, Allen, Conklin, and Pratt voting in favor of the motion; no one voted against the motion; and Councilmember Keeble abstained.

6. ITEMS FOR FUTURE AGENDAS: None

7. ANNOUNCEMENTS OF COMMUNITY INTEREST:

-The city received a \$25,000 solid waste grant from AACOG to fund the annual household hazardous waste event in September.

-Kerrfest, May 15-18 at the Hill Country Youth Event Center.

-Memorial weekend activities: Kerrville Folk Festival, Downtown Festival of the Arts, Texas Hill Country Wine and Brew Festival, Kerr County Market Days, Kerr Arts and Cultural Center Art Show, and Inn of the Hills and YO Hotel for master fine arts and crafts shopping and dining. Free parking available in the downtown parking garage and free bus service will take visitors to all events.

8. EXECUTIVE SESSION: None.

ADJOURNMENT. The meeting adjourned at 7:48 p.m.

APPROVED: _____

Jack Pratt, Jr., Mayor

ATTEST:

Brenda G. Craig, City Secretary