

**City Council Workshop
MINUTES**

September 25, 2023, at 5:00 PM

CALL TO ORDER

Councilmember and Mayor Pro Tem Casey Olson called the meeting to order at 5:00 p.m.

Present:	Byron Sanford	Mayor
	Carol Langley	City Council Place #1
	Casey Olson	City Council Place #2
	Sara Countryman	City Council Place #3
	Cheryl Fox	City Council Place #4
	Stan Donaldson	City Council Place #5
Also Present:	Gary Palmer	City Administrator
	Nici Browe	City Secretary & Director of Administrative Services

CALL TO ORDER

Mayor Byron Sanford called the meeting to order at 5:00 P.M.

DISCUSSION:

1. Review of the draft Chapter 380 Agreement Between The Home Depot and City of Montgomery for the Buffalo Springs Drive Roadway Reconstruction and Traffic Signal at SH105W & Buffalo Springs Drive.

Mr. Gary Palmer provided an overview of the negotiations thus far with Home Depot and stated that in the packets this evening there is a 380 agreement with changes that were received late this afternoon, therefore it has not been reviewed by staff or legal counsel. The goal here is to go through it as this is on the city council agenda the next night and can be ready for your consideration.

Clay Trozzo, Real estate broker for Home Depot thanked the council and staff for setting up a workshop to go over details prior to the council meeting.

He went on to explain that the red comments were an attempt to clean up and clarify some points, for instance Home Depot wants to clarify the sales tax amount, that it is 50%.

They also wanted to confirm that the engineering firm has built in a contingency, for instance the \$1.699 million includes \$245,000, and want to know if they could ask for a cap and that they are given a right to approve the General Contractor.

Ms. Katherine Vu, WGA Engineers responded that the city would receive the design and public bid for construction, they don't have any control over the number of bids they receive. She went on to add that she does not have any objection to Home Depot approving the GC.

Clay Trozzo moves to **Page 2** of the agreement.

Mr. Trozzo stated that Home Depot wanted clarification on the completion of construction, what does that mean?

Mr. Palmer, City Administrator, spoke to the City Attorney, Alan Petrov, and asked if he saw anything in the agreement that needs additional review to let him know as they move through it.

Mr. Trozzo stated that Force Majeure was another language Home Depot wanted added to the agreement, due to the issues that could arise much like the recent COVID-19 Pandemic.

Mr. Trozzo stated that he would list changes going forward.

- Language on the agreement "related to the property" has been taken out.
- Improvements, "Any of its agents" has been added.
- Sales Tax Grants, language "Cumulative payment of Annual Sales tax to Home Depot," has been added.
- The final cost is less than \$750,000.

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- Sales Tax Grants, clarify the definition of "Tax Breaks."

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- No developer, as Home Depot are the developer Sub Section D
- Data file of determination

Councilmember Sara Countryman asked when it says "completion" is that at Home Depot or the City's approval of completion.

Clay Trozzo responded that upon all approvals by the City.

Councilmember Stan Donaldson asked Mr. Palmer when the city got these latest edits.

Mr. Palmer responded today at 2:00 P.M.

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- \$2 million Cap – clarify what Home Depot is obligated which is currently: Road Improvement, Signal Improvement and fund the design and management. Placing the cap of \$2 million.

Ms. Vu, WGA stated she is nervous to place a cap as she has no control over the market, which as we have seen over the last two years, the city would have to understand that if they have the cap, anything above that then the city would be obligated to fund.

Councilmember Casey Olson discussed the costs and timelines of the roadway improvements and asked if the city could ask the engineers to obtain bids for the portion that is known and an alternate for the roadway to the rear of the property.

Ms. Katherine Vu stated that this would not give her any heartburn.

Alan Petrov, City Attorney stated that appropriate language could be added to define the road improvements, as boundary of property.

Clay Trozzo stated he would have expected that the numbers that WGA had provided would have been conservative.

Ms. Vu responded that is correct, and based on current construction costs today, with a 20% contingency, however, we do have options to play with the scope somewhat.

Clay Trozzo stated the next item is Home Depot wanted the following inserted: "Within five (5) days of execution of this agreement they will deposit \$137,500 for the design, survey, Geotech and bidding.

Upon bidding, within ten (10) business days deposit.

Ms. Vu responded that this should be separated out as this is confusing. It will be two separate processes. We could include "milestones." The \$137,500 is for design fees for the plans up to the bid. Escrow funds - the next deposit would be the bid amount plus 15%.

Clay Trozzo agreed and sought some more clarification on the design fee/bid processes.

Ms. Vu explained that bidding does not come into play until the design is completed. The signal is being designed by TXDOT, then WGA is construction design management.

Mr. Dave McCorquodale spoke to the Finance Director regarding placing escrow accounts for contractors separately.

(e) Clay Trozzo clarified the payment of \$137,500 for engineering and construction, as he was making sure that the payment gets the city to the Bid point and does not include engineering fees for construction management.

(f) Clay Trozzo continued by stating that Home Depot wants to give written approval on final bid, and changes of scope that exceed \$50,000.

Ms. Vu asked instead of written approval would Home Depot accept doing a concurrence just in case we are in a hurry during the construction and the concurrence would state something like 15%.

(g) Clay Trozzo clarified the deadline as September 1, 2024.

Dave McCorquodale reminded everyone that in construction, deadlines are something the city cannot control, due to mother nature and other unknown issues.

(h) Clay Trozzo added the remaining escrow, Home Depot want the escrow cleared out sixty (60) days after.

(I) Limited Liability, that Home Depot is reliant upon the city to ensure all roadways etc. are built to city standards.

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(6A) seeking clarification on termination provisions – subject to Force Majeure.

Some clean up in the Sales Tax certification section, such as city “SHALL” obtain.

Mr. Alan Petrov, the attorney, stated that the city has to get the sales tax certification.

6.2 term provision: this means that if we do not get sales tax certification then there can be corrective action within 90 days by either party.

Clay Trozzo read the Remedies.

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Clay Trozzo stated that the Home Depot was struck from the language, for the City Attorney to review.

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Clay Trozzo stated that the Home Depot struck from the language Right of Access for the City Attorney to review.

Councilmember Sara Countryman asked that what happens if we have heavy equipment doing the roadway then we decide to do more of the road, would the equipment be in the way, causing access issues.

Councilmember Casey Olson stated that is not what it implies.

Councilmember Sara Countryman stated maybe we should update that language just in case.

Councilmember Casey Olson stated that it would be a non-issue.

Clay Trozzo stated that Home Depot would not be on that portion.

Councilmember Sara Countryman asked if we close the road down to repave it, is there any liability on the city?

Clay Trozzo responded no, as people would likely go to Lonestar Parkway, and everyone still has full access.

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Home Depot wants final determination after all appeals are exhausted and have taken out the non-binding [Section 21].

Mr. Alan Petrov stated that having a requirement means you can file a lawsuit.

Councilmember Casey Olson stated that he prefers mediation as it gives everyone an opportunity to meet before going down the road of a lawsuit.

Clay Trozzo read the next language “needing written consent, right to assign an affiliate before approval.”

Mr. Alan Petrov stated that this is pretty standard with a large organization.

Councilmember Casey Olson said to recap, we had added:

Mediation

Milestone with WGA

Road Improvements with an alternative for going to the rear of the property.

Councilmember Carol Langley inquired if this would be on the agenda tomorrow evening.

Mr. Gary Palmer responded yes that it would be but if the council is not comfortable with it, then we can always call a special meeting for the approval.

Clay Trozzo responded that he would think it would be ready for the next meeting on 10th October.

Councilmember Casey Olson stated there was no way to have all that we have talked about tonight ready for tomorrow.

Mr. Gary Palmer stated that he would call a special meeting and will get a date and go from there.

Ms. Maryann Carl, Finance Director, inquired if Home Depot requires a third-party agent for escrow?

Clay Trozzo responded it uses First American Title.

Ms. Maryann Carl asked if there are any fees that the city is responsible for or is it, Home Depot.

Clay Trozzo responded as he recalled it is on Home Depot.

Ms. Maryann Carl asked if Clay Trozzo and others could help her understand the sales tax piece, not sure she fully understood after the back and forth. The % of sales tax requires because part of sales tax goes to the EDC and part is in lieu of property taxes.

Clay Trozzo responded that at one point there was a push for 100%

Mr. Palmer responded that Home Depot gets 50% of Sales Tax.

2. Review and Discuss Volunteer Committee/Commission Applicants for the Montgomery Economic Development Corporation, Planning and Zoning Commission, and Transportation Advisory Committee

Mr. Gary Palmer introduced the discussion on applications for board and committees. He stated that all applicants are subject to the same qualification as listed in the bylaws.

Councilmember Carol Langley asked if there was one (1) position for MEDC and four (4) applicants.

Mr. Palmer responded that for the MEDC yes.

Councilmember Carol Langley stated that Arnette Easley has been on MEDC before, the other lady she did not know who she is, another applicant is outside of the city, and everyone knows Ms. Simmons.

Mr. Palmer reiterated that there was one (1) person up for reappointment with the Planning & Zoning Commission and two (2) seats available, the reappointment takes care of one, and we do not have anyone who has applied for the other seat.

Mr. Dave McCorquodale stated that Shawn Davis submitted their interest to the Transportation Advisory committee and based on their current position in Conroe, is a no brainer.

Mayor Sanford agreed it was a no brainer.

Councilmember Carol Langley asked how many open seats on the Transportation Advisory Committee?

Mr. Gary Palmer explained and stated that the Chief has provided his designee and there is a city councilmember as well therefore we should be good to go and ready to make those appointments.

3. Discuss Proposed Water Operations Advisory Position.

Councilmember Casey Olson stated we have a resident who is knowledgeable and assists in water data analysis. There has been some concern, however, he is not an employee, and he has access to information which could cause us to be in breach of confidentiality, it's a valid concern. I think we should pay him a dollar a year and make him answer/ report to Gary.

Councilmember Sara Countryman said that she agreed, and we should supply him with a city computer with access to the necessary programs to conduct the analysis.

Mr. Gary Palmer responded that he would get things organized in that direction.

4. Final Review and Discussion on Proposed FY24 Operating Budget

Mr. Palmer stated that they have made changes, and today is about having the floor open before tomorrow night.

Councilmember Casey Olson said we have heard from Mike Muckleroy and heard his concern, and it seems like it would be nice to hear from other departments if they share the same concern.

Councilmember Sara Countryman stated she had received Mike's letter to council, and she appreciates him being the mouthpiece for his employees and the lead for his group, she also is appreciative he has his teams back, however, to address the letter...to call us liars right within the first sentence I don't appreciate that.

Councilmember Countryman outlined her disapproval for receiving the letter from Mike Muckleroy.

She further added that the city should be doing performance-based increases, as opposed to giving everyone COLA as that is a cost-of-living adjustment.

Councilmember Cheryl Fox asked what the difference was between a merit and a bonus, and could the city give bonuses.

Mr. Alan Petrov responded that no the city could not as it would be in violation of Tax Laws.

Police Chief Anthony Solomon stated that for three years there was a fixed COLA amount, and last year there was a 5.5 for everyone, there should have been an additional 6.6 to complete the three years this year, but now you want to do a study.

Mike Muckleroy stated that not getting anything is going to be a tough pill to swallow for his staff.

Ms. Nici Browe stated that everyone in this country is experiencing the same increase in costs at the grocery store, and to address Mikes letter, he is right, you have to value your employees, show them you value them.

Councilmember Sara Countryman exclaimed that the sense of entitlement is outrageous.

Councilmember Casey Olson stated that he does not support a blanket increase and there needs to be a proper salary study completed.

Councilmember Carol Langley stated that people that work at Jims hardware work 9–10-hour days for \$12 per hour and are happy to be there, don't seek bonuses or pay rises.

Mayor Byron Sanford stated that when you work for government you don't look to get rich.

Councilmember Cheryl Fox stated that she wants to do what she was elected to do and that is be good stewards of taxpayer's money.

Councilmember Sara Countryman asked if there was a policy on COLA?

Mr. Palmer stated there was and read it aloud.

Ms. Maryann Carl explained that October 1 is the effective date for any COLA and Merit increases are effective January 1.

Councilmember Carol Langley stated that she would be ok with 4% for 9 months for hourly staff only, and to make sure it is noted that she does not like to be threatened.

Councilmember Sara Countryman added "or insulted".

Mr. Gary Palmer stated that it is evident the city is in need of a class and compensation study. He would make sure the budget reflected enough funds for that and the 4% over 9 months COLA for all employees.

Adjourned at: 5:07 P.M.

Submitted by: Nici Browe, TRMC
City Secretary

Date Approved: _____

Byron Sanford, Mayor