

MINUTES OF REGULAR TELEPHONE CONFERENCE/VIDEO MEETING

April 13, 2021

MONTGOMERY CITY COUNCIL

CALL TO ORDER

Mayor Sara Countryman declared a quorum was present and called the meeting to order at 6:00 p.m.

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| Present: | Sara Countryman | Mayor |
| | Carol Langley | City Council Place # 1 |
| | Kevin Lacy | City Council Place # 2 |
| | T.J. Wilkerson | City Council Place # 3 |
| | Julie Davis | City Council Place # 4 |
| | Tom Cronin | City Council Place # 5 |

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| Also Present: | Richard Tramm | City Administrator |
| | Dave McCorquodale | Assistant City Administrator |
| | Susan Hensley | City Secretary |
| | Alan Petrov | City Attorney |

INVOCATION

T.J. Wilkerson 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. Phillip Lefevre with Lefevre Development said there has recently been a lot of comments concerning his Planned Development and a lot of the comments he has heard seem to be misinformed. Mr. Lefevre said he wanted to go over the background of the Planned Development. Mr. Lefevre said it was almost 20 years since this Planned Development started. Mr. Lefevre said at that time it took an hour in the morning for traffic to get through the town to get to schools and an hour to get back in the afternoon. Mr. Lefevre said there were sporadic water supplies and the City did not have a well on the north side. Mr. Lefevre said because of the traffic issues, the County said they were going to condemn a right-of-way through the Planned Development and did not know where or when, but it would be done. Mr. Lefevre said rather than have things undetermined, he proposed they build a loop and donate it to the City or the County, and within it, they would build other roads and developments to pay for it.

Mr. Lefevre said they agreed to build the loop and came up with a Land Plan that was reviewed at great length. Mr. Lefevre said the Planned Development was contingent on Lefevre Development giving the City a 200,000 gallon a day sewer permit. Mr. Lefevre said they agreed to build roads in the northeast quadrant of the City and put in utilities. Mr. Lefevre said since then property taxes and sales taxes have increased in the City. Mr. Lefevre said in his opinion much of that was started by the Planned Development. Mr. Lefevre said they planned to do what was called new urbanism, which is where you have cumulative zoning. Mr. Lefevre said at the time the lawyer said to do a Planned Development because in 10 years they will not remember what was agreed or why it was agreed. Mr. Lefevre said they had an exhaustive period of time where City Council required specialists to come in and talk to the City. Mr. Lefevre said they went line by line over the agreements and it took a significant amount of time to get the Planned Development pinned down. Mr. Lefevre said it worries him when people say no one heard about how it was done because it was done in the presence of everybody who wanted to attend in the City. Mr. Lefevre said it was not an agreement that was just snuck in the back door or that people did not know about.

Mr. Lefevre said they gave the City the water well site. Mr. Lefevre said he was on the Water Board along with Mr. Randy Burleigh and Mr. Bill Parker and they were not happy with the potential the City would sign up with the SJRA and he knew Mr. Ken Conatser who was the April Sound MUD #3 and #4, operator. Mr. Lefevre said he negotiated with Mr. Conatser the potential of the memorandum of understanding and from there the City took it over and Council voted in favor. Mr. Lefevre said the Planned Development was largely instrumental in Montgomery staying clear of the San Jacinto GRP. Mr. Lefevre said they have Memory Park that has come about and Rotary is largely to thank for that

but that is their property, the library is their property, and Fernland was something they pushed through. Mr. Lefevre said Sam Houston University was originally going to sell those buildings to The Woodlands to put down on the San Jacinto River but they persuaded them to make a deal with the City of Montgomery. Mr. Lefevre said even golf carts are an Ordinance they helped pushed through. Mr. Lefevre said there are a lot of things that hopefully have been good because of the Planned Development.

Mr. Lefevre said if you look around, where people are complaining about apartments and things like that, most of the Planned Development is still grass and cows. Mr. Lefevre said that is a price they have to pay because there are only two ways to control what goes on their land. Mr. Lefevre said one is by not selling to people who they do not think are going to do a good job which is not always easy to do because properties change hands subsequently, and the other is to have architectural control. Mr. Lefevre said with architectural control they still have a limited amount of power. Mr. Lefevre said in the overall picture of things if a property is zoned either by them subsequently, or more importantly, by the City, it is very hard to discriminate. Mr. Lefevre said you cannot discriminate nor should you discriminate based on race, religion, or any of those things. Mr. Lefevre said to him, the discussion about whether apartments or condominiums are better than the other, he feels they cannot dictate what people do on a property that is already eligible to do so. Mr. Lefevre said the only control they have once it gets past them is the architectural control. Mr. Lefevre said the first they saw were those apartments which again was land they had sold a long time ago when they came to them to get some drainage easements and they realized they were building Hardy board apartments. Mr. Lefevre said they exercised their architectural control and in that area, they only have architectural control of wainscot so the only thing they could make them do was to put a wainscot, but beyond that, there was nothing left to do. Mr. Lefevre said it is difficult to control things and it is very difficult to predict 20 years ahead. Mr. Lefevre said for their subdivision they are doing for the first section of Town Creek Crossing which has mandated 70 percent masonry. Mr. Lefevre said everything in that area and including anything across the street with anything they can control will be 70 percent masonry. Mr. Lefevre said he does not personally like the Hardy board but you have to be very careful because as a good example is Grace Point he thinks they are planning on coming in on the west side of the City and they do Hardy board buildings that are nice. Mr. Lefevre said Mr. Jeff Waddell told him he did not want to see lots of tiny lots there and they got the City to agree to 100 lots in Section 2. Mr. Lefevre said when he saw how much dirt had to be moved they realized Section 2 would be three-quarter-acre lots so they would not have to go through and remove every tree and builders would build pads on each

lot as they go and they could protect it. Mr. Lefevre said there is a certain amount of policing as they go, but it frustrates him as they seem to be coming under criticism for the Planned Development when in fact to him the Planned Development is what has largely helped the City be what it is and it is the strictest. Mr. Lefevre said they have had many opportunities to sell to apartments and they have not taken them. Mr. Lefevre said down the line there will be apartments and as a good example just a couple of days ago two backhoes and two heavy dump trucks showed up across on the east side of Buffalo Springs Drive. Mr. Lefevre said that is land that was sold to a very respectable developer and hopefully he will do something that is good but there is no way other than architectural control. Mr. Lefevre said it is very hard, as they go, to keep control of not just the Planned Development but it is hard for the City too because things change. Mr. Lefevre said the people here that have moved in do not know the history. Mr. Lefevre said he just wanted to say that hopefully when the City looks at how they are doing the Planned Development they will be proud of what they have done.

CONSENT AGENDA:

1. Matters related to the approval of minutes of the March 23, 2021, Regular Meeting.
2. Consideration and possible action regarding completion of the one-year warranty period for the Emma's Way Extension Project.

Julie Davis moved to approve the Consent Agenda items as presented. Kevin Lacy seconded the motion, the motion carried unanimously. (5-0)

CONSIDERATION AND POSSIBLE ACTION:

3. Consideration and possible action regarding renewal of the lease agreement with Virginia Adams for the property located at the northeast corner of SH105 and FM149.

Mr. Tramm said this is property the City has leased since 2013. Mr. Tramm said the two primary purposes for use are the City's LED sign at the corner of the intersection and overflow parking and vendor space during festivals on the northern portion of the land.

Mr. Tramm said the proposed lease terms are the same as the current lease terms. Mr. Tramm said the rent is made of two parts. Mr. Tramm said the City makes payment of the annual ad valorem taxes and an additional annual rent fee. Mr. Tramm said the additional annual rent fee was \$1,000 during the initial lease and increased to \$2,500 in the second and current version of the lease. Mr. Tramm said the proposed lease retains the \$2,500 rent fee as the second fee.

Mr. Tramm said the initial term of the initial lease was for 5 years and the second lease that is now coming up for expiration was a 3-year term and they are proposing to renew the lease for a 3-year term.

Mr. Tramm said it is important to note that in order to leave the City's LED sign in its current location, the lease needs to be renewed. Mr. Tramm said staff recommends approval of the lease.

Carol Langley moved to renew the lease agreement for three years with Virginia Adams for the property located at the northeast corner of SH105 and FM149. T.J. Wilkerson seconded the motion, the motion carried unanimously. (5-0)

4. Consideration and possible action regarding a building permit plan review fee exemption for Summit Universal, LP.

Mr. Tramm said in 2014 the developer of Summit Business Park requested an exemption for plan review fees for their development. Mr. Tramm said at that time City Council considered the matter and granted their request. Mr. Tramm said the development plans called for a total of 17 buildings including three building designs. Mr. Tramm said there were eight identical office buildings (Type A), five identical office/warehouse buildings (Type B), and four identical office/warehouse buildings (Type C) that were in those plans.

Mr. Tramm said the developer proposed to pay the adopted plan review fees for the first of each building type and then was to be charged the actual cost for the remaining 14 buildings. Mr. Tramm said the premise of the request was that the development would be built in a rapid timeline and the City Building Official would not need to conduct a thorough review of each building since they were identical to the recent submittal that was presented to the City at that time.

Mr. Tramm said currently in 2021 the development is approximately 50% built out. Mr. Tramm said as an additional factor the City updated its Building Codes in 2019. Mr. Tramm said the extended build-out timeline of the development coupled with updated Building Codes has created a situation where staff cannot adhere to both the adopted City Building Codes and the plan review fee exemption granted by City Council in 2014.

Mr. Tramm said this is the only developer that such an exemption for building permit and plan review fees has been granted by the City. Mr. Tramm said staff recommends that City Council

rescind this exemption that was originally provided to Summit Universal, LP to allow for equal application for the City regulations and a level playing field for all builders and developers in the City. Mr. Tramm said this way the City will be applying the regular City regulations and permitting process for this item.

Julie Davis asked if there were any legal ramifications to withdrawing this. Mr. Tramm said at a staff level anything that is created by City Council can be changed by City Council and in this particular case, both the spirit of this original item was that everything was going to be done quickly and that was seven years ago and here we are seven years later halfway built out. Mr. Tramm said his thought is they do not want to be in a position where they are continuing to try to apply a standard set in 2014, where other items have changed, and if this takes another seven years to build out that is 2028. Mr. Alan Petrov, City Attorney said they have certainly changed circumstances as a result of that to justify action by City Council, as they desire.

Mayor Countryman asked if it is typical that builders like this get grandfathered or is it typical for them to bring it back in front of the current City Council years later and ask for the exemption or just adhere to the Ordinance. Mr. Petrov said because they were granted an exemption, it would be typical for City Council to take action to rescind it and it would not be an item that they would normally come back to. Mayor Countryman asked if this is then atypical for them coming back asking for the exemption. Mr. Dave McCorquodale, Assistant City Administrator said they have not come back to ask for the exemption but, on a staff level they just realized the issues that go along with trying to adhere to a reduced amount for the plan review fee and to actually get the building permits properly reviewed and permitted. Mr. McCorquodale said this item was brought back by the staff to ask for either an affirmation or a rescindment of the exemption City Council granted back in 2014. Mr. McCorquodale said they do not feel, at a staff level, they can say this no longer applies and would need City Council action to say this no longer applies.

Tom Cronin moved to rescind the exemption for Summit Universal, LP to allow for equal application of City regulations and a level playing field for all builders and developers in the City because if continued it would set a precedent. Julie Davis seconded the motion, the motion carried unanimously. (5-0)

5. Update regarding the City Engineer.

Mr. Tramm said approximately two and a half months ago he provided City Council with his recommendation from the City Engineering RFQ process, which was to continue utilizing the services of Jones/Carter as City Engineer. Mr. Tramm said as he explained to City Council at that time, one of the primary factors was the volume of institutional knowledge and experience in the hands of the engineers handling the City's items with the City systems for those two that were assigned to the City. Mr. Tramm said last week he was notified that both of those engineers were resigning their positions with Jones/Carter Engineering and accepting positions with another firm.

Mr. Tramm said he has had multiple meetings and two significant meetings here with Jones/Carter Engineering as they are advising staff how they will continue to provide engineering services to the City and keep everything running from operations items to construction. Mr. Tramm said he also plans to interview WGA Consulting to see if that would be a better path for the City because that is where some of the City's institutional information has gone. Mr. Tramm said if neither of those ends up being the best path for the City, he also can review the recently interviewed firms and decide which is the best direction overall to recommend City Council moving forward. Mr. Tramm said he wanted to get input from City Council before he started moving in any of these directions. Mr. Tramm said he is not looking for any specific action from City Council tonight, but he did want to see if there are any questions or take input from City Council on this item at this time.

Julie Davis asked if WGA was a new firm that handles civil engineering. Mr. Tramm said that is partially true. Mr. Tramm said WGA was not a new firm, they have been around for a while. Mr. Tramm said they are in the process of opening up a new office to do municipal-type work. Mr. Tramm said he intersected with them in the past doing this kind of work, but they have not had a local office and it has not been their primary focus as he understands. Julie Davis said her only concern, even though the two engineers went there was, are they going to be a large enough company to handle what the City needs with the growth and infrastructure needs that are present right now. Mr. Tramm said the firm having the resources to do that work is certainly his top concern but it is not one he can get answered until he can engage them in significant conversations and he did not want to have that conversation without letting City Council know what he was planning to do.

Tom Cronin asked Mr. Tramm what other firms he would interview. Mr. Tramm said at this point if he determines neither Jones/Carter nor WGA would be recommended to be the best option for the City, he has discussed it with the City Attorney and the recent interviews they did with several

other engineering firms were recent enough that he could look into those firms and base a recommendation on those interviews, or chose to reinterview any of those firms based on the changing situation. Mr. Tramm said they still have all of the information and during the last week, several of those firms have contacted him to let him know they would still be interested should that opportunity arise.

Tom Cronin asked what type of agreement they have with Jones/Carter and was it an annual or evergreen agreement. Mr. Tramm said back in January City Council took no additional action other than continuing what they were doing, and the contract we have with them has a seven-day cancellation clause which is typical for firms like this to work with their entities if there is going to be a change. Mr. Tramm said he would expect if that were to be the direction, to ultimately move away from Jones/Carter, they would be very professional in doing that.

Julie Davis said to clarify, their choices are for the City to keep Jones/Carter with brand new staff who do not necessarily know what is going on with the City, move to WGA which the City would keep the existing engineers but they may not be able to have a large enough company to accommodate the City's growth and needs or to shuffle the pot altogether. Mr. Tramm said all those are possible but they are not necessarily limited to just those options. Mayor Countryman said until they hear from WGA they may be just assuming. Mayor Countryman said she has never run across them before so it would be good to hear what they have to offer.

Mr. Tramm said primarily he wanted City Council to know that he is trying to look out for how he sees the best interest of the City and bring that recommendation back to City Council. Mr. Tramm said they do not have to just be sitting here while the personnel that handles our account changes without at least considering our options. Mr. Tramm said it may well be that Jones/Carter is the best choice. Mr. Tramm said without talking and looking at other options he does not know the answer to that and he is not trying to imply that he is specifically planning to move in one direction or another because he just does not know the answers to those questions just yet as this is a new and developing situation. Mr. Tramm said Jones/Carter certainly has a lot of resources available as a larger company, but he wanted to advise City Council that he might be having these conversations before he actually had them and then City Council finds out about them as things are ongoing and he wants to keep City Council as informed as possible on this. Mr. Tramm said, for the time being, the City Engineer remains the firm Jones/Carter and they have a plan in place to continue providing services the City needs. Mr. Tramm said they are working with them as best as possible to make sure that gets done.

Carol Langley asked who was the contact person at Jones/Carter. Mr. Tramm said right now he is dealing with Erich Peterson, Vice President of Municipal and District Services.

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.

POSSIBLE ACTION FROM EXECUTIVE SESSION:

COUNCIL INQUIRY:

Pursuant to Texas Government Code Sect. 551.042 the Mayor and Council Members may inquire about a subject not specifically listed on this Agenda. Responses are limited to the 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.

Mayor Countryman said today while she was watching Commissioner's Court, Mr. Jason Millsaps, Executive Director of Homeland Security, gave an update regarding the City of Montgomery. Mayor Countryman said so that she does not mislead anyone or misspeak, she played meeting video for City Council.

Mr. Millsaps said "I received a late request as I had a City come to me right after the first of the new year and they had failed to respond to our request last year to have funds that they expended out of local funds for COVID related expenses reimbursed by the CARES Act last year, it was a glitch. We showed them where we had sent the request to them two times, unfortunately, the elected official we sent that to had an email system that was not functioning and they did not get that message. After that request came in he got with the Auditor and the Auditor and I agreed not to spend any time auditing those receipts and expenditures that they turned into us until the Court decided whether we were going to honor that late request and reimburse them or not. So if we were to honor it and reimburse them, it's the City of Montgomery, and their request and aggregate without any auditing and reductions due to non-allowable expenses are about \$75,000. Just at my glance at some of these expenditures, it would not be allowed, not all of them, so I'm confident that if the Court approved, that number would come in under \$75,000, however, if you do not

want to participate, I would inform the City that at this time they are not eligible for reimbursement.” A motion was made to reject their request. It was asked what they do with other cities. Mr. Millsaps said, “We had two cities that did not participate and that was the City of Willis and the City of Montgomery, otherwise we reimbursed everyone’s allowable expenses under the CARES Act.” It was asked how many cities are in that situation right now. “It included Conroe, Patton Village, Woodbranch, Magnolia, even The Woodlands Township, which isn’t a city, was included in that, City of Cut and Shoot, everyone was allowed to participate and most of them had.” It was suggested that why not see what they have and then see if they want to approve it or not. “I can do that I mean even if you want to entertain that as the Auditor’s office it is a lot of work to go through that.”

Mayor Countryman said they chose to table it. Mayor Countryman said after learning of these two alleged emails that supposedly were sent to an elected official, she did ask for a record request and she received information today, a stack of emails and after going through these, it is claimed by Meghan Arthur that an email was sent to her from a woman named Karen on October 16, 2020, at 9:15 a.m. and Mayor Countryman stated she has no such email. Mayor Countryman said she has looked in her trash, her inbox, and has looked everywhere and does not have such an email. Mayor Countryman said the second email she claims on October 22, 2020, at 9:46 a.m. from Meghan Arthur. Mayor Countryman said she still does not have that email as well. Mayor Countryman said she has checked with everyone at City Hall, Mr. Tramm, Ms. Susan Hensley, and Mr. Anthony Lasky and they do not have these emails either. Mayor Countryman said to her knowledge no one received these emails and she stated she sent them to scountryman@ci.montgomery.tx.us, for the record. Mayor Countryman said if Jason, Meghan, and Karen happen to see this video, she would love for them to go ahead and they have a copy of those emails that were sent and time-stamped with those times, she would appreciate it if they would send those along.

Mayor Countryman said she is not aware of any glitch during her term as Mayor, nor has she anticipated a glitch and has always received emails. Mayor Countryman said she has never been in a situation where someone says they sent her an email to her proper email address and not received the email. Mayor Countryman said secondly, based on her communication with the City, Mr. Tramm, and Mr. Anthony Lasky, the City of Montgomery only submitted funds for approximately \$16,000 for the COVID reimbursement, and that is a far cry from the \$75,000 that Mr. Millsaps spoke of and said she would like a copy of his figures which she will be making a records request immediately to his office to see what records were sent to him and where he came up with this \$75,000. Mayor Countryman said it is also apparent too that his record-keeping skills are not his strong suit when looking at going back through emails and looking at the communications.

Mayor Countryman said should the records request that she submits and they get back to her do not support the \$75,000 that he has stated, she will be asking for an apology at the next Commissioner's Court because this is misleading information and an untruth.

Mayor Countryman said lastly moving forward, she is going to ask Mr. Tramm, Mr. Lasky, Ms. Hensley, and anyone at City Hall to include herself as well as the Mayor Pro Tem T.J. Wilkerson on any and all emails between the City and County regarding City business and especially when it comes to money and funds. Mayor Countryman said she thinks this is a great opportunity to ensure that all eyes are on such situations and should they ever be available or have an opportunity for Federal funds, or payback funds she wants to make sure several eyes are on all of this.

Mayor Countryman said for the record, this City is run efficiently, effectively, and it is for the benefit of our residents and for someone to say that it is anything but that is offensive and she would like to have proof. Mayor Countryman said she will report back to City Council when she receives the records request on what she finds.

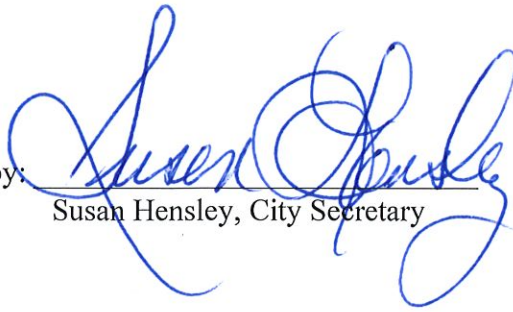
Kevin Lacy asked if there is a possibility to appeal their decision on that or do we need to do more research right now. Mayor Countryman said it is not over. Mayor Countryman said if you look at the video it starts at five minutes and 55 seconds at the Commissioner's Court.

Tom Cronin asked if Mayor Countryman has had any conversations with the City of Willis since they seem to be in the same boat. Mayor Countryman said through the City's defense, they looked hard at what the City submitted to ensure it was proper.

ADJOURNMENT

Kevin Lacy moved to adjourn at 6:40 p.m. Tom Cronin seconded the motion, the motion carried unanimously. (5-0)

Submitted by:



Susan Hensley, City Secretary

Date Approved: _____

Mayor Sara Countryman