

**MINUTES
FEBRUARY 26, 2013
HEATH CITY COUNCIL
200 LAURENCE DRIVE - HEATH, TEXAS
REGULAR MEETING - PUBLIC HEARINGS - EXECUTIVE SESSION**

ATTENDING: LORNE LIECHTY, MAYOR
BRIAN BERRY
ROBERT HILLE
JUSTIN HOLLAND
RICHARD KRAUSE
JULIE ZUREK
ABSENT: BARRY BROOKS, MAYOR PRO TEM

Mayor Liechty called the regular meeting to order at 6:30 p.m. and delivered the invocation

Department and Committee Reports

The reports were included in the Council packet. Director of Public Safety Terry Garrett provided information regarding the annual racial profile report for the 2012 calendar year that was included in the packet. The Council acknowledged receipt of the report.

Discussion and Action Regarding the Minutes of February 8 and February 12, 2013.

MOTION: APPROVE THE MINUTES OF FEBRUARY 8 AND FEBRUARY 12, 2013.

MOTION MADE: BERRY
SECONDED: KRAUSE
APPROVED: UNANIMOUS (Absent: Brooks, Krause)

PUBLIC HEARING - Receive Input Regarding the Creation of a Public Improvement District for the Heath Golf and Yacht Club Residential Development.

(The public hearing was first opened and conducted on January 15, continued to and opened on February 12 at which time it was opened and continued to February 26.) (Krause arrived at 6:43 p.m.)

Liechty opened the public hearing at 6:36 p.m. and invited input regarding the proposed creation of a public improvement district (PID) for the Heath Golf & Yacht Club development.

Roy Heath, 205 James Drive, stated that he welcomed new neighbors but was opposed to use of tax money to fund private development and to the use of any funding mechanism that had not been tested in other areas. Mark Paris, 149 Old Vineyard Lane, inquired as to whether bond debt associated with the proposed PID would be paid by the developer or the City. Mayor Liechty explained that bond issuance would be paid for through assessments on the property and that the City would not be obligated to pay bonds, notes, or any other debt of the district. Liechty stated that the City would be responsible for levy and administration of property assessments and that in the instance of nonpayment would be responsible for foreclosing on properties in default. Joan Ream, 11 Pintail Point, stated opposition to the proposed PID and to the Heath Golf & Yacht Club development and expressed concerns regarding potential conflicts of interest.

Richard Wincorn, 628 Moraine Way inquired regarding the relationship of the proposed PID to the Club Municipal Management District (MMD) No. 1 created by the Texas Legislature in 2011 and as to whether conflicts of interest for the City's financial advisor First Southwest Company might exist due to its association with the MMD. The Mayor stated that the MMD was granted authority to issue bonds and levy assessments and subsequently the developer petitioned for a PID, stating it would be a better instrument for financing the development. Liechty stated that the MMD has a 7-year life and that if no bonds have been issued by September 2018, the City has the authority to dissolve the MMD. Liechty stated that there were no known conflicts of interest for First Southwest Company.

Rob Whittle, president of Whittle Development and Heath Golf & Yacht Club Development provided background regarding subdivisions and projects of his companies and expressed his belief that the Heath Golf & Yacht Club

would be among the finest development in North Texas if allowed to proceed. Whittle reported that his consultants met with the City's financial advisors and were working on resolving stated concerns. Whittle requested that the public hearing be continued to March 26, 2013.

Erin Progelhof, 113 Stoneleigh Drive inquired regarding the benefits and risks to the City of the proposed PID. Liechty stated that potential benefits of the Heath Golf & Yacht Club development included expanded property and sales tax bases, increased revenue and more properties to share costs, enabling the City to enhance services to residents. As to potential risks, Liechty stated that, according to the City's financial advisors, the City's responsibilities would be limited to assessment administration as previously described.

Martha Pinson, 101 Craig Drive, expressed concern regarding water supply for the development and the golf course. Ryan Glaze, Rush Creek Yacht Club Commodore inquired regarding the effect of the proposed dredging of canals. Ron Dawson, 1444 Hubbard Drive inquired regarding the concept plan. Liechty suggested that residents contact the City staff for information pertaining to engineering, platting and zoning of the Heath Golf & Yacht Club development.

There were no others present who chose to provide input regarding the proposed creation of a PID.

MOTION: CONTINUE THE PUBLIC HEARING TO RECEIVE INPUT REGARDING THE CREATION OF A PUBLIC IMPROVEMENT DISTRICT FOR THE HEATH GOLF AND YACHT CLUB RESIDENTIAL DEVELOPMENT TO MARCH 26, 2013.

MOTION MADE: BERRY
SECONDED: KRAUSE
APPROVED: UNANIMOUS (Absent: Brooks)

PUBLIC HEARING – Receive Input Regarding a Request for a Conditional Use Permit to Construct a Guest House/Cabana, 2,620 Square Feet in Area and Built of Like Materials and Design as the Residence on Lot 9, The Hills of Buffalo Creek Addition (1732 Bison Meadow Lane) – Requested by Tim Seymore Custom Homes, Inc.

Liechty opened the public hearing at 7:19 p.m. and invited input regarding the request. (Hille was recused at 7:20 p.m.) Tim Seymore, builder speaking on behalf of property owners Clint and Tamara Pittman, presented the request to construct a guest house/cabana 2620 square feet in area and built of like materials and design as the residence at 1732 Bison Meadow Lane. In response to a question from Roy Heath, 205 James Drive, Seymore stated that the size of the proposed structure was consistent with others within The Hills of Buffalo Creek subdivision and proportionate to the size of the residence. There being no others present to speak in support of or in opposition to the request, the Mayor closed the public hearing at 7:23 p.m.

Discussion and Action Regarding a Request for a Conditional Use Permit to Construct a Guest House/Cabana, 2,620 Square Feet in Area and Built of Like Materials and Design as the Residence on Lot 9, The Hills of Buffalo Creek Addition (1732 Bison Meadow Lane).

The Council reviewed the request and the February 5, 2013 recommendation of the Planning and Zoning Commission that included a condition pertaining to the non-conforming status of an existing accessory building on the property. City Attorney Andy Messer recommended that the provision to either remove or bring the pre-existing non-conforming accessory structure into compliance be separated from the current consideration. Messer stated that the issue of a non-conforming structure could be handled by staff as a related but unconnected issue.

MOTION: APPROVE ORDINANCE 130226 GRANTING A CONDITIONAL USE PERMIT TO CONSTRUCT A GUEST HOUSE/CABANA, 2,620 SQUARE FEET IN AREA AND BUILT OF LIKE MATERIALS AND DESIGN AS THE RESIDENCE ON LOT 9, THE HILLS OF BUFFALO CREEK ADDITION (1732 BISON MEADOW LANE) PROVIDED THAT:

- 1. PRIOR TO ISSUANCE OF A BUILDING PERMIT, A GRADING PLAN OF THE PROPERTY PREPARED BY A REGISTERED ENGINEER IS SUBMITTED AND APPROVED BY THE CITY ENGINEER;**
- 2. CONSTRUCTION TRAFFIC AND DELIVERIES SHALL TAKE ACCESS FROM BISON MEADOW LANE AND NO ACCESS SHALL BE TAKEN FROM MORRISH LANE;**
- 3. TRASH AND CONSTRUCTION DEBRIS SHALL BE DEPOSITED FOR COLLECTION ON BISON MEADOW LANE; AND NO TRASH OR CONSTRUCTION DEBRIS SHALL BE DEPOSITED ON OR COLLECTED FROM MORRISH LANE;**

4. **THERE IS NO PERMANENT ACCESS TO THE PROPERTY FROM MORRISH LANE; AND**
5. **THE PROPOSED RETAINING WALLS AROUND THE PROPOSED GUEST HOUSE/CABANA WILL BE OF LIKE MATERIAL AS THE EXISTING RETAINING WALLS AND DETAILS FOR THE PROPOSED WALLS SHALL BE SUBMITTED TO THE CITY FOR APPROVAL.**

MOTION MADE: HOLLAND
 SECONDED: BERRY
 APPROVED: UNANIMOUS (Absent: Brooks; Recused: Hille)

(Hille resumed participating in the meeting at 7:28 p.m.)

Discussion and Action Regarding a Resolution Approving the Proposed Annual Rate Adjustment as provided for in the Agreement between the City of Heath and IESI TX Corporation and providing an effective date.

City Manager Ed Thatcher explained that the City’s agreement with IESI provided for requests for annual rate increases to reflect changes in the DFW consumer price index. Thatcher provided information regarding services provided and stated that the \$.21 per month increase would not be passed on to residents. Dick Demien, Municipal Marketing Manager for IESI (Progressive Waste Solutions) participated in the discussion and offered to answer questions.

MOTION: APPROVE RESOLUTION 130226A APPROVING THE PROPOSED ANNUAL RATE ADJUSTMENT AS PROVIDED FOR IN THE AGREEMENT BETWEEN THE CITY OF HEATH AND IESI TX CORPORATION AND PROVIDING AN EFFECTIVE DATE.

MOTION MADE: BERRY
 SECONDED: KRAUSE
 APPROVED: FOR: BERRY, HILLE, LIECHTY, KRAUSE, ZUREK
 OPPOSED: HOLLAND (Absent: Brooks)

Discussion and Action regarding a Resolution specifying that an 8-inch diameter sanitary sewer be added to the FM 740 Phase 2 Utility Relocation Project; authorizing the City Manager to enter into agreements with the property owners at 1301, 1303, 1305, 1405, 1407, and 1409 Laurence Drive for sanitary sewer service; and authorizing the City Manager to notify the Texas Department of Transportation (TxDOT) that the City Council has formally added the 8-inch sanitary sewer to the FM 740 Phase 2 Relocation Project, that the City of Heath will have sanitary sewer service available to the residents at 1301, 1303, 1305, 1405, 1407, and 1409 Laurence Drive, and that the City Council of the City of Heath has reaffirmed its direction to the TxDOT that it desires that a 10-foot wide sidewalk be constructed along the west side of the project including the right-of-way necessary for the 10-foot wide sidewalk.

R. Dobbs provided background regarding the Texas Department of Transportation (TxDOT) design of the Phase 2 Improvements to FM 740 project between FM 1140 North and FM 1140 South that includes specifications, as described in City of Heath Resolution 101116A for a 10-foot wide trail with a 5-foot buffer between the roadway and trail to the west and northwest sides. R. Dobbs reported that there were a series of meetings between staff and Council representatives and several property owners along the west side of FM 740 (Laurence Drive) to address their concerns regarding the effect of proposed right-of-way dedications on on-site sewer facility (OSSF) systems and minimum area requirements as specified in Chapter 159, Zoning of the Code of Ordinances. R. Dobbs presented a proposal that the City construct an 8-inch sanitary sewer line and connect the properties situated at 1301, 1303, 1305, 1405, 1407 and 1409 Laurence Drive to the City’s wastewater system at no cost to the property owners, provided that the property owners grant a single purpose 15-foot sanitary sewer easement that would not affect setbacks or lot size as they relate to minimum area requirements. R. Dobbs explained that the cost of the sanitary sewer improvements and connections was included in the estimated costs for utilities relocation related to the project and that in response to property owners’ concerns regarding the City’s commitment to said improvements, the proposed resolution was drafted.

The following residents participated in the ensuing discussion, some expressing opposition to the specifications for a 10-foot trail and others expressing support for the construction of the sanitary sewer lines described by R. Dobbs:

- Connie Nelson - 1407 Laurence Drive;
- Leslie Ledda - 1305 Laurence Drive;
- Jerry Jayroe - 1301 Laurence Drive;
- Clarice Isbell - 1117 Laurence Drive;

Chuck Dale - 804 Smirl Drive;
Blake Bryan - 1303 Laurence Drive;
Bryan Miller - 1107 Laurence Drive (on behalf of Wayne Jones, 1115 Laurence Drive); and
Carl Badgett - 1405 Laurence Drive.

Ledda, Nelson and Jayroe expressed safety, maintenance and liability concerns regarding the sidewalk. Nelson stated her opinion that the proposed easement would result in her OSSF being non-compliant with Texas Commission on Environmental Commission (TCEQ) requirements. Ledda requested that there be a public hearing regarding the planned 10-foot trail on the west side of Laurence Drive and stated her opinion that a 5-foot sidewalk would slow traffic and be less of a risk. Isbell questioned whether a 10-foot trail would be used. Miller, speaking on behalf of Jones, expressed concern that the proposed trail would adversely affect parking for Jones' residence.

Bryan stated that he was planning an addition to his home that would necessitate either connecting to the City's sanitary sewer system or installation of a new OSSF. Bryan stated his preference to connect to the sanitary sewer system but stated that he did not want to proceed in opposition to his neighbors. Badgett expressed support for sewer connection described by R. Dobbs and expressed opposition to the construction of a 10-foot trail.

Liechty explained that the City had indicated its preference in Resolution 101116A pursuant to the City's Master Trail Plan that calls for 10-foot trails wherever possible and pursuant to input from citizens indicating strong interest and support for trails throughout the City. There was discussion regarding how best to proceed in order that the TxDOT Phase 2 Improvements to FM 740 project not be delayed, preferred trail size and alignment and whether and to what extent the City would construct sanitary sewer improvements.

MOTION: APPROVE RESOLUTION 130226B SPECIFYING THAT AN 8-INCH DIAMETER SANITARY SEWER BE ADDED TO THE FM 740 PHASE 2 UTILITY RELOCATION PROJECT; AUTHORIZING THE CITY MANAGER TO ENTER INTO AGREEMENTS WITH THE PROPERTY OWNERS AT 1301, 1303, 1305, 1405, 1407, AND 1409 LAURENCE DRIVE FOR SANITARY SEWER SERVICE; AND AUTHORIZING THE CITY MANAGER TO NOTIFY THE TEXAS DEPARTMENT OF TRANSPORTATION (TxDOT) THAT THE CITY COUNCIL HAS FORMALLY ADDED THE 8-INCH SANITARY SEWER TO THE FM 740 PHASE 2 RELOCATION PROJECT, THAT THE CITY OF HEATH WILL HAVE SANITARY SEWER SERVICE AVAILABLE TO THE RESIDENTS AT 1301, 1303, 1305, 1405, 1407, AND 1409 LAURENCE DRIVE, AND THAT THE CITY COUNCIL OF THE CITY OF HEATH HAS REAFFIRMED ITS DIRECTION TO THE TxDOT THAT IT DESIRES THAT A 10-FOOT WIDE SIDEWALK BE CONSTRUCTED ALONG THE WEST SIDE OF THE PROJECT INCLUDING THE RIGHT-OF-WAY NECESSARY FOR THE 10-FOOT WIDE SIDEWALK.

MOTION MADE: KRAUSE

The motion died for lack of a second.

MOTION: APPROVE RESOLUTION 130226B SPECIFYING THAT AN 8-INCH DIAMETER SANITARY SEWER BE ADDED TO THE FM 740 PHASE 2 UTILITY RELOCATION PROJECT; AUTHORIZING THE CITY MANAGER TO ENTER INTO AGREEMENTS WITH THE PROPERTY OWNERS AT 1301, 1303, 1305, 1405, 1407, AND 1409 LAURENCE DRIVE FOR SANITARY SEWER SERVICE; AND AUTHORIZING THE CITY MANAGER TO NOTIFY THE TEXAS DEPARTMENT OF TRANSPORTATION (TxDOT) THAT THE CITY COUNCIL HAS FORMALLY ADDED THE 8-INCH SANITARY SEWER TO THE FM 740 PHASE 2 RELOCATION PROJECT, THAT THE CITY OF HEATH WILL HAVE SANITARY SEWER SERVICE AVAILABLE TO THE RESIDENTS AT 1301, 1303, 1305, 1405, 1407, AND 1409 LAURENCE DRIVE, AND THAT THE CITY COUNCIL OF THE CITY OF HEATH HAS REVISED ITS DIRECTION TO THE TxDOT THAT IT DESIRES THAT A 5-FOOT WIDE SIDEWALK WITH A 5-FOOT BUFFER BE CONSTRUCTED ALONG THE WEST SIDE OF THE PROJECT FROM THE INTERSECTION OF FM 740 AND FM 140 SOUTH TO WYNDEMERE BOULEVARD INCLUDING THE RIGHT-OF-WAY NECESSARY FOR THE 5-FOOT WIDE SIDEWALK.

MOTION MADE: BERRY

SECONDED: HOLLAND

FOR: BERRY, HILLE, HOLLAND

OPPOSED: KRAUSE, LIECHTY, ZUREK

The motion failed due to lack of a majority.

The discussion continued. Liechty noted that the motivation for undertaking the proposed sanitary sewer improvements was the achievement of the goal to construct a 10-foot trail on the west side of FM 740 and stated that the motivation no longer existed in the instance of a 5-foot trail for which expanded right-of-way was not needed.

MOTION: APPROVE RESOLUTION 130226B THAT SUPERSEDES AND AMENDS ANY PREVIOUS RESOLUTIONS, SPECIFYING THAT THE CITY COUNCIL OF THE CITY OF HEATH REVISES ITS DIRECTION TO THE TEXAS DEPARTMENT OF TRANSPORTATION TO SPECIFY THAT THE CITY DESIRES THAT A 5-FOOT WIDE SIDEWALK BE CONSTRUCTED WITH A 5-FOOT BUFFER BETWEEN THE PROPOSED BACK OF CURB AND SAID SIDEWALK INCLUDING THE RIGHT-OF-WAY NECESSARY FOR SAID 5-FOOT WIDE SIDEWALK AND 5-FOOT BUFFER ALONG THE WEST SIDE OF THE PROJECT FROM FM 1140 NORTH TO THE NORTH PROPERTY LINE OF THE WYNDEMERE II ADDITION AND THAT THE CITY WILL EXTEND SANITARY SEWER LINES FROM THE INTERSECTION OF WILLOW SPRINGS DRIVE AND FM 740 TO THE WEST FM 740 RIGHT-OF-WAY.

MOTION MADE: ZUREK
SECONDED: BERRY
APPROVED: FOR: BERRY, HILLE, HOLLAND, LIECHTY, ZUREK
OPPOSED: KRAUSE (Absent: Brooks)

The Mayor adjourned the meeting for a recess at 9:55 p.m. Liechty reconvened the meeting at 10:12 p.m.

Discussion and Action Regarding a Resolution Dedicating a Sanitary Sewer Easement within the platted area of Lot 5 of the City of Heath & Heath Municipal Benefits Corporation Addition for a future sanitary sewer for the Benefit of the City of Heath.

R. Dobbs presented and answered questions regarding the dedication of right-of-way that reflects the terms of the development agreement for the Lamberth Addition approved by Council on December 18, 2012.

MOTION: APPROVE RESOLUTION 130226C DEDICATING A SANITARY SEWER EASEMENT WITHIN THE PLATTED AREA OF LOT 5 OF THE CITY OF HEATH & HEATH MUNICIPAL BENEFITS CORPORATION ADDITION FOR A FUTURE SANITARY SEWER FOR THE BENEFIT OF THE CITY OF HEATH.

MOTION MADE: KRAUSE
SECONDED: HOLLAND
APPROVED: UNANIMOUS (Absent: Brooks)

Executive Session.

Mayor Liechty adjourned the meeting to go into executive session as allowed by the Texas Open Meetings Act, Government Code: 1.) Section 551.071(2) on a matter in which the duty of the City Attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflicts with the Open Meetings Act regarding Heath Golf and Yacht Club development and bidding procedures involving the Terry Park retaining wall; 2.) Section 551.087: Deliberation Regarding Economic Development Negotiations; and 3.) Section 551.071: Consultation with Attorney - Cause 1-12-656, Texas Media Enterprises L.L.C. dba Rockwall County News v. City of Heath at 10:13 p.m. Liechty reconvened the regular meeting at 11:44 p.m. and stated that no action was taken in executive session. There was no additional discussion or action taken regarding items discussed in executive session.

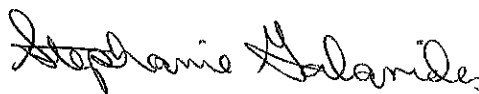
Mayor Liechty adjourned the stated meeting at 11:44 p.m.

APPROVED:



BARRY J. BROOKS
MAYOR PRO TEM

ATTEST:



STEPHANIE GALANIDES
CITY SECRETARY

