

**MINUTES
JULY 14, 2015
HEATH CITY COUNCIL
200 LAURENCE DRIVE - HEATH, TEXAS
REGULAR MEETING - PUBLIC HEARINGS - EXECUTIVE SESSION**

ATTENDING: LORNE LIECHTY, MAYOR
BRIAN BERRY, MAYOR PRO TEM
BARRY BROOKS
JUSTIN HOLLAND
JOE CHAMBERLAIN
RICHARD KRAUSE
KEVIN LAMBERTH

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

Discussion and action regarding the Minutes of June 23, 2015.

MOTION: APPROVE THE MINUTES OF JUNE 23, 2015.

MOTION MADE: CHAMBERLAIN
SECONDED: LAMBERTH
APPROVED: UNANIMOUS

(Absent: Brooks)

(Brooks arrived at 6:31 p.m.)

Discussion and action regarding an ordinance to abandon the right-of-way on Peninsula Court.

(Holland was recused at 6:34 p.m.)

The Mayor explained that the Council's consideration of the right-of-way abandonment stemmed from a prior 2006 action of the City Council and should not be misconstrued as action on the separate request to close the gates at Peninsula Court. City Attorney Andy Messer stated that approval of the proposed ordinance would satisfy the City's obligation as specified in the 2006 Development Agreement pertaining to the Le Chateau and The Peninsula subdivisions to abandon right-of-way and roadway easement on Peninsula Court (previously named St. George Lane). Messer presented and answered questions regarding the proposed ordinance abandoning right-of-way on Peninsula Court. Messer noted that public utility facilities, such as water and sewer infrastructure, and utility easements will remain dedicated to the public and not be abandoned. Krause expressed uncertainty that abandonment of right-of-way on Peninsula Court was intended in the provisions of the 2006 Developer Agreement.

MOTION: APPROVE ORDINANCE 150714A VACATING AND ABANDONING PENINSULA COURT RIGHT-OF-WAY IN THE CITY OF HEATH, TEXAS AND RETAINING A PUBLIC UTILITY EASEMENT AND EMERGENCY ACCESS EASEMENT.

MOTION MADE: CHAMBERLAIN
SECONDED: BERRY
APPROVED: FOR: BERRY, BROOKS, CHAMBERLAIN, LAMBERTH, LIECHTY
OPPOSED: KRAUSE (Recused: Holland)

Consideration regarding a request to close the entry to Peninsula Court – requested by Mr. and Mrs. Sami Ebrahim and Mr. Shawn Marion.

Presentation of request.

Speaking on behalf of the requestors, Trent Petty, 1021 Simmons Drive in Keller, presented the request to close the entry to Peninsula Court. Petty expressed the opinion that the gates should be closed for improved privacy and security for properties in the Le Chateau and The Peninsula subdivisions and to encourage development of the lots on Peninsula Court. Petty also attributed development potential not being fulfilled due to the lack of gate closure, stating the last property to sell in either subdivision was sold in 2007.

PUBLIC HEARING to receive comments regarding the request.

Mayor Liechty provided guidelines for the conduct of public hearings, and then opened the public hearing to receive input regarding the request to close the entry to Peninsula Court at 6:44 p.m. The following residents expressed concerns regarding and/or opposition to the request:

Sherri Mueller	-	121 Darrell Drive;
Donna Dignam	-	114 Autumn Trail;
Rebecca Bowen	-	120 Darrell Drive;
Sherron Hearold	-	130 Gregory Drive;
Paul Adair	-	131 Gregory Drive;
Dawn Dignam	-	104 Autumn Trail;
Jason Sepalak	-	517 Terry Lane;
Jennifer Gagnon	-	128 Autumn Trail; and
Garon Horton, on behalf of	-	Pat and Dave Kirwan, 1 Candlelite Trail.

Items cited included:

- Preservation of public access designated on the plat of the Le Chateau subdivision;
- Emergency services access;
- Safety of children, other pedestrians and bicyclists that use Peninsula Court for access to Terry Lane and Terry Park;
- Existing signage regarding trespassing;
- Lack of safe access to Terry Park should access along Peninsula Court be restricted;
- Whether a study that included impact on traffic, property values and crime had been conducted;
- Access for large vehicles such as trucks and school buses;
- Access for undeveloped property; and
- A general indication of no objection to the gates being closed at night, as established in 2006.

Specifically:

- It was suggested that individual properties in the Le Chateau and The Peninsula subdivisions could be individually gated without compromising the safety of residents who use Peninsula Court for recreation and Park access.
- Horton stated that the 2006 Developer Agreement provided for vehicular and pedestrian access on Peninsula Court as a trade-off for the City abandoning Randles Road, previously a second access to the Candlelite Park subdivision. Horton stated that in his experience, the City tried to preserve 2 points of ingress and egress to subdivisions.
- Mueller stated that a citizen petition expressing opposition to access along Peninsula Court being taken away was submitted on July 13.
- Becky Burkett, 277 Terry Lane suggested that the developer and affected residents work together with the staff to find a mutually acceptable solution.

Speaking in favor of the request:

- Jack Cecil, 708 Starlight Pass, Westchester Homes, contractor for Shawn Marion; and
- Sami Ebrahim, 7 Peninsula Court, resident and owner/developer of Le Chateau.

Specific items cited included:

- Improved security and privacy;
- Continued open access for public safety personnel;
- Concerns for owner liability;
- Private investment in the developments' infrastructure; and
- Improved development potential and consequently tax base.

There being no others present to speak in support of or in opposition to the request, the Mayor closed the public hearing at 7:10 p.m.

Discussion and action regarding the request.

The Mayor invited the requestor to respond to questions and concerns expressed during the public hearing. Petty stated his opinion that Peninsula Court was not intended to be a secondary access and that because it was privately maintained, it would be best to close the gates. Petty also clarified that the last property that was sold in either subdivision was in 2013, not 2007 as previously stated.

The Mayor confirmed that copies of the petition referenced by Mueller were distributed to the Council and that an impact study had not been conducted. The Council discussed items including traffic safety for pedestrians and bicyclists, International Fire Code requirements regarding subdivision access points, authority pertaining to gate closure, goals to install trails along Terry Lane and throughout the City, increased law enforcement at Terry Park and in the vicinity, access for undeveloped land to the south of Candlelite Park and options for gates on individual properties or in between the Le Chateau and The Peninsula subdivisions that would preserve public access to Terry Lane and Terry Park. Messer confirmed that pursuant to the Texas Transportation Code, the Council has authority to close the road to the public. It was suggested that representatives of Candlelite Park meet with Ebrahim to find a solution acceptable to residents and to the developer.

MOTION: APPROVE A REQUEST TO CLOSE THE ENTRY TO PENINSULA COURT PROVIDED THAT 1.) THE DEVELOPER’S AGREEMENT IS AMENDED; AND 2.) THE DEVELOPER REPLACES THE CURRENT GATE WITH A GATE AND LOCKING DEVICES APPROVED BY THE DEPARTMENT OF PUBLIC SAFETY.

MOTION MADE: BERRY

The motion died for lack of a second.

MOTION: APPROVE A REQUEST TO CLOSE THE ENTRY TO PENINSULA COURT PROVIDED THAT 1.) PAVED PEDESTRIAN ACCESS IS MAINTAINED FROM LEMLEY DRIVE TO TERRY LANE AND 2.) AN AMENDMENT TO THE DEVELOPER’S AGREEMENT THAT INCLUDES PROVISIONS FOR RESTRICTION OF VEHICULAR ACCESS AND MAINTENANCE OF PEDESTRIAN ACCESS IS DRAFTED FOR FUTURE COUNCIL CONSIDERATION.

MOTION MADE: BROOKS

SECONDED: LAMBERTH

There was discussion regarding the motion. Krause expressed concern regarding cutting off access for undeveloped property to the south of Candlelite Park.

APPROVED: FOR: BERRY, BROOKS, CHAMBERLAIN, LAMBERTH, LIECHTY
OPPOSED: KRAUSE (Recused: Holland)

(Holland returned and resumed participating in the meeting at 7:59 p.m.)

Discussion and action regarding an application submitted by OMNI A/V, LLC for 6775 Horizon Road for variances to Chapter 151: Signs of the Code of Ordinances.

Jesse Ladd presented and answered questions regarding proposed signage for the Omni building under construction at 6775 Horizon Road.

MOTION: APPROVE RESOLUTION 150714A GRANTING VARIANCES TO CHAPTER 151: SIGNS OF THE CODE OF ORDINANCES AS FOLLOWS:

1. § 151.26 (A)(2)(A) THAT LIMITS THE MINIMUM HEIGHT OF FRONT SIGN LETTERS TO SIX INCHES (6”) TO ALLOW LETTERS FIVE INCHES (5”) IN HEIGHT ON THE SIGN;
2. § 151.26 (A)(2)(B) THAT LIMITS THE MAXIMUM HEIGHT OF FRONT SIGN LETTERS TO EIGHTEEN INCHES (18”) TO ALLOW LETTERS THIRTY-THREE INCHES (33”) IN HEIGHT ON THE SIGN;
3. § 151.26 (A)(3) THAT LIMITS THE MAXIMUM AREA OF THE FRONT SIGN TO FORTY-FIVE SQUARE FEET (45 SQ FT) TO ALLOW A SIGN AREA OF SEVENTY-FOUR SQUARE FEET (74 SQ FT); AND
4. § 151.26 (A)(4) THAT LIMITS THE MAXIMUM AREA OF A SECONDARY REAR SIGN TO ELEVEN SQUARE FEET (11 SQ FT) TO ALLOW AN ATTACHED AWNING SIGN WITH AN AREA OF FORTY-EIGHT SQUARE FEET (48 SQ FT).

MOTION MADE: BERRY

SECONDED: LAMBERTH

APPROVED: UNANIMOUS

Consent Agenda:

- a) **Approve second reading of resolution approving the use of sales tax proceeds to develop a Comprehensive Plan update related to promoting new and expanded business development, and transportation and infrastructure planning which may include costs for consulting.**
- b) **Approve resolution awarding the bid and authorizing the Mayor to execute a Construction Contract for the Annual Street Repair 2014-2015 Phase 2 Project.**
- c) **Approve Resolution authorizing the City Manager to implement Group Health Insurance, Dental Insurance and Medical Flexible Spending Accounts.**

Krause requested that Item "c" be removed from the Consent agenda for separate discussion. Mayor Liechty read Items "a" and "b" of the Consent Agenda aloud.

MOTION: APPROVE ITEM "a" AND ITEM "b" ON THE CONSENT AGENDA AS FOLLOWS:

- a) **APPROVE SECOND READING AND ADOPT RESOLUTION 150714B APPROVING THE USE OF SALES TAX PROCEEDS TO DEVELOP A COMPREHENSIVE PLAN UPDATE RELATED TO PROMOTING NEW AND EXPANDED BUSINESS DEVELOPMENT, AND TRANSPORTATION AND INFRASTRUCTURE PLANNING WHICH MAY INCLUDE COSTS FOR CONSULTING.**
- b) **APPROVE RESOLUTION 150714C AWARDING THE BID AND AUTHORIZING THE MAYOR TO EXECUTE A CONSTRUCTION CONTRACT FOR THE ANNUAL STREET REPAIR 2014-2015 PHASE 2 PROJECT.**

MOTION MADE: CHAMBERLAIN
SECONDED: HOLLAND
APPROVED: UNANIMOUS

Approve Resolution authorizing the City Manager to implement Group Health Insurance, Dental Insurance and Medical Flexible Spending Accounts.

City Manager Ed Thatcher presented and answered questions regarding the proposed resolution that provides for authority to implement group health insurance, dental insurance and medical flexible spending accounts that do not exceed the amount budgeted within a fiscal year. There was discussion regarding the proposed authorization and options for negotiating insurance plans. Krause stated his opinion that Council involvement in negotiating group health insurance could positively affect the process.

MOTION: APPROVE RESOLUTION 150714D AUTHORIZING THE CITY MANAGER TO IMPLEMENT GROUP HEALTH INSURANCE, DENTAL INSURANCE AND MEDICAL FLEXIBLE SPENDING ACCOUNTS.

MOTION MADE: HOLLAND
SECONDED: CHAMBERLAIN
APPROVED: FOR: BERRY, BROOKS, CHAMBERLAIN, HOLLAND, LAMBERTH, LIECHTY
OPPOSED: KRAUSE

Discussion and action regarding an application for a variance to §157.02 (C) of the Code of Ordinances that limits fences in the side and rear yard abutting a street to a maximum height of 4' to allow a fence in the rear yard of 7' in height on Lot 13, Block C, Wellington Ridge Manor addition (2514 Buckingham Drive) - requested by Brandy McPherson.)

The Mayor stated that the City Council had conducted a public hearing for the application on June 9, 2015 and action had been deferred per the applicant's request. Eric McPherson, 2514 Buckingham Drive, presented and answered questions regarding the request for a variance to fence regulations for a recently-constructed 7' fence on a portion of the side yard of the property abutting Cambridge Drive. McPherson stated that the fence replaced a previously existing fence of the same dimensions and that the new fence section varied slightly in height due to the elevation of the lot. McPherson offered his opinion that the fence does not block views for neighboring properties or create visibility issues for vehicular traffic. Staff confirmed that the application for a fence permit requested 6' for the portion of fence in question but that the permit that was issued for the fence included a note that specified only a 4' maximum height for the subject section would be permitted. McPherson stated that he did not notice the note on the permit that limited the subject portion to 4' until after installation was completed and the staff called it to his attention.

MOTION: APPROVE A VARIANCE TO §157.02 (C) OF THE CODE OF ORDINANCES THAT LIMITS FENCES IN THE SIDE AND REAR YARD ABUTTING A STREET TO A MAXIMUM HEIGHT OF 4' TO ALLOW A FENCE IN THE REAR YARD OF 7' IN HEIGHT ON LOT 13, BLOCK C, WELLINGTON RIDGE MANOR ADDITION (2514 BUCKINGHAM DRIVE).

MOTION MADE: BERRY

The motion died for lack of a second. There was discussion regarding the request and whether or not a variance might have been granted had it been requested in advance of the construction. The Mayor requested a motion and none was offered. No action was taken by the Council. The Mayor stated that, in the absence of a motion to approve, the request was effectively denied.

(Holland was recused at 8:31 p.m.)

Application for a zoning change from Agricultural (A) to Planned Development (PD) zoning district for local retail on 14.8 acres of land in the E. Teal Survey A-207 consisting of RCAD tracts 115-03, 115, and 74 (also described as RCAD parcel ID #s 12820, 12817 and 12730 respectively) situated on the southwest corner of the intersection of FM 740, FM 549 and FM 550, Heath, Rockwall County – requested by Double Eagle Properties, LLC;

Presentation of request.

Craig Carney, Carney Engineering in Plano, presented and answered questions regarding the proposed planned development (PD) zoning district for local retail use on 14.8 acres on the southwest corner of the intersection of FM 740, FM 549 and FM 550. Carney described the location and planned uses, elements and amenities including a grocery store anchor, architectural and design requirements, landscaping, benches, pathways and courtyard/patio areas. Carney acknowledged that the original application/concept plan had included a residential component that was withdrawn because of unforeseen circumstances and that the applicant hoped to bring forward that aspect of the PD at a future date. Planning and Zoning Commission Chairman John Main reported that on July 7, the Commission voted (4/2/1 absent) to recommend approval of the request provided that 1) The southern-most entrance on FM 740 is located as far south as possible, subject to TxDOT approval; 2) Prior to submission of a building permit application, the owner, builder or developer of a property within the PD shall submit a site plan to the Commission and City Council for review and approval (pursuant to §159.40 of the Code of Ordinances); and 3) Businesses that are on lots adjacent to FM 740 shall be designed so that the building façade facing FM 740 will appear to be the front of the building.

PUBLIC HEARING to receive comments regarding the request.

Liechty opened the public hearing at 8:44 p.m. Generally, residents expressed support for development of a grocery store in the City. The following residents spoke:

- Teresa Sherman, 702 Laurence Drive expressed concerns regarding the 8' masonry screening wall on the west side of the property, traffic, fuel truck access, and the inclusion of a gasoline service station;
- Donna Dignam, 114 Autumn Trail expressed concerns regarding trail connections, the masonry screening wall, traffic flow and the inclusion of a gasoline service station. Dignam stated that she supported zoning for a grocery store provided it fit in aesthetically with the vision for Heath;
- Dawn Dignam, 104 Autumn Trail expressed concern regarding the inclusion of a gasoline service station;
- Hossain Makvandi, owner of the convenience store at 460 Laurence Drive, expressed concerns regarding traffic, commitment of the grocery store anchor, the inclusion of a gasoline service station and the price of the gasoline offered for sale, and the lack of architectural renderings for proposed businesses;
- Susan Gamez, 602 Laurence Drive, expressed concerns regarding the location being situated between Amy Parks-Heath Elementary School and Heath High School, traffic flow and pedestrian safety within the retail area and the impact on Safe Routes to School projects;
- Rob Whittle, 460 Terry Lane, expressed support for the request and suggested that the City work with the Texas Department of Transportation (TxDOT) to ensure access for Makvandi's store;
- Becky Burkett, 277 Terry Lane, expressed support for the request and concerns regarding maximization of green space, truck traffic flow, the masonry screening wall and the situation of a second gasoline service station in the vicinity;
- Chuck Dale, 804 Smirl Drive, expressed support for the zoning change request.

There being no others present to speak regarding the proposed planned development, the Mayor closed the public hearing at 9:03 p.m.

Discussion and action regarding the request.

The Mayor invited the requestor to respond to questions and concerns expressed during the public hearing. Carney stated that the 8' masonry wall was included as a buffer per the City's zoning regulations for the benefit of directly adjacent properties and that because deliveries were generally at night, truck access should not cause traffic issues. Carney clarified that the proposed pond behind the store would be a constant-level water feature as well as a storm drainage facility. Carney stated that truck access and traffic control measures would be planned and installed as required by TxDOT.

The Council discussed the proposed planned development.

MOTION: APPROVE ORDINANCE 150714B APPROVING A PLANNED DEVELOPMENT (PD) ZONING DISTRICT FOR LOCAL RETAIL USE ON 14.8 ACRES OF LAND IN THE E. TEAL SURVEY A-207 CONSISTING OF RCAD TRACTS 115-03, 115, AND 74 (ALSO DESCRIBED AS RCAD PARCEL ID #S 12820, 12817 AND 12730) SITUATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF FM 740, FM 549 AND FM 550 PROVIDED THAT: 1) THE SOUTHERN-MOST ENTRANCE ON FM 740 IS LOCATED AS FAR SOUTH AS POSSIBLE, SUBJECT TO TXDOT APPROVAL; 2) PRIOR TO SUBMISSION OF A BUILDING PERMIT APPLICATION, THE OWNER, BUILDER OR DEVELOPER OF A PROPERTY WITHIN THE PD SHALL SUBMIT A SITE PLAN TO THE COMMISSION AND CITY COUNCIL FOR REVIEW AND APPROVAL (PURSUANT TO §159.40 OF CHAPTER 159, ZONING OF THE CODE OF ORDINANCES); AND 3) BUSINESSES THAT ARE ON LOTS ADJACENT TO FM 740 SHALL BE DESIGNED SO THAT THE BUILDING FAÇADE FACING FM 740 WILL APPEAR TO BE THE FRONT OF THE BUILDING.

MOTION MADE: BERRY
SECONDED: BROOKS

There was discussion to clarify that the motion included the same provisions as the July 7 Planning and Zoning Commission recommendation for approval. Carney confirmed that the developer hoped to complete the project around the same time as the TxDOT Phase 2 improvements to FM 740 project.

APPROVED: UNANIMOUS (Recused: Holland)

(Holland returned and resumed participating in the meeting at 9:20 p.m.)

EXECUTIVE SESSION

The Mayor recessed the meeting to go into Executive Session (Closed Meeting) in accordance with Government Code: §551.071: Consultation with City Attorney on pending litigation and matters in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act regarding the Heath Golf & Yacht Club development and the City of Heath vs. Samuel Lee Ellis, et al, Rockwall County District Court 382nd Judicial Dist. Cause No. 1-15-606; §551.072: Deliberations regarding real property within Forney Lake's Water Supply Corporation's service area; and §551.074 Personnel Matters pertaining to board, commission and committee appointments at 9:20 p.m. The Mayor reconvened the meeting at 10:18 p.m. and stated that no action was taken in executive session.

Discussion and action regarding executive session items.

MOTION: APPROVE A FINANCIAL SERVICES CONSULTING AGREEMENT PERTAINING TO THE CLUB MUNICIPAL MANAGEMENT DISTRICT NO. 1 (HEATH GOLF & YACHT CLUB MMD).

MOTION MADE: BERRY
SECONDED: HOLLAND
APPROVED: UNANIMOUS

Discussion and action regarding board and commission appointments.

Discussion and action were deferred to a future meeting. No action was taken by the Council.

Discussion and action regarding Comprehensive Plan Review Committee appointments.

Discussion and action were deferred to a future meeting. No action was taken by the Council.

Liechty adjourned the meeting at 10:20 p.m.

APPROVED:



LORNE O. LIECHTY
MAYOR

ATTEST:



STEPHANIE GALANIDES
CITY SECRETARY

