

NOVEMBER 13, 2006

A REGULAR MEETING OF THE CITY OF KINGSVILLE, TEXAS CITY COMMISSION WAS HELD ON MONDAY, NOVEMBER 13, 2006 IN THE HONORABLE ROBERT H. ALCORN COMMISSION CHAMBERS CITY HALL / 200 EAST KLEBERG AVENUE 6:00 P.M.

CITY COMMISSION PRESENT:

Sam R Fugate, Mayor
Charles E Wilson, Mayor Pro-tem
Al Garcia, Commissioner
Stanley Laskowski, Commissioner
Arturo Pecos, Commissioner

CITY STAFF PRESENT:

Carlos Yerena, City Manager
Courtney Alvarez, City Attorney
Edna S Lopez, City Secretary
Robert Rodriguez, Library Director
Frank Garcia, Wastewater Supervisor
Dora Byington, Purchasing Director
Diana Gonzales, Human Resource Director
Mark Rushing, Finance Director
Bob Daehn, Building Official
Al Lopez, Fire Chief
Ricardo Torres, Police Chief
John Garcia, Garage Superintendent
Tricia Ratcliff, Permit Secretary

I. Preliminary Proceedings.

OPEN MEETING

Mayor Fugate called the meeting to order in the City Commission Chambers at 6:00 P.M.

INVOCATION / PLEDGE OF ALLEGIANCE – (Mayor Fugate)

The invocation was delivered by Ms Dora Byington, followed by the Pledge of Allegiance and Texas Pledge.

MINUTES OF PREVIOUS MEETING(S) – Required by Law

Mayor Fugate called for consideration of the minutes from the regular meeting of October 23, 2006. **Commissioner Laskowski made a motion to accept the minutes, as presented, seconded by Commissioner Pecos. The motion was passed and approved by the following vote: Fugate, Garcia, Pecos, Laskowski voting “FOR”. Wilson “ABSTAINED”.**

II. Public Hearing - (Required by Law).¹

NONE

III. Petitions, Grievances, and Presentations.²

1. City Manager's Report. (City Manager).

Mayor Fugate called for the City Manager's report. City Manager Yerena reported on some new appointments: Mr. Bill Donnell, Public Works Director; Mr. Frank Garcia, Wastewater Supervisor; and Mr. Albert Pardo, City Engineer. He announced the retirement of Mr. Jose A Garcia a 30 year employee of the Water Department. Finally, he reported on the JLUS meeting.

2. City Attorney's Report. (City Attorney).

Mayor Fugate called for the City Attorney's report. Ms Alvarez reported on receiving an email from Mr. Cantwell who is stepping down from the ZBA Board, and announced that there are vacancies on other boards. She reported that the City's Christmas party will be on Friday, December 8th. Finally, she stated that she will be recusing herself from Agenda Items 3 & 4 from the regular agenda.

3. City Commission's Reports. (City Commission).

Mayor Fugate called for the City Commission's reports. Commissioner Garcia urged everyone to support the United Way program. Mayor Fugate announced the Brahma play-off game on Friday in Edinburg.

IV. Public Comment on Agenda Items³

1. Comments on all agenda and non-agenda items.

Mayor Fugate called for comments on all agenda and non-agenda items.

Ms Diana Garza, 629 W Lee, she briefed the Commission on a situation regarding her property located at 604 W Alice.

Mayor Fugate called for consideration of the Consent Agenda Items 1 & 2.

V. Consent Agenda

1. Motion to approve final passage of an ordinance amending the zoning ordinance by changing the zoning map in reference to 2.42 Acres located at 221 West Sage Road from "AG" Agriculture to "R-1" Single Family Residential, applicant Ludivinia Benavides. (Director of Development Services).

2. Motion to approve the submission of an application to the Wal-Mart Safe Neighborhood Heroes Grant. The grant is for \$3,000.00 to be specifically used to purchase fitness equipment for the Fire Department. (Fire Chief).

Commissioner Laskowski made a motion to approve the Consent Agenda as presented, seconded by Commissioner Wilson. The motion was passed and approved by the following vote: Fugate, Garcia, Pecos, Wilson, Laskowski voting "FOR".

REGULAR AGENDA

CONSIDERATION OF MOTIONS, RESOLUTIONS, AND ORDINANCES:

VI. Items for consideration by Commissioners.⁴

3. Consider final passage of an ordinance amending the zoning ordinance by changing the zoning map in reference to .2583 Acres out of Lund Addition, Block 7, Lots 5-7, from "R-2" Multi-family to "C-2" Commercial, applicant Ricardo Alvarez. (Director of Development Services).

Mr. Bill Donnell stated this is a request to rezone a total of three lots from R-2 Multi-Family to C-2 Commercial. He added that King Ave is an area of transition within Kingsville in addition to being a gateway into the community. This property will comply with all existing landscaping requirements. This block is predominately residential, but it is surrounded by mixed commercial uses. Staff received five phone calls from property owners within the 200 feet radius, all calls were in support of this proposed use.

Mayor Fugate called for questions or comments. Commissioner Laskowski stated he had a couple of questions for clarification. He asked if the applicant has submitted plans for landscaping the property and if it complies with the City ordinance. He also asked if the owner intends to put in sidewalks on King and 16th Street as required by the ordinance. He stated that he has watched the property development and it doesn't look like there will be concrete sidewalks. He then provided information on new developments that have put in sidewalks. Commissioner Laskowski stated he wants to make sure that his questions are addressed prior to this item moving forward.

Mayor Fugate voiced his concern about this project almost being completed and just now the Commission is voting to rezone this property. He then asked how this happens. City Manager Yerena replied he was not sure how this happens, but that Staff has to do a better job of making sure to stay with the formal process that is in the ordinance and making sure that the citizens comply with what is in the ordinance. Mayor Fugate voiced his concern about this not being the correct procedure. He stated that this puts citizens in a bad position. Mayor Fugate stated that Mr. Alvarez is very fortunate that the neighbors are not complaining. He added that if the neighbors were complaining he would not vote to rezone this. Commissioner Laskowski asked if TXDOT had approved the curb cut for a spillway. Mr. Donnell replied that he would look into that.

Mayor Fugate called for other questions or comments.

Commissioner Garcia made a motion to approve agenda item as presented with the exception of landscaping, upon the requirements of having a landscaping plan made available and approved by the Engineering department, and sidewalks installed on King Street. Mayor Fugate stated that this item is only to rezone the property and there can not be any stipulation, it either passes or does not pass. He added if this is rezoned to commercial the applicant will have to comply with the requirements.

Commissioner Garcia withdrew his motion and made another motion to approve the rezoning request as presented, seconded by Commissioner Pecos. The motion was passed and approved by the following vote: Fugate, Wilson, Laskowski, Pecos, Garcia voting "FOR".

4. Consider final passage of an ordinance amending the zoning ordinance by changing the zoning map in reference to 0.1722 Acres out of Lund Addition, Block 7, Lots 8 & 9, from "R-2" Multi-family to "C-2" Commercial, applicant Guadalupe Alvarez. (Director of Development Services).

Mr. Donnell stated this property adjoins the previous property. Staff received five phone calls from property owners within the 200 foot radius, all calls were in support of this proposed use.

Commissioner Laskowski stated he wanted to make sure that before the Certificate of Occupancy is given, that the building is checked to be in compliance with ADA, and that the landscaping plan has been approved for the location.

Commissioner Laskowski made a motion to approve this property for rezoning, seconded by Commissioner Wilson. Mayor Fugate called for further discussion. Commissioner Garcia asked for clarification on the building being inspected for ADA compliance.

Mayor Fugate stated that Mr. Alvarez is very fortunate that the neighbors are not complaining about this project. He reminded the City Manager that Staff needs to be more diligent in watching for these types of situations.

Mayor Fugate called for a roll-call vote. **The motion was passed and approved by the following vote: Fugate, Garcia, Pecos, Wilson, Laskowski voting "FOR".**

5. Consider final passage of an ordinance amending the zoning ordinance by changing the zoning map for Vista Alegre Addition, Block 1, Lots 18 & 19, from "R-1" Single Family Residential to "R-2" Multi-Family Residential, applicant Manuel Esquivel, Jr. (Director of Development Services).

Mr. Donnell stated this is a two unit structure which is not in compliance with the zoning ordinance; the neighborhood is an established single family area. Staff received four phone calls from residents within the 200 feet radius of this property stating their opposition to this rezoning request.

Mayor Fugate called for questions or comments. Commissioner Laskowski requested that Mr. Bob Daehn, Building Official answer some questions for him. Commissioner Laskowski asked for a brief overview of what happens when someone comes in to make an application for a permit to move a building from one property to another. Mr. Daehn replied there is an application process, they pay a fee, and an inspection of the building occurs to make sure it is suitable to move. Commissioner Laskowski then read the current ordinance. Mr. Daehn stated that is not the procedure that has been in place since his employment. Commissioner Laskowski asked about the permit fees paid by the applicant. Mr. Daehn stated all this occurred on May 20th, and he was not informed of the situation. He continued to say that he was sitting in a secretary's desk and not in the Building Officials desk at the time. He added that he was never made aware of the situation at this location until the other inspector made him aware there was a plumbing problem. During his visit to the location, Mr. Daehn stated that he discovered that the area was not zoned for a duplex. He added that the permit was issued to the address of 1318, not 1314. Commissioner Laskowski provided information on permit fees. Mr. Daehn stated that he did not issue out this permit, and that the permit was issued by Ms. Jennifer Vela, former Permit Clerk. He stated that he was not even aware of this. Commissioner Laskowski stated he is pointing this out to staff.

Commissioner Laskowski complimented the City Manager on the website having all the licensed contractors listed and asked that it be kept current. Commissioner Laskowski stated that now the Commission has to decide whether or not the applicant has to move the property or he gets to leave it there. Mayor Fugate called for other questions or comments. Mayor Fugate stated this puts this Commission in a difficult situation. He stated that the citizens in the neighborhood have been denied due process because the City did not follow the correct procedure. He stated that it has been his position, as Mayor, when the citizens in a neighborhood do not want something he has voted for the citizens' request. Commissioner Pecos echoed the Mayor's comments. He stated that there is a lack of communication among Staff and the citizens are being hurt. He stated that the applicant, Mr. Esquivel did the right thing. He voiced his concern about voting against the citizens. Since the City dropped the ball, he suggested the City should reimburse Mr. Esquivel for his expense if this item was not approved. Mayor Fugate stated that was for a later date. Commissioner Garcia asked what the objections from the neighbors were. Commissioner Laskowski replied that the neighbors just didn't want a duplex in their neighborhood.

Mayor Fugate called for the applicant, Mr. Manuel Esquivel to comment. Mr. Esquivel stated that most of the houses surrounding the duplex belong to him. He asked if this would be approved if he circulated a petition that included the two neighbors within the 200 foot radius.

Mayor Fugate called for questions or comments. Commissioner Garcia stated he would like to see him given the opportunity to circulate the petition.

Commissioner Garcia made a motion to table this item, seconded by Commissioner Pecos. The motion was passed and approved by the following vote: Wilson, Laskowski, Garcia, Pecos voting "FOR". Fugate voting "AGAINST".

As a point of order, Commissioner Wilson stated a signed affidavit would be more in order than a petition, that way they would be relinquishing their rights to complain once again.

TABLED

6. Consider authorizing a change order in the amount of \$53,870.00 for improvements and rehabilitation of a clarifier in the north Wastewater plant and other improvements at both plants. (City Manager).

Mr. Robert Viera, LNV Engineering stated this portion of the project was part of the initial plan which has not been bid out with the clarifier project. He stated that the contractor has said if this is added they will do the job for only the cost of the material. The material cost is approximately \$64,520. There was a change at the South Wastewater Treatment plant that saved \$10, 650. He stated he is recommending approval, since this was part of the original

plan. The change order is for \$53,870. He stated based on his numbers, there is approximately \$248,000 remaining for the remainder of the project.

Commissioner Wilson made a motion to authorize the change order of \$53,870, seconded by Commissioner Pecos. The motion was passed and approved by the following vote: Fugate, Garcia, Laskowski, Pecos, Wilson voting "FOR".

7. Consider awarding bid authorizing electrical repairs to be performed as needed at the lift stations and Wastewater Treatment Plants. (Purchasing Director).

Ms Byington stated this item authorizes electrical repairs to be performed as needed, effective immediately and through September 30, 2007 to the lift stations and the Wastewater Treatment Plants. Based on previous history, this action should not expend more than \$60,000 for these repairs. Since all the improvements to the lift stations have been made or just about completed, the city is hopeful that this amount can be cut down to approximately \$30,000. Funds for this project will come out from the department's annual budget. It is recommended that the bid be awarded to the lowest bidder, T.J. Company, Inc. from Falfurrias, Texas.

Commissioner Garcia made a motion to award the bid to the lowest bidder, T.J. Company, Inc., seconded by Commissioner Wilson. The motion was passed and approved by the following vote: Fugate, Laskowski, Pecos, Wilson, Garcia voting "FOR".

8. Consider introduction of an ordinance abandoning an alley and retaining an easement for utility purposes in Block 2 of the Clyde Addition and in Block 1 of the Eva Addition. (City Manager).

City Manager Yerena stated this is a proposed alley closure at Clyde and Eva Additions. The City would need to retain a utility easement. The city has an eight inch sewer line in this alley and AEP, SWB, and Entex all have utilities within this alley but none have responded with rejections to the alley closure.

Commissioner Laskowski asked if anyone knew what the owner's intent is for the future of this property. He provided the reason for his question. Based on the mobile home ordinance all existing trailer parks prior to the adoption of the 2003 Mobile Home ordinance, were grandfathered. He stated that if this alley is abandoned in essence the property has been increase, and he must comply with the entire new ordinance.

Mayor Fugate stated he is not sure that enlarges the park, and he asked the City Attorney to look into this.

As a point of order, Mayor Fugate advised two citizens that they could not comment at this time.

INTRODUCTION ONLY

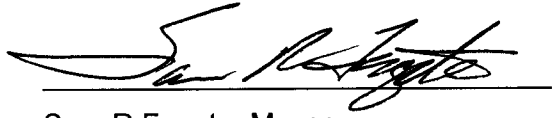
9. Consider introduction of an ordinance amending Chapter XIII, Article 2, Offenses against public peace and safety, Section 13-2-20, providing for a change to the education code cite in the curfew definition for daytime curfew regulations for minors. (City Attorney).

Ms Alvarez stated this was a minor housekeeping matter to the definition site. She stated the site currently in the City's ordinance is no longer valid. The correction is to the TEX. EDUC. CODE, from §21.032 to §25.085.

INTRODUCTION ONLY

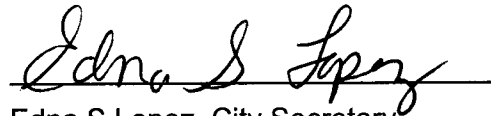
VI. Adjournment.

There being no further business to come before the City Commission, the meeting was adjourned at 6:55 P.M.



Sam R Fugate, Mayor

ATTEST:



Edna S Lopez, City Secretary