

MARCH 6, 2006

A SPECIAL MEETING OF THE CITY OF KINGSVILLE, TEXAS CITY COMMISSION WAS HELD ON MONDAY, MARCH 06, 2006 IN THE HONORABLE ROBERT H. ALCORN COMMISSION CHAMBERS, CITY HALL / 200 EAST KLEBERG AVENUE AT 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
Stanley Fees, City Engineer
Jennifer Cantu, Director of Development Services
Dora Byington, Purchasing Director
Frank Garcia, Interim Wastewater Supervisor
Yolanda Cadena, Health Director
Dianne Leubert, Solid Waste Superintendent
Al Lopez, Fire Chief
Ricardo Torres, Police Chief

I. Preliminary Proceedings.

OPEN MEETING

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

INVOCATION / PLEDGE OF ALLEGIANCE – (Mayor Fugate)

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

MINUTES OF PREVIOUS MEETING(S) – Required by Law

Mayor Fugate called for consideration of the minutes of the regular meeting of February 27, 2006. Commissioner Laskowski made a motion to approve the minutes as presented, seconded by Commissioner Pecos. The motion was passed and approved by the following vote: Fugate, Wilson, Garcia, Pecos, Laskowski voting "FOR".

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 staff working on developing an employee manual which will be presented to the Commission; and reported on training sessions with KISD regarding bomb threats.

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

Mayor Fugate called for the City Attorney's report. Ms Alvarez reported staff working on ordinance revisions; on receiving a draft pass thru agreement from the Water Authority; and on an email from Ms Carol Ann Anderson, KCVB Director with information about the Peddler's Show being held here in Kingsville.

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

Mayor Fugate called for the City Commission's reports. Commissioner Laskowski thanked the Woman's Club on a job well done with the official welcome home for our troops. Commissioner Wilson reported on the Javelina Baseball team being ranked #8 in the Nation, Division II. He added that they would be hosting a game at Whataburger Field, on Tuesday night, March 14th. Mayor Fugate reported on his and the City Manager's visit to Reynosa regarding economic issues which is progressing,

IV. Public Comment on Agenda Items³

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

NONE

V. Consent Agenda

1. Motion to approve a resolution authorizing the submission of an application to the U. S. Department of Justice for the purpose of requesting funding for Bulletproof Vests through the Bulletproof Vest Program Grant. (Police Chief).

Mayor Fugate called for consideration of the Consent Agenda Items 1 & 2. Commissioner Wilson made a motion to remove Agenda Item #2 from the Consent Agenda and to move Agenda Item #7 before Agenda Item #4 in the regular agenda, seconded by Commissioner Laskowski. The motion was passed and approved by the following vote: Fugate, Garcia, Pecos, Laskowski, Wilson voting "FOR".

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

2. Motion to approve final passage of an ordinance amending the City of Kingsville Code of Ordinances by amending Chapter IX, Article 5, Fire Prevention and Protection, providing for fire billing services, definitions, explanation of charges, and fees. (Fire Chief).

Commissioner Wilson stated he removed this item from the consent agenda because he had a few questions and wanted to clarify them before taking a vote. He asked if the fees being charged were for commercial buildings. He voiced his concern about charging utility companies for a service that is not a result of their own doing. Chief Lopez provided an example of an incident, and added that the intent is to apply fees for standing by.

Commissioner Wilson voiced his concern about there not being enough mechanism in place to charge them for an incident that is an act of God. Chief Lopez stated that SOP's will be developed. Commissioner Wilson stated that the way the ordinance reads it does not leave any discretion even after finding a standard operating protocol. Ms Alvarez replied by reading information from Section 9-5-30 Services and 9-5-32 Explanation of Charges #2 & 4. She added that these sections correspond with the services that he had questions on. Commissioner Wilson stated that he was not comfortable with the language and the City should not charge fees for events that are beyond their control.

City Manager stated Staff's intent is to have a mechanism in place to recover staff's time.

Mayor Fugate stated that if it is not outlined like it is in the ordinance then someone will have to make a determination whether it was negligence or not. He added that it is easier and cleaner to have it like it is. Commissioner Wilson stated he is trying to find a balance and is concerned that if they are at fault then they should be held accountable and should pay whatever it costs the City to help in that situation. He added that if it is something is beyond their control it is not fair for them to pay.

Ms Alvarez explained the reimbursement procedure.

Mayor Fugate asked where Staff had gotten the language for this ordinance. Chief Lopez replied the language came from other cities. City Manager Yerena stated that the ordinance was drafted so the insurance could be recovered.

Commissioner Laskowski stated that whether it is a utility company or a business you have to draw the line, if the work is done then the City should get paid for it.

Mayor Fugate called for a motion. **Commissioner Garcia made a motion to approve the agenda item as presented, seconded by Commissioner Pecos. The motion was passed and approved by the following vote: Fugate, Wilson, Laskowski, Pecos, Garcia voting "FOR".**

REGULAR AGENDA

CONSIDERATION OF MOTIONS, RESOLUTIONS, AND ORDINANCES:

VI. Items for consideration by Commissioners.⁴

3. Consider resolution appointing Election Judges and the Early Voting Ballot Board Judge for the City General Election on May 13, 2006. (City Secretary).

Ms Lopez stated that this resolution appoints the Election Judges and the Early Voting Ballot Board Judge for the City General Election on May 13, 2006. The appointments are as follows:

<u>CITY POLLING PLACE JUDGE</u>	<u>PRESIDING JUDGE</u>	<u>ALTERNATE</u>
1 – TAMUK Industrial Tech Bldg.	Selina Perez	Beatrice Garza
2 – School Administration	Diana Garcia	Jo Ann Gaddis
3 – Kleberg Human Res. Center	Estela Rodriguez	Angie Saenz
4 – St. Joseph’s Church Hall	Janie Munoz	Rosa Guerrero
5 – Lamar School	Priscilla A. Cantu	Tana Torres
6 – Perez School	Tony Torres	Vilma Quintanilla

The Early Voting Ballot Board Judge is Ms Mary Flores. Ms Lopez noted a change in the amount of clerks being hired: instead of hiring no more than one (1) clerk; Election Judges can now hire two (2) clerks.

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

AS PREVIOUSLY APPROVED BY THE COMMISSION, AGENDA ITEM #7 WAS HEARD BEFORE AGENDA #4.

7. Discuss only the process for enacting a temporary moratorium on future development for the JLUS within a reasonable distance of Naval Air Station-Kingsville. (City Attorney).

Ms Alvarez stated she had found an interesting state statute and had wanted to check with TML Director of Legal Services, Mr. Scott Houston before passing out any information. After speaking with Mr. Houston, he confirmed the finding that she had come across, which are that things are not as easy as they used to be with regarding to passage of a moratorium on property development. She stated that the memo gives a highlight or summary of the law as it stands. In 2000, after a land developer got stung on a City passing a moratorium, a well-crafted bill was introduced and passed by a lobbyist which significantly curtails Cities abilities to pass development moratoriums. Ms Alvarez then provided information on the statute which states a municipality may not adopt a moratorium on property development unless the municipality: (1) complies with the very specific notice and hearing procedures in Section 212.134 and (2) makes written finds as provided by: (a) Section 212.135 Justification for Moratorium: Shortage of Essential Public Facilities, (b) Section 212.1351 Justification for Moratorium: Significant Need for Essential Public Facilities, or (c) Section 212.1352 Justification for Commercial Moratorium in Certain Circumstances. She stated this is a relatively new statute and there is no case law.

Mayor Fugate asked Ms Alvarez if the JLUS Study fell under any of the circumstances. Ms Alvarez replied the study itself does not. Mayor Fugate asked if under the circumstances of a 1000/2000 ft moratorium this law would allow this type of moratorium. Ms Alvarez replied if initial criteria can be met than basically once you get

to meeting the threshold then you set the boundaries, and a reasonably short time period. The distance could be a part of the geographic boundary that would be set out.

Commissioner Laskowski asked if this particular section of the Local Government Code would prevent the City from adopting ordinances to outline the proper use of land. Ms Alvarez replied no, and added that the Commission still has the legislative ability.

4. Consider removing from the table an ordinance to amend the zoning map in reference to 21.96 acres out of part of K.T.& I Subdivision, Section 23, Lots 4 and 5, of property fronting FM 3320 (Golf Course Road) from AG Agriculture to R-1 Single Family Residential. (Director of Development Services).

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

5. Consider final passage of an ordinance to amend the zoning map in reference to 21.96 acres out of part of K.T.& I Subdivision, Section 23, Lots 4 and 5, of property fronting FM 3320 (Golf Course Road) from AG Agriculture to R-1 Single Family Residential. (Director of Development Services).

Ms Jennifer Cantu, Director of Development Services stated this item was brought before them on the 20th of February in the form of a public hearing, at that time three people spoke. This item went before the Planning and Zoning Commission on February 8th, where it was recommended approval unanimously (7-0), and at the March 6th meeting this item was tabled.

Commissioner Wilson stated this was an important issue not only for the Navy but also for the developer and the City to put this issue to bed. He added that he would hate for it to wait some 9-14 months in hopes that a study would be done by that time. He stated that Ms Alvarez has brought to light other issues that would somewhat circumvent creating a window of non opportunity for other properties in the general area. He added that currently a zoning map is in place and those mechanisms that would let the Commission defend their decisions.

Commissioner Laskowski asked Ms Cantu if she has had an opportunity to review the comprehensive plan to see if this land in question is addressed on that plan. Ms Cantu replied that she had not check for that.

Upon request from Commissioner Garcia, the developer and Navy representative addressed the Commission. Captain Jim Crabb, NAS Kingsville Commanding Officer, stated that the comments he made were neither for nor against. The consideration that he puts to the Commission is the long term future, preservation, mission, effectiveness of the base. Captain Crabb stated his biggest concern is long term through the life span of the T-45 and into whatever the next training airplane might be, or whatever future expanded capabilities the Navy might want to do with the City of Kingsville. Finally, he stated that his concern and goal is to support buffers around the Base.

Mr. Wylie McIlwain, developer for the property, briefly went over the process of the subject site. He stated they are looking forward to starting a nice community around the golf course. The property lies totally out of the AICUZ. The landowner, Dr. Ramey owns thirty-three (33) acres, but only twenty-two (22) acres lie within the city limits of Kingsville. All twenty-two (22) acres are over 1300 feet outside the base fence. The major concern in developing this property is noise mitigation. He stated that from day one, they had voluntarily said all homes would be built within the subdivision as if they were in the AICUZ. They would give a full disclosure to any potential purchaser of property notifying them that would have a sound nuisance area within the area. He stated that although the R-1 allows for basically lots that are 5, 500 feet in size they do not intend to build that high of a density. Finally, he stated that they have tried to satisfy everybody.

Mayor Fugate asked if these were deed restrictions. Mr. McIlwain replied that was correct and homes would be sound proof down to 45 decibels.

Based on this type of rezoning and in this type of situation without substantiation to deny it, Commissioner Laskowski asked if the Commission has the authority to pick and choose. Ms Alvarez replied no, all case law supports that the Commission or the

Planning and Zoning is charged with looking at all the facts available to them at the time that they make their decision, they must act with the public's general health and welfare safety in mind and they can not be arbitrary, capricious, or discriminatory.

Mayor Fugate asked for staff recommendation. City Manager Yerena stated Staff's recommendation feels that the process was created, this will bring in housing, create property taxes after homes are completed, and create additional revenue. Staff's position has always been to approve this based on the fact to create an improved quality of life and diversify economic base by all parties.

Commissioner Garcia provided information he had gathered from the internet of the area around NAS Lemoore, California. He stated that the area around Lemoore, California is encroachment free; the community has provided a space for them to operate. He voiced his concern about safety and that the study would probably not define everything. One thing needed is space. He requested to study the entire issue with developers, property owners, and the Navy.

Commissioner Laskowski voiced his concern about the age of the comprehensive plan. Mayor Fugate commented that he understood Commissioner Garcia's concern, but some of those issues were discussed during the AICUZ meetings in 2005.

Commissioner Wilson stated that Planning and Zoning issues create the most emotion throughout the community because it impacts everyone. He stated that there is no other military community that does more for its Military Base than the citizens of Kingsville. Referring to Captain Crabbe's letter of February 8th; Commissioner Wilson stated that Captain Crabbe clearly understood the dynamics at play here, he expressed his concern for development in that area and he as well laid out three very specific issues that needed to be addressed up front. The developer has made the commitment that this is what they will do. All players have done what they can to make a bad situation good. Finally, Commissioner Wilson stated each individual has to come to a conclusion and make that call.

Taking Commissioner Wilson's one step further, Commissioner Laskowski stated that the Captain did say, give me as much space as you can.

In a final comment from Commissioner Garcia, he stated that this community has waited twenty-six (26) years; he suggested waiting one year to see if there is better information to make a decision.

Mayor Fugate called for a motion. **Commissioner Wilson made a motion to adopt the final passage of the ordinance to amend the zoning map in reference to 21.96 acres out of part of K.T.& I Subdivision, Section 23, Lots 4 and 5, of property fronting FM 3320 (Golf Course Road) from AG Agriculture to R-1 Single Family Residential, seconded by Mayor Fugate. The motion failed by the following vote: Fugate, Wilson voting "FOR". Laskowski, Pecos, Garcia voting "AGAINST".**

6. Discuss and consider appointments to the Joint Land Use Study Policy Committee. (City Manager).

City Manager Yerena stated the memo dictates the terms of the make up of the policy committee. Traditionally, it has been a small committee of elected officials and staff. Recommendation is to include representatives from Kleberg County. The committee will have a unique role in the development in the Joint Land Use Study, specific the development of the RFP and the entire process of it. He stated that in his memo he neglected to include the Navy as a part of this committee.

Upon a question from Commissioner Wilson, Ms Alvarez stated that the committee would be made up of five (5) members. In essence, five (5) members; the Base Commander, the County Judge, Pct 1 County Commissioner, the Mayor and one (1) Commissioner. Commissioner Wilson stated that the Navy can not vote in governmental affairs. Mayor Fugate suggested appointing someone from the School Board.

Mayor Fugate called for a motion. **Commissioner Wilson made a motion that the City's representatives from the Joint Land Use Study are: the Mayor and Commissioner Garcia, seconded by Commissioner Pecos. The motion was passed and approved by the following vote: Fugate, Garcia, Laskowski, Pecos, Wilson voting "FOR".**

8. **Discuss feasibility of procurement of a Lobbyist. (Commissioner Garcia).**

Commissioner Garcia stated this item was just for discussion because the further the City goes along the more the need for help. Not only legislatively with the University but with the City as far as procuring grants and to tackle all the laws that affect the City. He added that someone has approached him, but thought it be best to open up to others. He recommended looking at the cost and benefits derived from that cost.

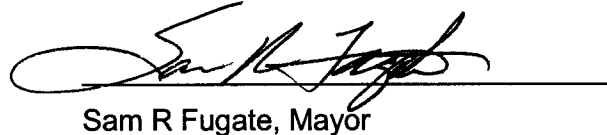
Mayor Fugate agreed it was a good idea, but added that timing might not be good, but this could be looked at during budget time. He stated there are a lot of things in Austin that the City could use some help on.

Commissioner Wilson suggested tasking the City Staff with creating an RFP and putting it out to see what everyone's expectations are and then have a better feel for allocating the service.

Taking that one step further, Commissioner Laskowski suggested including and getting input from County to do a partnership with the City. Mayor Fugate stated that was a good idea because they have been good partners.

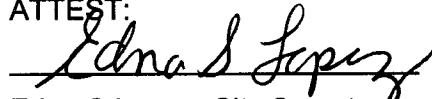
VII. Adjournment.

There being no further business to come before the City Commission, the meeting was adjourned at 7:19 P.M.



Sam R Fugate, Mayor

ATTEST:


Edna S Lopez, City Secretary