

APRIL 5, 2011

A SPECIAL MEETING OF THE CITY OF KINGSVILLE CITY COMMISSION WAS HELD ON TUESDAY, APRIL 5, 2011 IN THE HONORABLE ROBERT H. ALCORN COMMISSION CHAMBERS CITY HALL/200 EAST KLEBERG AVENUE AT 12:00 P.M.

CITY COMMISSION PRESENT:

Sam R Fugate, Mayor
Al Garcia, Commissioner
Charles Wilson, Commissioner
Stanley Laskowski, Commissioner
Arturo Pecos, Commissioner

CITY STAFF PRESENT:

Vincent Capell, City Manager
Edna S Lopez, City Secretary
Courtney Alvarez, City Attorney
Mark Rushing, Finance Director
Naim Khan, City Engineer
Al Lopez, Fire Chief
Willie Vera, Task Force Commander
Diana Gonzalez, Human Resource Director
Yolanda Cadena, Health Director
John Garcia, Risk Manager
Bill Donnell, Public Works Director
Gary Fuselier, Landfill Supervisor
Julian Cavazos, Lieutenant

I. Preliminary Proceedings.

OPEN MEETING

Mayor Fugate called the meeting to order in the City Commission Chambers at 12:00 P.M., and announced quorum as present. He announced if there were no objections, he would forego the formalities.

INVOCATION / PLEDGE OF ALLEGIANCE – (Mayor Fugate)

MINUTES OF PREVIOUS MEETING(S) – Required by Law

Mayor Fugate called for consideration of the minutes of the regular meeting of Monday, March 28th, 2011. **Commissioner Wilson made a motion to approve the minutes from the previous meeting, seconded by Commissioner Laskowski. The motion was passed and approved by the following vote: Fugate, Garcia, Pecos, Laskowski, Wilson voting “FOR”.**

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

NONE

III. Reports from Commission & Staff²

“At this time, the City Commission and Staff will report/update on all committee assignments which may include, but is not limited to the following: Planning & Zoning Commission, Zoning Board of Adjustments, Historical Board, Housing Authority Board, Library Board, Health Board, Convention and Visitor’s Bureau, Chamber of Commerce, Coastal Bend Council of Governments, Conner Museum, Keep Kingsville Beautiful, and Texas Municipal League. Staff reports include the following: Building & Development , Code Enforcement, Proposed Development Report; Accounting & Finance – Financial & Investment Information, Monthly Financial Reports; Police & Fire Department – Grant Update, Police & Fire Reports; Street Updates; Public Works- Building Maintenance, Construction Updates; Park Services - grant(s) update, miscellaneous park projects, Administration –Workshop Schedule, Interlocal Agreements, Public, Information, Hotel Occupancy Report, Quiet Zone, Proclamations, Health Plan Update, Tax Increment Zone Presentation, Main Street Downtown, Chapter 59 project, Financial Advisor presentation. No formal action can be taken on these items at this time.”

City Manager Capell reported he has met with Staff, held his first Staff meeting and has toured some City departments. He stated he was glad to be here. Ms Alvarez stated she’s glad to have Mr. Capell here, and she will be out of the office tomorrow to attend a TCAP Board meeting in Austin.

Commissioner Laskowski announced the Chamber of Commerce and the City will be hosting a Meet and Greet for the new City Manager, Mr. Capell on Tuesday, April 12, 2011 at 5:30 P.M. at the Henrietta Memorial Center.

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. There were no comments.

Mayor Fugate called for consideration of the items in the Consent Agenda, Items 1-4. **Commissioner Laskowski made a motion to accept the Consent Agenda, as presented, seconded by Commissioner Pecos. The motion was passed and approved by the following vote: Fugate, Garcia, Wilson, Pecos, Laskowski voting "FOR".**

V. Consent Agenda

1. Motion to approve Corporate Authorization Resolution for Bank signatories. (City Manager).
2. ORDINANCE NO. ORD2011-11 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, updating the Edition of the International Fire Code. (Fire Chief).
3. ORDINANCE NO. ORD2011-12 Motion to approve final passage of an ordinance amending the City of Kingsville Code of Ordinances Chapter VII, Article 6, Traffic Control Devices; providing for the restriction of parking on both sides of Santa Gertrudis Street from University Blvd to Santa Monica. (City Engineer).
4. RESOLUTION NO. R2011-22 Motion to approve resolution authorizing the Mayor to execute a Certified Resolution and Notice of Appointment of Successor Trustee for the City of Kingsville Employee Benefit Plan Trust. (Human Resource Director).

REGULAR AGENDA

CONSIDERATION OF MOTIONS, RESOLUTIONS, AND ORDINANCES:

VI. Items for consideration by Commissioners.⁴

5. RESOLUTION NO R2011-23 Consider resolution authorizing submission of an application to the Texas Department of Agriculture for funding through the Texas Capital Fund for Real Estate Improvements. (City Manager).

Ms Martha Drake with Grant Works addressed the Commission and stated they were here as a result of the last Commission meeting. The resolution for the Texas Capital fund application was tabled until a more interactive meeting could occur with the representatives from Proco. She stated the owners are present, Mr. Otto Ewer, Mr. Mike Ewer and Ms Stacie Ewer. Ms Drake called for questions or concerns. Mayor Fugate called for questions or comments from the Commission. Commissioner Laskowski stated at the last meeting the Commissions' concern was the term of repayment. The City Attorney has come up with a couple of options, one that he feels comfortable with which would be a ten (10) year repayment amortization over twenty (20) years with a balloon at the end of that ten (10) years. Mayor Fugate called for Mr. Mike Ewer's opinion. Ms Stacie Ewer, chief financial officer for Proco addressed the Commission. She stated it is their feeling to request the twenty (20) years that's offered by TCF because it's to their benefit. Their industry is growing they would like to take advantage of it and they would like to get this done and move on to the next thing. They don't want to have to come back and revisit it in ten (10) years because they won't know where the economy is going to be. If it's not doable they would rather get their financing now, at a good interest rate and keep going forward rather than have to revisit it in ten (10) years when possibly interest rates aren't as good. Ms Ewer added they have always been on the cautious side. Their request is to be approved for the twenty (20) years. They know the City's concerns of what's happened in the past with possibly a previous grant, but they are in a different situation where their business has been around for over thirty (30) years.

Mayor Fugate commented that their industry, Proco is growing. Ms Ewer stated their industry is spread throughout the United States, even in Wyoming. Mayor Fugate stated the Commissions' concern is the twenty (20) year period and leaving that to another administration to deal with in the future. Commissioner Laskowski commented they are talking about 6.5%, and this is a 0% loan. In doing a twenty (20) year amortization, this

would actually cut their payments in half, they would be getting free money for ten (10) years and they will have 50% on the balance of the \$750,000 repaid at the end of ten (10) years. He added they are actually looking at paying the balance of the \$375,000 back in that single balloon or getting financing at that time to handle the balance. Personally, he would like to be free and clear of the City's obligation with their business because his concern is that they don't know what ten (10) years is going to bring to their industry. Commissioner Laskowski added they want to help them grow and they are excited about their interest in expanding their business by adding additional employees but they have to look at the City's position. The City could end up with a piece of property that's land locked. The City would have access to it with a limited cential to solicit to fill those facilities for the ten (10) years.

Ms Drake addressed the Commissioner Laskowski's concerns, stating that if his concern is that the business may go belly up and that the City will be stuck with another building like the Call Center, in this case, the State is going to mandate that there be a protection in place so that if the business does fail they have a guarantee provided to the City of a negotiated form, whether it be a performance bond, a personal guarantee an assignment of asset. These things will still be available to the City so that the City can take and recoup whatever outstanding balance is left. Mayor Fugate asked who would give a personal guarantee. Ms Drake responded it could be the Ewers or a Proco guarantee. Mayor Fugate commented he has never seen a performance bond on a real estate transaction. Ms Drake further explained that the City of Seadrift required it on their Capital Fund grant.

Mayor Fugate asked if the City of Seadrift's resolution had a provision requiring receiving of a performance bond in the amount of the principal of the note. Ms Drake replied it did not, the only thing the resolution had, as does the City of Kingsville's is in Section 4, a requirement for repayment. Therefore, Proco will be required to repay any capital fund monies received according to the terms of the lease agreement that will be between Proco and the City. A sample lease agreement has been sent to the City Attorney and in that; those kinds of stipulations can be made, if the Commission chooses.

Commissioner Laskowski asked how the City would monitor if the bond is in place for the entire length of the loan. Ms Drake replied the same as they would require Proco through the lease agreement that once a year they have to provide to the City proof that the insurance has been maintained. She added that can be added into each of the liability and protections. Commissioner Laskowski stated his experience with the last economic development incentives that were offered to businesses, Lowe's and the Call Center, where the City set down requirements for reporting, the City never received information. He stated it is easy to say to put in writing, but it's not enforceable because the City can't make them give us the information. Ms Drake stated for the term of the grant award period, the City will certainly be receiving information because that would be a requirement of the contract between the City and the State and the sub recipient contract with them. Following that time, if included in the lease agreement some sort of annual reporting the business would comply.

Mayor Fugate asked for the cost of performance bond insurance. He added he has never heard of a performance bond on a payment of a real estate transaction most performance bonds deal with construction projects. Ms Drake replied she really didn't know the cost.

Mayor Fugate asked Ms Ewer if she wanted to sign this note with the City; Ms Ewer replied she feels comfortable and they are being judged and penalized for mistakes other people have made. Mayor Fugate stated they are good people, great citizens and the City wants to help.

Ms Drake provided information on recent real estate awards in other Counties. She stated the Ewers have been here and are members of the community. Commissioner Garcia asked the life of the bond, referring to the information Ms Drake had provided about the City of Seadrift. Ms Drake replied the life of the bond was for the repayment period. Commissioner Garcia commented the problem with bonding companies is that today they may be willing to do it for a three year or five year period, but then that same bonding company will not renew the bond for financial reasons.

Upon a question from Mayor Fugate, City Manager Capell replied his more accustomed to letters of credit.

Commissioner Laskowski reminded everyone about the improvements made at Paulson Falls, Phase III. The City had discussed the requirement of repayment and there's a contract with Mr. Disdar that he has to meet. There was discussion on an insurance to cover that loan or the improvements that were made for him. In Mr. Disdar's findings, he couldn't find any insurance that would cover him for that, so what ended up happening was that the Industrial Foundation pledged their assets or guaranteed the repayment in

the event that Mr. Disdar didn't meet his requirement. Commissioner Laskowski stated not to construe his comments to be negative to Proco. The Commission has a responsibility to the taxpayers to make sure that whatever decisions are made are in the best interest of the community. In the event that the company could not repay the balance then the taxpayers are asked to pay for that and if the City can't get the insurance or the bond, then there has to be some type of document to guarantee the loan.

Ms Ewer stated they could investigate the possibility of insurance for added comfort but they already have funding in place and they have to provide personal guarantee to them. Commissioner Pecos asked how many people are employed with the company at this time. Ms Ewer stated they have seventy (70) employees but will add another seventy (70).

Mayor Fugate stated this will go on the tax rolls, even though the City will own it, because it will be of commercial use at probably about \$700,000.

City Manager Capell stated it is his understanding this is a two (2) step process. So today, they are being asked to approve just applying for the loan, there would be subsequent agreements for a lease or some kind of agreement between the company and the City that actually would line out the terms and provisions of lease rates. He added he understands that saying, yes, to the loan application, the City is committing to following through all the way. The City is kind of saying they will reach an agreement because it is his understanding it's not a popular thing to apply for one of these loans with the State then pull it back. He stated the Commission is trying to gain enough comfort to be ultimately comfortable entering into an agreement. So they are trying to get some ideas as the structure of the final agreement even though they are not being asked to enter into it today. But the reality is they still have more time to talk about the specific lease terms and provisions, and maybe to investigate the insurance issue or letter of credit or the personal guarantees that would make the Commission comfortable on the repayment. City Manager Capell stated the Commission did have an out that they could take, but that would probably not be a good thing.

Commissioner Wilson stated City Manager Capell makes a good point, except Proco needs to understand the Commissions' level, even though they may say they are going to apply for the grant. If Proco is not comfortable to what the City is holding them to, and Proco understands where the City is going, then they might want to get their own financing. It is vitally important that the City give them where the final deal is going to be. He stated that he agrees with City Manager Capell, that they are just here to say let's move forward. Commissioner Wilson stated he thinks the City is best served with a ten (10) and a balloon of ten (10), as is Proco. He added that in ten (10) years, Proco is half way there.

Mr. Robert Ewer stated it's better to lock down what you know for sure. Ms Ewer stated for their level of comfort, they would rather know ahead of time in order to plan. Commissioner Wilson commented he can't speak for everyone but can give the general rule of thumb that they are all happy they are here and the Commission will work with them as far and as long to get the best deal done as to what the Commission believes is best for both.

Mayor Fugate called for further comments or questions. Commissioner Pecos suggested fifteen (15) years for repayment. This would be great for the economy and the citizens. Mr. Ewer stated this will help kids that don't want to go to college.

Ms Drake stated timing from this point forward would be that the final application gets submitted in a week, or so, and at that point the Capital Fund will begin doing its internal credit worthiness, evaluation of the company's financial performance over the last three (3) years, as well as their projections into the next three (3) years. This review will take about one month to six weeks. When their comfortable level is in place, they will schedule a site visit. A meeting will be held to go over rules of the program, the site will be toured, and they will go back to Austin and have a credit committee to do an internal final approval which will take another two (2) to three (3) weeks. Basically there will no contract coming to the City for three (3) months. This would be the time to finalize the any negotiations. Ms Drake stated the Capital Fund is a unique position with their grant pool of money if they award a contract, then the contract is terminated by the locality the Capital Fund loses that economic development money back to the sister agency which goes into the disaster relief fund.

Commissioner Wilson made a motion to approve the resolution authorizing the submission of an application to the Texas Department of Agriculture for funding through the Texas Capital Fund for real estate improvements, seconded by Commissioner Garcia. The motion was passed and approved by the following vote: Fugate, Laskowski, Pecos, Garcia, Wilson voting "FOR".

6. Consider introduction of an ordinance amending the Fiscal Year 2010-2011 Budget for the Solid Waste Capital Projects Fund to allocate funds for a truck and an excavator. (Finance Director).

Mr. Rushing stated this is relation to the Landfill equipment, the excavator and the 14 yd truck. He stated he prepared details on the accumulation of the additional Sanitation revenues. Originally what was implemented was a half click of what was recommended in the increase of garbage rates for Fiscal Year 2007-08 (\$114,247.33); 2008-09 (\$369,225.56); and 2009-10 (\$466,034.72). The offsetting transfer to debt service fund for the related debt service for last fiscal year was \$434,912.00. The available balance at the end of September 30th, 2010, is \$514,595.61. This year the projection is a net difference of \$32,224 when you bring in the revenues in expenditures for this current fiscal year, for sum total at this point and time of \$546,819.61. If this budget amendment is passed for these two items of purchase there would be a residual balance of \$349,422.61.

Commissioner Laskowski suggested to Staff on discussing with Mr. Gary Fuselier, Landfill Supervisor his thoughts and ideas of the future of the Landfill. He stated Mr. Fuselier talked about not needing future cover because he wants to do a permit modification to take the Landfill deeper which would provide adequate cover for the future. Commissioner Laskowski stated the City has \$200,000 that was borrowed for land for future cover. He suggested taking that \$200,000 and using it to cover the cost of this equipment and then save these reserves because Solid Waste will need a couple of new commercial trucks in the next year. If there's not a need for the money for the land, for a future cover then the City should consider utilizing that and not be put in a position to have to do an arbitrage calculation because the City didn't spend the money in a timely manner.

Commissioner Pecos asked what happens if the permit modification is not approved. Commissioner Laskowski stated Mr. Fuselier has plans for alternative cover that will reduce the amount of dirt. He stated the City borrowed money twice to buy the land and the land hasn't been bought. He suggested giving Mr. Fuselier the opportunity to see what he can do in implementing his plans. He requested Staff look at this and come back to the Commission with a recommendation.

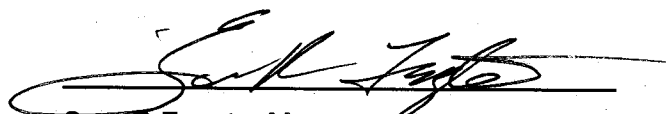
Mr. Donnell stated there's approximately \$240,000 to \$250,000 budgeted for modification. He added that \$120,000 was for the purchase of the land. He stated they were looking at presenting a proposal to the Commission of the modification and taking that money for the modification and using the Sanitation revenue to purchase this equipment. He stated the Sanitation department has two (2) new commercial units, one (1) of the older unit is a 2004 year model that is also being used for commercial and they have four (4) residential. Commissioner Laskowski asked if there was residual on the construction of the Landfill. Mr. Donnell replied yes, there's some. Commissioner Laskowski suggested saving the money for future cash purchases for new equipment. Commissioner Pecos stated what is being suggested is to spend the monies that the City borrowed and put the rest in reserves. Commissioner Laskowski stated the money is already in reserves.

Mr. Fuselier provided information on his plan. Commissioner Laskowski stated the permit modification will be a long term process.


INTRODUCTION ONLY

VI. Adjournment.

There being no further business to come before the City Commission, the meeting was adjourned at 12:42 P.M.


Sam R Fugate, Mayor

ATTEST:


Edna S Lopez, TRMC, CMC
City Secretary