

**BRYAN CITY COUNCIL  
MINUTES OF REGULAR MEETING  
APRIL 26, 2016**

The Bryan City Council held a regular meeting on Tuesday, April 26, 2016, in Room 305 and the Council Chambers of the Bryan Municipal Building, a notice of said meeting having been posted at least 72 hours in advance in accordance with Section 551, Texas Government Code. Mayor Jason Bienski and Councilmembers Al Saenz, Rafael Peña, Greg Owens, Mike Southerland, Ben Hardeman and Buppy Simank were present. In attendance were City Manager Kean Register, City Attorney Janis Hampton and City Secretary Mary Lynne Stratta.

**1. CALL TO ORDER**

The meeting was called to order at 4:20 p.m.

**2. EXECUTIVE SESSION**

The meeting was called into executive session at 4:21 p.m. under the provisions of Section 551, Texas Government Code, to discuss under the authority of Section 551.071, consultation with attorney – receive legal advice regarding enforcement of ethics policy compliance, receive legal advice regarding Chapter 380 Economic Development Agreement with CALJO, Inc., and receive legal advice regarding issues related to compliance with the Brazos Valley Convention and Visitors Bureau funding agreement; under the authority of Section 551.072, real estate – discussion regarding possible sale, lease, conveyance and/or purchase of property in central, north and west Bryan; and under the authority of Section 551.074, personnel – discussion regarding duties and responsibilities of City Internal Auditor and Council self-evaluation.

**3. OPEN SESSION FOR ACTION FOLLOWING EXECUTIVE SESSION**

The meeting was called into open session at 5:48 p.m. No action was taken regarding the items discussed in executive session.

**4. INVOCATION AND PLEDGES OF ALLEGIANCE TO THE U.S. AND TEXAS FLAGS**

Reverend Michael L. Gillen, Abundant Life Assembly of God, gave the invocation and Cub Scout Pack 350 led the pledges.

**5. PROCLAMATIONS AND PRESENTATIONS**

A proclamation recognizing Bryan-College Station Travel and Tourism Week was presented.

**6. HEAR CITIZENS (Approximately 6:00 p.m. – Council Chambers)**

Mrs. Debra Miller, 714 Williamson Drive, encouraged town hall meetings with citizens and spoke about the Council's ethics policy and ethics training. Mr. Larry Gilbert, 2902 Highway 21 West, thanked Council for hearing Castle Heights neighborhood residents' concerns about flooding. Public Works Director Jayson Barfknecht was thanked for work on the creek to help prevent flooding. He also expressed that City staff members should not attend Councilmembers' town hall meetings. Ms. Dimple Wilson Suseberry, 1404 Conroy Street, expressed appreciation for the improvements in the

Castle Heights neighborhood and reported there was no flooding during the last rain event. She added residents in that neighborhood did not want their homes bought out by the City. She thanked Neighborhood and Youth Outreach Coordinator Bubba Bean for his efforts to help clean up the neighborhood. Mr. George Lewis, 1201 Clark Street, also expressed appreciation for improvements to the Castle Heights neighborhood. Mr. Eric Guyton, 1104 Clark Street, reported his mother's home in Castle Heights had flooded in the past and recommended additional improvements to the creek to help prevent future flooding. Mr. John Miller, 714 Williamson Drive, spoke about behavior of board and committee members.

## **7. CONSENT (AUTOMATIC APPROVAL) AGENDA**

It was announced agenda item 7 c would be removed from the consent agenda for separate consideration. Councilmember Peña made a motion to approve the remainder of the consent agenda. The motion was seconded by Councilmember Owens and carried unanimously.

### **a. Consideration – Two-Dimensional Flooding Analysis Engineering Contract**

Consider awarding a professional services contract for city-wide, two-dimensional flooding analysis to Lockwood, Andrews & Newnam, in an amount not to exceed \$69,630. Source of Funds: Drainage Fee Fund.

### **b. Consideration – Second Amendment to Chapter 380 Agreement - 1179 Joint Venture 1, L.P.**

Consider amending the Chapter 380 Economic Development Agreement with 1179 Joint Venture 1, L.P., by replacing the word "Riverstone" with "Stonebrier" in the second recital and replacing Phase "3" and "4" with Phase "1" and "2" in the title block of Exhibit "C" to match the final plat of property.

### **d. Second and Final Reading of an Ordinance – Texas Municipal Power Agency Alternate Governance**

Second and final reading of Ordinance No. 2147 adopted concurrently with the Cities of Denton, Greenville and Garland electing the provisions of Subchapter C-1 of Chapter 163, Texas Utilities Code, providing for alternate governance of the Texas Municipal Power Agency.

Council then considered the item removed from the consent agenda for separate consideration.

### **c. Consideration – Downtown Improvements Program Grant Applications**

Special Projects Director Lindsey Guindi recommended the grants to be funded. Councilmember Peña moved to approve the 11 grant requests for façade improvements as part of the Downtown Improvements Program (DIP); nine of those requests were recommended for approval by the DIP Review Panel and Historic Landmark Commission; and to approve six requests that were recommended for approval in the following amounts for buildings located at: 105 North Main Street \$10,000, 112 South Main Street \$5,000, 200 West 26<sup>th</sup> Street \$2,100, 205 South Parker Avenue \$21,250, 212 North Bryan Avenue \$17,814, and 509 South Bryan Avenue \$1,493. Three requests are recommended for conditional approval in the following amounts for buildings located at: 121 North Main Street \$15,000, 301 North Main Street \$12,000, and 308 North Bryan Avenue \$15,000. Two requests are not recommended for funding for buildings located at: 307 South Main Street \$10,520, and 201 South Main Street \$11,662 (Source of Funds: Tax Increment

Reinvestment Zone #21 Fund). The motion was seconded by Mayor Bienski. Councilmember Peña then moved to amend the main motion to provide that if the remaining \$30,000 of program funds were not used by previous applicants by May 30, it be used toward the 105 North Main Street project. The motion to amend was seconded by Mayor Bienski and carried unanimously. The main motion as amended carried unanimously.

## **8. STATUTORY (AUTOMATIC APPROVAL) AGENDA**

Councilmember Owens moved to approve the statutory agenda. The motion was seconded by Councilmember Hardeman and carried unanimously.

### **Consideration – Bryan City Cemetery Expansion Change Order No. 3**

Consider the approval of Change Order No. 3 to the City of Bryan Cemetery Expansion Contract to CLM Energy Services, L.L.C., in an amount not to exceed \$116,551.94 and authorizing to reset the City Manager’s change order authority for this project. Source of Funds: Street Improvement and Cemetery Trust Funds.

## **9. REGULAR AGENDA**

### **a. Consideration – Ethics Policy Training**

Councilmember Southerland moved to direct staff to provide an update on ethics policy training for new board, committee and commission members at a future meeting. The motion was seconded by Councilmember Peña and carried unanimously.

### **b. Consideration – Report from Council Wastewater Committee**

Councilmember Southerland reminded Council a subcommittee of Councilmembers Peña and Southerland were asked to bring back sales contract(s) for the 90 percent of Bryan’s wastewater effluent that is now being discharged into creeks and rivers. He listed the contacts he had made about this topic. He mentioned the Brazos Valley Groundwater Conservation District had advised that in the future there may be opportunities to inject wastewater back into the ground. Councilmember Southerland brought up a previous offer by Dow Chemical to buy some of the effluent and said Dow was still willing to work with the City. Councilmember Peña added Dow was willing to buy the effluent under a 25-year contract. Questions were posed as to whether Dow offered the same price as before. Public Works Director Jayson Barfknecht advised the current offer from Dow was not significantly different from the previous offer, which he felt was extremely low for the effluent based on other cities’ contracts in this regard. He said the proposed contract with Dow was not advantageous to the City of Bryan and was written heavily in Dow’s favor. Dr. Barfknecht then advised he believed there were other potential buyers and asked for the opportunity to determine offers from other entities.

### **c. Consideration – Bryan City Staff Participation in Community Meetings**

Councilmember Hardeman moved to direct the City Manager to designate a City staff member(s) to attend all “town hall” meetings, neighborhood association meetings and other announced community meetings at which a councilmember is in attendance, participating in an official capacity, and/or addressing any issues that may come before the City Council. The staff member would be expected to make an audio recording of the meeting and provide minutes or highlights to the Council and appropriate staff identifying any significant comments or discussions that may

require follow-up communication. The motion was seconded by Councilmember Simank. Councilmember Southerland moved to substitute Council committees instead of community meetings, but the City Attorney advised the substitution was not germane. Discussion followed about the pros and cons of having City staff members present at meetings where Councilmembers were communicating with citizens about city business. It was pointed out that neighborhood associations were their own entities and if their members desired a staff member to be present, they would submit that request. Councilmember Owens then moved to amend the motion by removing neighborhood associations from the main motion. The motion was seconded by Councilmember Southerland. Discussion followed about which meetings should be included in the motion. Concern was expressed about singling out certain individuals or meetings rather than all meetings with Councilmembers in attendance. Councilmember Owens withdrew his motion to amend. Discussion returned to the pros and cons of having City staff members at these meetings. Councilmember Simank moved to postpone consideration until legal advice could be provided in executive session within the next 30 days. The motion was seconded by Councilmember Southerland. The motion to postpone carried with five yeases and two noes (Mayor Bienski and Councilmember Hardeman).

**d. Presentation by Weaver and Tidwell, L.L.P., Concerning Expenditures Related to the Traditions Project**

Councilmember Southerland moved to postpone this report for 30 days. The motion was seconded by Councilmember Saenz. It was pointed out this item was not posted for action but rather to hear the report from the forensic investigator/independent auditor, who traveled to the meeting from the Dallas area. Mr. Register reminded Councilmembers he had informed them earlier that the forensic investigator's report would be presented to Council in open session. Discussion followed about the merits of hearing the report or postponing. Mr. Register again pointed out everyone on Council had agreed to this procedure. Accordingly, the motion to postpone failed to carry by a vote of three yeases (Councilmembers Saenz, Peña and Southerland) and four noes (Mayor Bienski and Councilmembers Owens, Hardeman and Simank).

Mr. Brian Reed, forensic investigator/auditor with Weaver and Tidwell, presented the results of his investigation into costs associated with the Traditions project. He described the methodology he employed in reaching his conclusions. He advised his review included financial information from the beginning of the Traditions project through the current time, including every kind of expenses, financing costs, outflows, etc. Mr. Reed then reviewed those figures, which coincided with the figures previously provided by City staff regarding the costs of the Traditions project. He also reported he had reviewed cost figures submitted by a Councilmember, but found those figures to be inaccurate. He explained the differences between the two sets of figures and broke down the project related costs. He explained what would rise to the level of project costs and also advised that bond revenue and the cost of a project component could not be counted twice in calculating costs as it was the "same money". Mr. Reed then reported he conducted these types of forensic investigations frequently. Mr. Reed listed the discrepancies noted in the cost figures submitted by the Councilmember. Mr. Reed opined that the Traditions development had added value to the land involved since upscale homes and a signature golf course were already built, a hotel and senior living center were under construction, and many companies were putting money into operations in the area. He reported the Traditions project had already generated a \$5 million profit and the City had benefited from almost \$14 million in land sales. Chief Finance Officer Joe Hegwood reported that after Mr. Reed's forensic investigation/audit, his total project costs differed by only one dollar (\$1.00) from the staff's figure of project costs. He advised the \$1 difference was due to rounding. In response to a question posed by a Councilmember, Mr. Reed stated he saw nothing in the City's numbers that would cause him concern. Mr. Reed added he

had never done work for the City of Bryan before this assignment and had not met the City Manager until the prior week.

Councilmember expressed that after hearing Mr. Reed's report, it was time to move forward and work towards making Bryan as successful as possible. It was opined that the Traditions project was one project that had generated interest in Bryan and would pay for itself. It was also stated that none of the current Councilmembers had voted to begin the Traditions project, but at that time, the Council wanted to see west side development and used the Traditions project as the catalyst for that growth. It was again asked that the Council move forward and allow the staff to return to their regular duties.

**e. Consideration – City Manager Production of Financial Information for Councilmembers**

Councilmember Hardeman moved to deny the request to direct the City Manager or designee to provide the following information to Councilmembers Southerland and Peña and any other Councilmembers desiring the information. The information in items 1, 2, 3 and 5 have been requested for over 30 days. This total request shall be produced by noon, on May 10, 2016:

1. For the Period FY 98 thru 4/15/2016  
An Excel spreadsheet in the format attached with the addition of the accounting year for each activity expenditures or revenues in funds:
  - a. 280 TIRZ 10
  - b. 506 BCD
  - c. and any other fund including BTU that has any activity related to or benefiting the Traditions Project.
2. For the Period FY 98 thru 4/15/2016  
All land transactions in TIRZ 10 or in the Traditions project from BCD to the Traditions Partners and from the City of Bryan to BCD or Traditions projects in an excel spreadsheet.
3. For the Period FY 98 thru 4/15/2016  
List of all projects in the Traditions project area.
4. For the Period 6/1/2015 thru 4/15/2016  
A copy of all emails to or from any City staff member or any Councilmember to or from any other party (including between staff and Councilmembers) and to or from any party to any staff members or Councilmembers that pertain to any aspect of the Traditions project, Traditions Partners, Traditions area projects, Traditions land transactions, TIRZ 10 projects and personal notes pertaining to the same subjects.
5. For the Period FY 98 thru 4/15/2016  
An Excel spreadsheet listing all permits issued and fees waived that are associated with any of the following agreements:
  - a. Amended and Restated Master Economic Development Agreement
  - b. Reclaimed Water Agreement
  - c. TIRZ #10 Economic Development Agreement for the Atlas Hotel (also under Chapter 311 of the Tax Code)
  - d. TIRZ #10 Economic Development Agreement for the Atlas Town Center (also under Chapter 311 of the Tax Code).

The motion was seconded by Councilmember Simank. It was stated the forensic investigator's report indicated there were no problems with the City's accounting of Traditions project costs. It was opined the City staff needed to return to their important work of moving the City forward, and that this issue needed to be put to rest. Mr. Register reported staff was already working to produce records regarding the Bryan Commerce and Development, Inc., expenses and revenues as requested by two Councilmembers. Mr. Register stated he had offered twice before to sit down with the two Councilmembers requesting the records and suggested a meeting take place as soon as possible, which one of the Councilmembers agreed to. Chief Finance Officer Joe Hegwood reported the delay in providing the extensive information requested was due to the legal deadline to finish the Comprehensive Annual Financial Report. He advised the staff spent eight hours in programming time alone to produce the data relative to the first request for information that was filed by the two Councilmembers. Mr. Hegwood reminded Council that since the Traditions project began, the City was required to change its accounting structure. The Councilmembers submitting this agenda item agreed to remove item 4 above from the list of documents requested. At the end of the discussion, it was agreed a meeting would take place between staff and one of the Councilmembers to clarify and simplify the process. Council was advised that Councilmembers have the right of access to City documents and information regardless of the vote on this item; however, the staff does not have to create new reports or forms. Concern was expressed that even if the staff provided everything requested, more time consuming requests would be forthcoming. A Councilmember added this would be the last information he would request regarding the Traditions project. The motion to deny carried with four yeses (Mayor Bienski and Councilmembers Owens, Hardeman and Simank), two noes (Councilmembers Saenz and Peña) and one absent (Councilmember Southerland had left the meeting at this time).

#### **10. CITY MANAGER REPORT**

Mr. Register did not provide a report.

#### **11. ITEMS OF COMMUNITY INTEREST**

Councilmembers listed items of community interest, as follows. Staff was thanked for drainage improvements in the Castle Heights neighborhood, a new pavilion to be built in Castle Heights Park, and the Castle Heights neighborhood cleanup project. Bryan and Rudder High School baseball teams were congratulated on their successful seasons. Also mentioned were town hall meetings, Texas A&M University student employee of the year ceremony, activities for senior citizens, etc.

#### **12. ADJOURN**

Without objection, the meeting was adjourned at 8:31 p.m.

---

City Secretary Mary Lynne Stratta

---

Mayor Jason P. Bienski