

**BRYAN CITY COUNCIL  
MINUTES OF REGULAR MEETING  
MAY 10, 2016**

The Bryan City Council held a regular meeting on Tuesday, May 10, 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. Also present were Deputy City Manager Hugh Walker, City Attorney Janis Hampton and Assistant City Secretary Christina Cabrera.

**1. CALL TO ORDER (Room 305)**

The meeting was called to order at 4:19 pm

**2. EXECUTIVE SESSION**

The meeting was called into executive session at 4:19 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 issues related to compliance with the Brazos Valley Convention and Visitors Bureau funding agreement, receive legal advice regarding Councilmember Charter residency requirements and open records issues, receive legal advice regarding obligations and liabilities for release to the public of certain information under the Texas Public Information Act; under the authority of Section 551.072, real estate – discussion regarding possible sale, lease, conveyance and/or purchase of property in west Bryan; and under the authority of Section 551.074, personnel – discussion regarding duties and responsibilities of City Attorney.

**3. OPEN SESSION FOR ACTION FOLLOWING EXECUTIVE SESSION, IF NECESSARY**

The meeting was called into open session at 6:09 p.m. Councilmember Hardeman moved that the Council direct the City Attorney not to raise the discretionary exception under Government Code Section 552.108 (a) 2 on the grounds that the information concerns an investigation that concluded in a result other than a conviction or deferred adjudication concerning a member of the City Council of the City of Bryan, Texas. Mayor Jason Bienski seconded the motion. Discussion regarding the motion followed. Councilmember Peña moved to postpone consideration until the Attorney General ruled on the discretionary information. Councilmember Southerland seconded the motion. Discussion followed regarding the merits of postponing consideration. The City Attorney pointed out that if the main motion passed, only the discretionary information would be released; information that may be confidential by law would still be redacted and would not be released without the Attorney General's ruling. After further discussion, the City Attorney clarified it is routine practice for the City not to release discretionary information on incidents that have not resulted in prosecution. It was opined the public has a right to know information about elected officials. It was also opined that politics should not enter into decision making of elected officials in order to govern fairly. City Attorney Hampton pointed out that even when the City raises the discretionary exception with the Attorney General on an incident that did not result in prosecution, the City is still required to release the basic front page information of the police report; the narrative part of the report would not be released. Council discussion continued. The motion to postpone consideration until the Attorney General ruled failed to carry with vote of three ayes (Councilmembers Saenz, Peña and Southerland) and four nays (Mayor Bienski and Councilmembers Owens, Hardeman, and Simank). Discussion followed about the main

motion. (Councilmember Peña left the dais for a short period of time during the discussion). The main motion passed by a vote of four ayes (Mayor Bienski and Councilmember Owens, Hardeman and Simank) and three nays (Councilmembers Saenz, Peña and Southerland). Councilmember Hardeman moved that the Council direct the City Attorney to request the County Attorney, District Attorney or Attorney General initiate a quo warranto action concerning qualifications of Councilmember Rafael Peña to serve on the Bryan City Council. Mayor Jason Bienski seconded the motion. Discussion followed about Charter requirements regarding residency, the State law definition of residency, intent to return after temporary absence, residency determination, and the time frame for Councilmember recall. The motion carried with a vote of four ayes (Mayor Jason Bienski and Councilmember Owens, Hardeman and Simank) and three nays (Councilmembers Saenz, Peña and Southerland).

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

Pastor Sylvester Smith, Jr., New Zion Missionary Baptist Church, gave the invocation. Mr. Mike Guidry, Brazos Valley Veterans Memorial, led the pledges.

#### **5. PROCLAMATIONS AND PRESENTATIONS**

The 2016 Arts Council of the Brazos Valley college arts scholarship recipients, Hannah Hunt and Haille Goodman, were recognized. Mayor Bienski presented proclamations recognizing National Public Works Week and World Neurofibromatosis Day.

#### **6. HEAR CITIZENS**

Mr. John McBride, 1143 Stanley Trail; Ms. Helen Washington, 2300 Wilkes; Mr. Bryce Durgin, 1331 Harvey Mitchell Parkway South; Mr. Raul Santana, 104 South Sterling; Ms. Caroline White, 11583 Russell Lane Road; Mr. Larry Gilbert, 2902 Highway 21 West; Mr. John Miller, 714 Williamson; Ms. Kimberly Mooring, 4008 High Street; Mr. DaMichael Kraft, 703 Dean Street; Mr. Jay Brakefield, 231 Clearleaf; Ms. Linda Vukovich, 2356 West Briargate, and Mrs. Debra Miller, 714 Williamson Drive, spoke about the Council's actions following executive session. Ms. Dimple Wilson Suseberry, 1404 Conroy Street, and Mr. Elmer Burns, Jr., 1302 Clark, asked for more improvements in the Castle Heights area and addressed Council's actions following executive session. Ms. Sheree Boegner, 314 North Main Street, mentioned the Sassy Shoe Social benefitting Phoebe's Home and provided educational information about domestic violence. Mrs. Cathy Conlee, 833 South Rosemary Drive, spoke about residency requirements in the Bryan City Charter.

#### **7. REZONING REQUEST (RZ16-02)**

##### **a. Public Hearing – Rezoning Request (RZ16-02)**

Mayor Bienski called for public comment regarding an ordinance of the City of Bryan, Texas, amending Chapter 130, Zoning, of the City of Bryan Code of Ordinances, by a new development plan for a Planned Development-Mixed Use District (PD-M), subject to development requirements specified herein, on 20.61 acres of land adjoining the west side of Groesbeck Street between Palasota Drive and Richard Street, being north of the intersection with Richard and Groesbeck Streets, and being Lot 1 in Block 1 of Save Our Streets Subdivision, as well as 11.67 acres of land out of the Zeno Phillips Survey, A-45, in Bryan, Brazos County, Texas. The public hearing closed at 8:10 p.m. with no comments from the public.

**b. First Reading of an Ordinance – Rezoning Request (RZ16-02)**

Councilmember Peña moved to approve the first reading of an ordinance of the City of Bryan, Texas, amending Chapter 130, Zoning, of the City of Bryan Code of Ordinances, by a new development plan for a Planned Development-Mixed Use District (PD-M), subject to development requirements specified herein, on 20.61 acres of land adjoining the west side of Groesbeck Street between Palasota Drive and Richard Street, being north of the intersection with Richard and Groesbeck Streets, and being Lot 1 in Block 1 of Save Our Streets Subdivision, as well as 11.67 acres of land out of the Zeno Phillips Survey, A-45, in Bryan, Brazos County, Texas. Councilmember Saenz seconded the motion. Staff answered a question from Council and the motion passed unanimously.

**8. REZONING REQUEST (RZ16-04)**

**a. Public Hearing – Rezoning Request (RZ16-04)**

Mayor Bienski called for public comment regarding an ordinance of the City of Bryan, Texas, amending Chapter 130, Zoning, of the City of Bryan Code of Ordinances, by changing the zoning classification from Industrial District (I) to Residential District-5000 (RD-5) on 9.081 acres of land out of Stephen F. Austin League No. 9, A-62, located at 2509 West 28<sup>th</sup> Street, generally southeast of the intersection of Cunningham Lane and West 28<sup>th</sup> Street, and being the proposed Cunningham Oaks Subdivision Phase 3 in Bryan, Brazos County, Texas. The public hearing closed at 8:11 p.m. with no comments from the public (Councilmembers Owens left the dais at this time).

**b. First Reading of an Ordinance – Rezoning Request (RZ16-04)**

Councilmember Peña moved for approval the first reading of an ordinance of the City of Bryan, Texas, amending Chapter 130, Zoning, of the City of Bryan Code of Ordinances, by changing the zoning classification from Industrial District (I) to Residential District-5000 (RD-5) on 9.081 acres of land out of Stephen F. Austin League No. 9, A-62, located at 2509 West 28<sup>th</sup> Street, generally southeast of the intersection of Cunningham Lane and West 28<sup>th</sup> Street, and being the proposed Cunningham Oaks Subdivision Phase 3 in Bryan, Brazos County, Texas. Councilmember Saenz seconded the motion. Staff answered a question from Council and the motion passed with all present voting aye.

**9. REZONING REQUEST (RZ16-07)**

**a. Public Hearing – Rezoning Request (RZ16-07)**

Mayor Bienski called for public comment regarding an ordinance of the City of Bryan, Texas, amending Chapter 130, Zoning, of the City of Bryan Code of Ordinances, by changing the zoning classification from Agricultural-Open District (A-O) to Residential District-7000 (RD-7) on 14.869 acres of land out of the John Austin League, A-2, wrapping around the north and west side of the intersection of Thornberry and Austin Estates Drive in Bryan, Brazos County, Texas. The public hearing closed at 8:12 p.m. with no comments from the public.

**b. First Reading of an Ordinance – Rezoning Request (RZ16-07)**

Councilmember Peña moved for approval the first reading of an ordinance of the City of Bryan, Texas, amending Chapter 130, Zoning, of the City of Bryan Code of Ordinances, by changing the

zoning classification from Agricultural-Open District (A-O) to Residential District-7000 (RD-7) on 14.869 acres of land out of the John Austin League, A-2, wrapping around the north and west side of the intersection of Thornberry and Austin Estates Drive in Bryan, Brazos County, Texas. Councilmember Saenz seconded the motion. Staff answered a question from Council and the motion passed with all present voting aye.

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

Councilmember Peña moved to approve the consent agenda. The motion was seconded by Councilmember Simank and carried with all present voting aye (Councilmember Owens returned to the dais at 8:13 p.m.).

**a. Approval of Minutes – Workshop and Regular Meetings of April 12, 2016**

**b. Consideration – Transfer of Funds to Community Development Block Grant Program**

Consider approving the transfer of proceeds from the sale of four (4) single family homes from the General Fund fund balance to the Community Development Block Grant Program income revenue account in the amount of \$63,801.09.

**c. Consideration – Contract for Equipment Improvements at Burton Creek Wastewater Treatment Plant**

Consider approving a professional services contract for engineering services for equipment improvements to be made to the Burton Creek Wastewater Treatment Plant with CDM Smith, Inc., in an amount not to exceed \$126,055. Source of Funds: Wastewater Fund.

**d. Consideration – Fiscal Year 2017 Brazos Valley Wide Area Communications System Budget**

Consider approving the Proposed Fiscal Year 2017 Brazos Valley Wide Area Communications System (BVWACS) Operating Budget, \$552,063.84, and Capital Equipment Replacement Fund (CERF) Budget, \$310,131.13, for the period of October 1, 2016, through September 30, 2017, with the City of Bryan's total funding contribution being \$128,643.15. Source of Funds: General Fund.

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

It was announced agenda item 11 c was removed from consideration at staff's request. Councilmember Peña moved to approve the remainder of the statutory agenda. The motion was seconded by Councilmember Hardeman and carried unanimously.

**a. Resolution – Transfer of One-Time Revenues to Capital Reserve Fund**

Adoption of Resolution No. 3653 of the City Council of the City of Bryan, Texas, authorizing the transfers from the Bryan Commerce and Development Fund to the City of Bryan Capital Reserve Fund, inclusive of a transfer of \$1,201,307.

**b. Resolution – Texas Water Development Board Application**

Adoption of Resolution No. 3654 of the City Council of the City of Bryan, Texas, requesting financial assistance from the Texas Water Development Board in the amount of \$18,000,000 to

provide for the costs of the Bryan Aquifer Storage and Recovery (Carrizo-Wilcox) Project; authorizing the filing of an application for assistance and making certain findings in connection therewith. Source of Funds: Water Fund.

**c. First Reading of an Ordinance – Right-of-Way Abandonment (RA16-01)**

This item was not considered.

**d. First Reading of an Ordinance – Right –of -Way Abandonment (RA16-02)**

First reading of an ordinance of the City of Bryan, Texas, providing for the abandonment of the following right-of-way, to wit: 2.81 acres of undeveloped public street rights-of-way for East Dodge Street and East 33<sup>rd</sup> Street, between East 32<sup>nd</sup> Street and East Pease Street as well as South Ennis Street and South Coulter Drive, respectively, lying adjacent to Blocks 30 through 33 of the Philips Addition in Bryan, Brazos County, Texas; authorizing the conveyance thereof to the abutting property owner and providing for the terms and conditions of abandonment and conveyance.

**12. REGULAR AGENDA**

**a. Consideration - Appointment to a Vacancy on the Joint Relief Funding Review Committee**

Councilmember Southerland moved to appoint Ms. Mary Walraven to fill a vacancy on the Joint Relief Funding Review Committee for an unexpired term ending December 31, 2018. The motion was seconded by Mayor Bienski and carried unanimously.

**b. Consideration – Appointment of Individual to the Research Valley Partnership Board**

The Mayor called for nominations for appointment of one individual to the Research Valley Partnership Board for a three-year term beginning June 1, 2016. Councilmember Saenz nominated Vernell Walton. Councilmember Peña seconded the nomination. Mayor Bienski nominated Bobby Gutierrez. Councilmember Simank seconded the nomination. Mayor Bienski moved to close nominations and the motion carried with all present voting aye. The appointment of Mr. Gutierrez was confirmed with four votes in favor of his appointment. Councilmember Owens left the meeting following this vote.

**c. Resolution – Bryan Business Council Bylaws Amendment**

Mayor Bienski moved to adopt Resolution No. 3655 of the City Council of the City of Bryan, Texas, approving the amendment to the bylaws of the Bryan Business Council, Inc., passed by its Board of Directors on March 21, 2016. The motion was seconded by Councilmember Hardeman and carried with all present voting aye (Councilmember Saenz was not present at the dais for this vote).

**13. CITY MANAGER REPORT**

Deputy City Manager Hugh Walker reminded the Council of the summer meeting schedule: two regular meetings to be held on June 7, 2016, and two regular meetings to be July 12, 2016. He added meetings in August would be held on August 16, 2016, and August 23, 2016.

**14. ITEMS OF COMMUNITY INTEREST**

Councilmembers listed the following items of community interest: the 50<sup>th</sup> anniversary of the BCS Newcomers Club, National Nurses Week and new emergency room at CHI St. Joseph Regional Health Care Center, town hall meetings and Pawpaloosa. The Rudder High School boys' gymnastics team was congratulated on their state championship. Public Works Director Jayson Barfknecht and his employees were thanked for their hard work. Councilmember Southerland was wished a happy birthday.

**15. ADJOURN**

Without objection, the meeting adjourned at 8:26 pm.

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City Secretary Mary Lynne Stratta

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Mayor Jason P. Bienski