

TUESDAY, AUGUST 16, 2016
REGULAR COUNCIL MEETING
6:30 P.M.

REGULAR COUNCIL MEETING

1. CALL TO ORDER: Mayor Herron called the City of Hilshire Village Regular Council Meeting to order at 6:30 P.M. at 8301 Westview, Houston, Texas 77055.

1.1 Invocation: was given by Council Member Gunn.

1.2 Pledge of Allegiance:

1.3 Present: were Mayor Russell Herron, Mayor Pro Tem Paul Maddock, Council Members Mike Gordy, Robert Byrne, Robert Swanson and David Gunn. Also present were City Administrator Susan Blevins and City Attorney Kim Mickelson, Olson & Olson, Spring Valley Police Chief Evans and City Engineer Efrain Him, P.E., HDR Inc.

2. REPORTS TO COUNCIL:

2.1 Police Report: Chief Evans said that on July 8th at the 1300 block of Wirt Road there was a burglary of a motor vehicle. The vehicle was left unlocked. There also was a burglary of a habitation on Pine Creek Lane in which the residence was entered through an unlocked rear door. Also during the month, a purse was stolen from a motor vehicle at the block of 7900 Westview. All of these items are still an active investigation. There were three (3) citations and one (1) arrest made during a traffic stop for an outstanding warrant. Mayor Herron asked if Chief Evans could comment on the major accident that occurred on Westview. The Chief stated he did not have any information since it was in the City of Houston.

3. CITIZEN'S COMMENTS:

Bill Bristow, 1233 Pine Chase, wanted to know the status of the cleaning out of drainage easements in the City in preparation of hurricane season. He feels it is very important they be kept clean. Also in regard to the cracks on the street he felt the streets needed to be maintained, especially with the heavy equipment that is coming into the City.

4. COUNCIL COMMENTS: NONE

5. REPORTS TO COUNCIL:

5.1 Engineers Report – City Engineer Efrain Him stated in regard to the Pine Creek Lane Reconstruction Project it was 95% complete. Installation of the water meter vault and backflow preventer assemblies are the only outstanding work. Mayor Herron and Efrain Him met with the City of Houston, Engineer's office to discuss and address the

easement issues. The City of Houston is allowing the City to keep the meter vault below grade but that it would have to be moved allowing a minimum separation of five (5) foot between the meter vault and the building. The City of Houston has requested that the easement be re-dedicated and the water meter vault permit plans be revised to reflect these changes and to include a note, signed by Mayor Herron, granting permission to the City of Houston to work in the Pine Creek Lane right-of-way in the event construction or maintenance work in the water meter vault is required. Efrain stated he has requested a quote from Conrad Construction to move the vault and adjust the water lines accordingly. The permit plans have been re-submitted and approved by the City of Houston. The City of Houston stated the City could resume the work on the vault.

On the Friarcreek Subdivision all the boring of the water lines has been completed except for one. The forecasted work to be completed is to perform disinfection and pressure testing and transfer the new services to the new water lines. They anticipate the job completion to be September 16th. Efrain recommended that Pay Application No. 10 be approved for payment.

Mayor Herron asked about the asphalt repairs and ditch repairs. City Engineer Him said that the asphalt crack sealing work has been completed along with the grading of the ditches and the addition of the concrete channel liner at 1206 Glourie.

City Engineer Him stated that he is trying to secure quotes to rehabilitate or repair the storm sewer outfall on the west end of Pine Creek Lane. Conrad provided an estimate of \$22,000.

Council Member Gordy asked where the water line at the new water vault would be moved to. City Engineer Him stated it needed to be moved two (2) feet towards the street. Council Member Gordy was concerned about the warranty of the vault and meter. The City Engineer stated that the vendor for the vault would handle it if necessary to prevent any warranty issues.

6. ACTION ITEMS:

6.1 Mayor Pro Tem Maddock made a motion to authorize payment of Conrad Construction Company Limited for services provided to the City for the Pine Creek and Bridle Spur Reconstruction Project, invoice # 10, in the amount of \$40,921.73, seconded by Council Member Gordy. **A vote was taken to approve the motion authorizing payment of Conrad Construction Company Limited for services provided to the City for the Pine Creek & Bridle Spur Reconstruction Project, invoice # 10, in the amount of \$40,921.73. The vote passed unanimously.**

6.2 Mayor Pro Tem Maddock made a motion to discuss and possibly take action on the feasibility of covering the swale/ravine in the front yard of 1220 Archley Drive to allow prospective buyers the option to extend the building footprint to the 30-foot front building setback, seconded by Council Member Gordy. City Engineer Him stated that Ms. Ruthstrom contacted the City to discuss drainage issues and requirements for the future development of the property. She was trying to answer questions from prospective buyers as to the feasibility of covering the swale/ravine in her front yard on the southeast

corner that extends towards Archley Drive. The potential buyers wanted to regain 75 feet of the front yard so that they could build up to the building line. Pictures were shown of the property. City Engineer Him stated that Ms. Ruthstrom stated that her father had actually excavated the swale/ravine for aesthetics. He also said that the property on both sides of this property both are new and will drain to the street, so this particular swale/ravine only drains its own property. He said this was a different kind of ravine than the ravine at 1210 Ridgeley that was brought to Council in June.

Ms. Ruthstrom stated that both houses on either side of her were large homes that were built at the building line. She stated that her house is set back in a hole and that the potential buyers would also like to build at the property line. She stated the only purpose of the swale or ravine is to drain her front yard. Efrain Him stated there has not been any flooding in the area. Ms. Ruthstrom said the only reason she is coming to Council is to get a definite answer to give to the potential buyers so they are not coming to the City Office asking the question over and over again.

Mayor Herron asked the City Attorney if there were any legal issues that would be associated with the new owner to allow this property to regrade the property. The City Attorney, Kim Mickelson, stated as long as the City Engineer is satisfied that it would not adversely affect the drainage in that area and that the other drainage plans that are required adequately drain the property into the proper facilities. She said it is a government function and there would be no liability.

Council Member Gordy stated that on all the plats on every survey there normally is information that talks about the ravines and the center line. He wanted to know if the City would need to release any wording to be added to the plat. City Engineer Him stated this ravine was not dedicated to the City. Council Member Gordy said he was just asking to make sure the easement did not need to be released. City Engineer said it was not a dedicated easement and therefore it did not need to be released. Council Member Gordy stated he would be willing to consider closing it but he has questions as to where it would start, where it is going to stop and how they are going to make the transition back into the area to preserve the neighbor's property. Ms. Ruthstrom thought it would be an improvement to the neighbor's property.

Mayor Herron asked Ms. Ruthstrom if she wanted to fill the ravine in herself? She stated "No", she is just trying to give the potential buyer the proper answer to their questions. Mayor Pro Tem Maddock said that City Council in general is saying that "in general we have no problem with filling it in as long as the City Engineer says we are not going to impede the drainage but the City cannot give carte blanche to do whatever they want. So, until the City knows what they want to do we cannot give permission." Ms. Ruthstrom stated she understood what Council was saying and she felt it was very favorable. Mayor Pro Tem Maddock repeated that the City Council is open to this request assuming that it meets the current regulations and the City Engineer approves the drainage and as presented it appears to be a very feasible thing to do.

No action was taken on the motion to discuss and possibly take action on the feasibility of covering the swale/ravine in the front yard of 1220 Archley Drive to

allow prospective buyers the option to extend the building footprint to the 30-foot building setback.

Alan Wolfe, 1314 Pine Chase, stated that when the residents of the new construction next door to his house installed their pool the approved drainage no longer functions properly. The consequence is he has water in his back yard. He said things change and he now also has a “swimming pool” in his back yard after every heavy rain. Mr. Wolfe said his property and the property behind him no longer drain as it did before. Mayor Herron stated that the City would check into the problem.

6.3 Mayor Pro Tem Maddock made a motion to authorize the rededication of a 9-foot x 25-foot easement for the Pine Creek Water Meter Vault to the City of Houston, seconded by Council Member Byrne. City Engineer Him stated the City has to rededicate the easement for the meter vault. The only thing that has changed is that the width is 6 feet shorter. He needs authorization by the City and it needs to be filed with the City of Houston.

A vote was taken to approve the motion authorizing the rededication of a 9-foot x 25-foot easement for the Pine Creek Water Meter Vault to the City of Houston. The vote passed unanimously.

6.4 Council Member Gordy made a motion to consider and possibly take action to accept a Subdivision Improvement Agreement between the City and Schwab Design Builders, LLC for Hilshire Villas, seconded by Council Member Gunn. City Attorney, Kim Mickelson stated the City had been approached by Mr. Schwab regarding the subject of the bond. The City Subdivision Ordinance requires, as permitted by state law, that the developer either provide a Performance Bond for the public roads and/or streets to be installed at the time of the subdivision plat approval or alternatively the Council can accept the Performance Bond at a later time. This plat and proposed development went through several years of planning. The plat was approved in November of last year and filed in March of this year. The City has had multiple conversations as to how they go forward regarding the requirement of the bond. The developer was requesting an alternative. They were requesting Council accept, as a modification to the bond requirement, a Subdivision Improvement Agreement. A copy of the draft was provided in the Council packet. City Attorney Mickelson said she had made changes to the draft and that has also been provided. She stated there was also a letter from Texas Gulf Bank who is financing the project. The request was that the City accept this agreement as a modification to the bond requirement in lieu of a Performance Bond. It reiterates that the developer’s obligation is to put in the improvements. Mr. Schwab is planning on putting in the improvements. Ms. Mickelson said she has added additional language regarding inspections. A Performance Bond is designed as a way to guarantee to a public entity and any future owners of the lots that the improvements will be done to code. It is a financial surety to get the improvements constructed in case something happens to the developer or his company. Mr. Schwab has recommended in this agreement that he is agreeing that he will not sell any lots or have anyone seek any building permits until the City has accepted the dedication of the street and utilities. The final point that Ms. Mickelson wanted to make was that a plat that gets approved is an offer of a dedication of a certain public improvement such as public streets, utilities and

easements and so forth. State law provides that approval of the plat is not an acceptance of the dedication of the streets and utilities. A city would first make sure that the improvements were put in and that they were right before they accept maintenance of them. The City's Ordinance requires the developer to provide a Maintenance Bond. It is the Performance Bond alone that the developer has requested for the modification.

Mayor Pro Tem Maddock stated the Agreement had been presented at a very late date and did not allow Council sufficient time to review.

Kyle Sears, Attorney for Schwab Development, stated he was here as the advocate for Schwab Development; he is not here as an adversary. He stated the property had been long in development for a variety of reasons. Mr. Schwab has been in business for many years and has been a developer for many years and has several properties in Spring Valley. Mr. Sears stated they scrambled to get the Agreement in place and they would prefer not to reschedule. The purpose of the Agreement is to give the City a level of financial security. He stated the reason there was a problem getting the Performance Bond was due to the wording of the City's Ordinance. There was no bondable transaction nor has the City entered into a contract with a contractor to build the streets or the utilities. There is no obligation from a contractor to install or an obligation for the City to make payment. The City is not paying for anything; therefore, there is no obligation to the City. Mr. Sears stated the City was not obligated to accept anything until the improvements have been completed.

Mr. Sears stated the plat was approved in November. Mr. Schwab has listened to the Council recordings and he states that he believes his approval was not approved with any condition of the Bond. He said that it does not say that on the plat or in the motion. Mr. Schwab did realize that some type of bond was required; however, the City's Ordinance wording is challenging. Mr. Sears stated they are not trying to duck or dodge the financial issues. They will be providing a Warranty Bond for two (2) years that will handle any defects; however, he did not feel there would be any warranty issues with the inspections by the bank and the supervision by the City. He said that the Engineer Plans are of high quality and the City's Engineer had put Mr. Schwab's Engineers through the paces. This development is a win for everyone. This agreement alternatively gives the City the financial security, "there is money in the bank".

Mayor Herron read from the City's Ordinance "The village council will not approve any map or plat unless such map or plat is accompanied by a bond". He stated the Ordinance goes on to specify how to determine the size of the bond and in the minutes it stated the plat was contingent upon getting the value that the bond needed to be because it was unknown as to the cost of the improvements. Mayor Herron stated the fundamental statement is that the Village will not approve the plat unless there is a bond. It seems to be the law and he is not in the position to change the law.

Council Member Gordy appreciated Schwab Developers explaining the issues. He stated it is this Council's responsibility to make sure any project to be dedicated to the City is completed per specs and that all the bills are paid. Without the bond the missing part is that the City has no assurance that the project will be completed. The City has no one to go back to. Normally the Bond Company would take over. Council Member

Gordy asked if the subcontractor could get a bond. He stated he had a problem approving a project that does not have a bond associated with it when it is written in the law.

Mr. Sears stated the subcontractor has no obligation to the City and the City has no obligation to the subcontractor. He repeated again this plat was approved without a bond or any requirement or condition for a bond. The issue is a financial security. They are asking the City to work with them.

David Schwab asked the Mayor to read the whole Ordinance. Mayor Herron proceeded to read the Ordinance. "The village council will not approve any map or plat unless such map or plat is accompanied by a bond, the amount of which shall be determined by the village council, payable to the Village of Hilshire Village, to the effect that the owner or owners will construct the roads or streets therein shown in accordance with the specifications set out by the village, and will maintain such roads and streets for a period of one (1) year thereafter, as provided in Art. 2372k R.C.S.; provided, however, in lieu of the above bond the village council may, in its discretion, require the subdivision developer to furnish the village with a signed copy of a Performance Bond, executed by a surety company authorized to do business in Texas, with an agency or home office in Harris County, Texas, together with a copy of the contract upon which said bond is written. Said bond or contract shall contain a provision that the roads or streets in such subdivision or re-subdivision shall be maintained for a period of one (1) year from date of completion."

Mr. Schwab said the City had not done any development in 25 years. Everyone is confused with the language. He has tried to resolve the issue. Mr. Schwab stated he has petitioned the City Attorney and City Administrator as to what kind of bond was needed. He wants everyone protected. Mr. Schwab said "do not accuse me that I don't want to comply. The City Ordinance does not have the proper language." He also stated he did not have to have a bond in Creekstone.

City Attorney Mickelson understands the frustration regarding the Ordinance. She said the Ordinance is not clear but it is not that unclear. Ms. Mickelson stated the new Ordinance is clearer and that the Developer could use the new Ordinance. She said what she sees as the problem is that the City does not own the right-of-way until it accepts the dedication. She thinks that the surety company does not understand. State laws would make the situation even more difficult because it requires a Performance and Payment Bond.

Mr. Schwab stated that he has consulted five (5) legal consultants and they all have said the City should have written the bond requirement as a contingency when the plat was approved. He states the Ordinance is not clear enough and if it was they would not be having these issues.

Council Member Gunn stated he would like to hear from the public and would like to go into an Executive Session to consult with the City Attorney.

Bill Bristow, 1233 Pine Chase, wanted to know if the plat had already been approved? He also wanted to know if the property taxes were up to date. The answers to both his questions were “yes”.

OUT OF ORDER

8. ACTION ITEMS:

Council Member Gunn made a motion to recess the Regular Council Meeting to go into a Closed Executive Session to discuss the requirement of a Performance Bond per Texas Government Code, Sections 551.071, Consultation with Attorney, seconded by Mayor Pro Tem Maddock. **A vote was taken to approve the motion to recess the Regular Council Meeting to go into a Closed Executive Session to discuss the requirement of a Performance Bond. The vote passed unanimously.**

Mayor Herron recessed the Regular Council Meeting at 8:00 PM.

8.1 CLOSED EXECUTIVE SESSION:

Mayor Herron reconvened the Regular Council Meeting at 8:21 PM.

Mayor Herron asked for a motion to table the original motion.

Council Member Gunn made a motion to table the original motion to consider and possibly take action to accept a Subdivision Improvement Agreement between the City and Schwab Design Builders, LLC, for Hilshire Villages, seconded by Mayor Pro Tem Maddock

A vote was taken to approve the motion tabling the original motion to consider and possibly take action to accept a Subdivision Improvement Agreement between the City and Schwab Design Builders, LLC, for Hilshire Villages. The vote was approved unanimously.

City Attorney Kim Mickelson said she would contact Mr. Sears first thing in the morning to discuss the matter and that a Special Council Meeting would be scheduled, if needed.

6.5 Mayor Pro Tem Maddock made a motion to approve the request by the Village Fire Department Commissioners to approve the 2015 Intra-Budgetary transfers, seconded by Council Member Gordy. Council Member Swanson said he was new so he would like to know what were the transfers for. City Administrator Blevins stated that at year end the City and the Fire Department make internal transfers to balance the budget.

A vote was taken to approve the motion approving the request by the Village Fire Department Commissioners to approve the 2015 Intra-Budgetary transfers. The vote passed unanimously.

The City Engineer was excused at this time.

6.5 Council Member Swanson made a motion authorizing the City to purchase paint to provide to the commercial area to paint existing buildings to approve the aesthetics and uniformity of the commercial area not to exceed \$1,000 as an Economic Development Project, seconded by Mayor Pro Tem Maddock.

Mayor Herron said that the City has received comments for decades stating “what could be done to the commercial area to improve the appearance”. He said that the City Administrator Blevins said jokingly that Cities sometimes do things to be an incentive to commercial companies. Could we not supply the paint and ask them to paint the building? Mayor Herron said it was a brainstorming idea, thinking outside of the box. The point was the concerns that the City had regarding spending money to improve private property. Mayor Herron said everything we do is to improve private property. He thinks it is a good idea. Mayor Pro Tem Maddock said that the City did receive one (1) letter from a concerned resident stating the City should not spend public funds on private property.

City Attorney Mickelson stated the voters passed an Economic Development Law and because it is in the commercial area it was allowed. Council Member Gordy said he does not like the appearance of the commercial area but he does not believe the City should spend public funds on private property. He stated there are a lot of other issues that need to be addressed in the commercial area. Mayor Herron said the City has sent letters to clean the area up.

A vote was taken to approve the motion to authorize the City to purchase paint to provide to the commercial area to paint existing buildings to approve the aesthetics and uniformity of the commercial area not to exceed \$1,000 as an Economic Development Project. The vote failed 2-3. Council Member Swanson and Gunn voting for and Council Member Gordy, Byrne and Mayor Pro Tem Maddock voting against.

7. DISCUSSION:

7.1 Planning and Zoning: Kathleen Stafford said that a subcommittee was formed to look at the commercial area. Nancy Freedman and Nyle Polis presented a presentation regarding the commercial area. Ms. Freedman said the Committee was ready to start working with the City Attorney to draft the language to implement the Committee’s recommendation. The Commercial Subcommittee has met weekly to discuss the specific issues in the commercial area. They started with the Hilshire Village Ordinances, they looked at other City ordinances, they have talked with architects, a first amendment attorney, Village Fire Marshal, a representative from the Texas Masonry Council and City Administrator Blevins. They have made field trips to the commercial area and to other small commercial sites and they met with the largest property owner in the District. The Committee is not wanting to make a lot of radical changes but they wanted to clarify, strengthen, modernize and make consistent the existing Ordinance. If they added to the Ordinance they would use wording from other City Ordinances or

Model Ordinances, which had been tested by others. The changes that they are suggesting have been unanimously decided on by the Committee.

The objectives of the proposed revisions are to preserve the property values of residential and commercial owners, safeguard the environment and quality of life in the neighborhood, protect the privacy of residential owners, prevent new construction from crowding the existing homes and businesses and promote a business environment which benefits the City.

The proposed changes are to make sure maintenance, repair and compliance are the responsibility of the owner and tenant and the use is commercial only. They thought they would list prohibited business and activities. However, Ms. Freeman stated the City Attorney said that the Zoning Ordinances are permissive and not what was prohibited. City Attorney Mickelson stated the general rule is that the Zoning Ordinances tell you what is allowed in the district. She stated that it is not prohibited to list what is not permitted. Ms. Mickelson said that the City could provide a provision in the Ordinance stating what procedure could be done if the use was allowed. It could state it would need Council's approval. City Attorney Mickelson said the City could have a general list. Ms. Freeman also mentioned that Council had already approved an ordinance that allows food establishments. She also said the current ordinances needed to be corrected regarding state laws.

Ms. Freeman stated that there needs to be a Business Use Application to operate in the Commercial Zone and it must be approved by the City Engineer, City Attorney, Fire Marshal and City Council. The application should include business activity description, parking plan, landscape plan and signage plan. Ms. Freeman went over the business use detail, signage, landscaping, fencing, lighting and construction requirements and setbacks. Council expressed their appreciation for all the hard work the committee has done. Council discussed parking regulations and parking in the rear of the commercial area. Council Member Gordy questioned if the City had a Health Department. Mayor Herron stated the City contracts with Harris County for their services. Council Member Gordy also stated he would like the committee to discuss parking in the rear with the Police Department. Council also discussed the fence in the rear of the commercial area. Ms. Freeman wanted to make sure that the consensus from Council was that the committee could submit their language to the City Attorney for review and editing. The answer was "yes".

Out of order

10. REPORTS FROM COUNCIL:

10.1 Mayor Herron stated he had talked to the City of Houston regarding the issues with Wirt Road and the traffic. The City of Houston has started a study taking data on the load of traffic and they have also been issuing tickets.

7.2 8373 Group: City Administrator Blevins stated she has been asking the 8373 Group to put in writing their use. She has developed a form and sent it to the Group but it has not been submitted to the City. City Attorney Mickelson stated that City

Administrator Blevins has also been discussing the need for cleaning the property. Mayor Herron stated the City will not give up on resolving this issue.

The City Attorney was excused at this time.

7.3 FYE 2017 Budget: City Administrator Blevins stated that if Council wants anything changed or addressed on the proposed budget to please let her know so that she can make changes to the budget for the next Council Meeting. She stated that Council will need to vote on the proposed tax rate in a Special Council Meeting.

7.4 Parking issues update: Mayor Herron stated he has been driving through the City looking at the parking situations and for the most part the contractors working on the houses know the rules and seem to abide. It is the residents and their guests, yard guys, UPS trucks, the pool companies that are parking across from the construction workers and sometimes they do not park with two wheels off the pavement. However, there are several areas that there is not room to park with two (2) wheels off because you would fall into the ravine or ditch. Mayor Herron asked Council if they wanted to look at “no parking areas”. City Administrator Blevins stated the City could send out an email regarding the parking issues. It was also discussed for the City to put signs at the entrances stating not to block the street.

9. REPORTS TO COUNCIL: (CON'T)

9.1 Fire Commissioner: Council Member Byrne stated the new fire ladder truck has been ordered and the cost of the truck was \$977,00., which was within the budget. The truck should be delivered in seven (7) to nine (9) months. He also stated that he would be attending an Emergency Operations Center Meeting tomorrow morning with City Administrator Blevins in which he is the backup person on the team. By assignment by the Mayors the City Administrators are the point person on the team and each City has a backup person.

9.2 City Administrator: City Administrator Blevins stated that she had added an invoice to DonMar Grading to the Consent Agenda. Council Member Byrne wanted to amend the minutes by changing verbiage on his discussion with Mr. Bilski.

9.3 Building: No report given due to time constraints.

9.4 Treasurer: No report given due to time constraints.

11. CONSENT AGENDA:

11.1 Mayor Pro Tem Maddock made a motion to approve the Consent Agenda as presented including the disbursements presented to Council, the Minutes from the Regular Council Meeting of July 19, 2016, including Council Member Byrne’s changes, the Fraud and Misconduct Policy and the Authorization of payment to the Friends of the Spring Branch Memorial Library in the amount of \$250., seconded by Council Member Swanson.

A vote was taken to approve the motion approving the Consent Agenda as presented including the disbursements presented to Council, the Minutes from the Regular Council Meeting of July 19, 2016, with Council Member Byrne, the Fraud and Misconduct Policy and the Authorization of payment to the Friends of the Spring Branch Memorial Library in the amount of \$250. The vote passed unanimously.

12. ADDITIONAL COUNCIL COMMENTS: NONE

13. ANNOUNCEMENTS: NONE

14. ADJOURNMENT: Mayor Pro Tem Maddock made a motion to adjourn the meeting, seconded by Council Member Byrne. **A vote was taken to approve the motion to adjourn the meeting. The vote passed unanimously. The meeting was adjourned at 9:39 P.M.**

Russell Herron, Mayor

ATTEST:

Susan Blevins, City Secretary