

CITY COUNCIL MINUTES  
REGULAR MEETING

KERRVILLE, TEXAS  
DECEMBER 14, 2010

On December 14, 2010, the Kerrville City Council meeting was called to order by Mayor Wampler at 6:00 p.m. in the city hall council chambers, 800 Junction Highway. The invocation was offered by Charlie Hastings, Director of Public Works, followed by the Pledge of Allegiance led by Mayor David Wampler.

**MEMBERS PRESENT:**

David Wampler	Mayor
R. Bruce Motheral	Mayor Pro Tem
Gene Allen	Councilmember
Stacie Keeble	Councilmember

**MEMBER ABSENT:**

T. Scott Gross	Councilmember
----------------	---------------

**STAFF PRESENT:**

Todd Parton	City Manager
Mike Hayes	City Attorney
Kristine Ondrias	Assistant City Manager
Brenda G. Craig	City Secretary
Travis Cochrane	Director of Information Technology
Mindy Wendele	Director of Business Programs
Mike Erwin	Director of Finance
Robert Ojeda	Fire Chief
Kevin Coleman	Director of Development Services
Kim Meismer	Director of General Operations
Charlie Hastings	Director of Public Works

**VISITORS PRESENT:** List on file in city secretary's office.

**1. VISITORS/CITIZENS FORUM:** The following persons spoke:

1A. Robert Naman agreed with council's action on November 23 voting against the use of EIC funds to raze dilapidated buildings; he felt such use did not meet the requirements of the 4B Act.

1B. Dick Eilerman expressed concern of what he described as a training event for young Muslims at MO Ranch next week; the event would be closed to the public and no one would be allowed to enter MO Ranch during that week. He was told by a police officer that the FBI had been advised of the event, and he would notify the county of the event in an effort to prevent the event from happening.

**2. PRESENTATIONS:**

2A. Resolution of commendation to David Lipscomb for serving on the Library Advisory Board was presented by Mayor Wampler.

### **3. CONSENT AGENDA:**

Mr. Allen moved for approval of items 3A through 3E; Ms. Keeble seconded the motion and it passed 4-0:

3A. Approval of the minutes of the special city council meeting held November 15, the regular meeting held November 23, and the special meeting held December 9, 2010.

3B. Authorize execution of a contract with Kerr County for conducting the City of Kerrville General Election to be held on May 14, 2011, in the estimated amount of \$5,975.76.

3C. Authorize contract extension with Unifirst Corporation for uniform service from December 18, 2010, through December 19, 2011.

3D. Approval of a funding agreement between the City of Kerrville, Texas Economic Improvement Corporation and the Hill Country Sports Shooting Center in the amount of \$494,838.00.

3E. Authorize the purchase of an ambulance from Frazer Ambulance Company through Dallas Dodge Chrysler Jeep, in the amount of \$150,500.

### **END OF CONSENT AGENDA**

### **4. PUBLIC HEARING AND RESOLUTION:**

4A. Resolution No. 040-2010 granting a conditional use permit for an approximate 4.67 acre tract of land situated in the Samuel Wallace Survey No. 113, Abstract No. 347, within the City of Kerrville, Kerr County, Texas, generally located northwest of the Main Street and Clearwater Paseo intersection, and located within the 32-E (eastside) district; by permitting said property to be used for manufacturing and industry, limited (contractor yard); and making said permit subject to certain conditions and restrictions granting a conditional use permit for manufacturing and industrial on 4.67 acre tract northwest of the Main Street and Clearwater Paseo intersection.

Mr. Coleman reviewed uses in the area and noted property owners within 200 ft. had been notified. P&Z voted to recommend approval of the resolution.

Mayor Wampler declared the public hearing open at 6:10 p.m.; no one spoke, and Mayor Wampler closed the public hearing at 6:10 p.m.

Mr. Motheral moved for approval of Resolution No. 040-2010; Mr. Allen seconded the motion and it passed 4-0.

### **5. PUBLIC HEARING AND ORDINANCE, FIRST READING:**

5A. An ordinance repealing Ordinance No. 2002-04 which created a "Planned Development District" on an approximately 2.99 acre tract of land generally located at the southeast corner of the intersection of Yorktown Boulevard and Stadium Drive, for indoor sports, recreation, and physical fitness activities and other uses generally associated with a community center; changing the zoning classification for said tract from the Planned Development District (PDD) to the Gateway District (GTW); containing a cumulative clause; containing a savings

and severability clause; and ordering publication. Mayor Wampler read the ordinance by title only.

Mr. Coleman noted the property was previously zoned PDD to accommodate a community center for the YMCA; however, that project did not happen, and the property had been sold. The applicant proposed to establish a vehicle maintenance and repair facility, which required both a zoning change to GTW and a conditional use permit (CUP) in the GTW district. The recommendation was to change the zoning for the entire lot to GTW and then proceed to a CUP and development site plan for the portion to be used for vehicle maintenance. The land use plan proposed commercial zoning for the two block area inside of the Sidney Baker corridor. He noted that all property owners within 200 ft. had been notified.

Mayor Wampler declared the public hearing open at 6:12 p.m. and the following persons spoke:

1. David Jackson noted he had previously submitted a letter on behalf of his client objecting to the zone change; however, he stated that his client would not object to the proposed use as long as adequate protection and buffers were provided under the conditions listed in the proposed CUP. He noted that part of the land was currently vacant and the owner may sell all or part and it could become commercial in the future.

2. David and Denise LeMeilleur, applicants, noted that part of the property in the area was already zoned GTW and this ordinance would result in consistent zoning for the entire tract. They discussed the proposed state of the art repair facility and landscaping and buffering adjacent to residential areas. They also noted the school district had a vehicle maintenance facility across the street.

3. Bruce Stracke stated his opinion that the proposed use did not belong in a residential area, and he was concerned about the zoning process from residential cluster, to PDD, to CUP, and then commercial.

No one else spoke, and Mayor Wampler closed the public hearing at 6:25 p.m.

Mr. Allen moved for approval of the ordinance as presented on first reading; Ms. Keeble seconded the motion and it passed 4-0.

**6. CONSIDERATION AND POSSIBLE ACTION:**

6A. Authorize staff to reject all proposals received in April 2010 for carbon credit brokerage services, and authorize staff to re-advertise a revised request for proposal (RFP) to seek a qualified company to broker carbon credits generated at the landfill.

Mr. Hastings noted the city received two proposals in April 2010: Element Markets, and Terra Pass. Council authorized the city manager to negotiate a contract with Element Markets; however, they withdrew their bid. Staff contacted

Terra Pass, and they also withdrew their bid due to a decline in the carbon credit market. Staff was recently contacted by Blue Source, another carbon credit brokerage company, and staff recommended council reject all proposals received in April 2010 and authorize staff to re-advertise a new RFP. Mr. Hastings estimated the city would receive \$10,000-15,000 annually from the sale of carbon credits generated at the landfill.

Mr. Motheral moved to accept staff's recommendation; Mr. Allen seconded the motion and it passed 4-0.

## **7. INFORMATION AND DISCUSSION:**

### **7A. Presentation regarding the possible construction of a multi-purpose meeting facility (MMF).**

Mr. Parton reviewed the two year history of the project which began in March 2009 with a report from the convention and visitors bureau that documented substantial lost market from conventions and conferences that wanted to come to Kerrville. The TXP report further reaffirmed the findings of the blue ribbon committee appointed by council that a MMF would assist in the growth and sustainability of local businesses. An RFP was issued, and Hunter Equity was determined to be the most qualified proposal received and a memo of understanding (MOU) was authorized by city council for Hunter Equity to study whether the city should move forward with the construction of a MMF with a four-star hotel, determine the estimated cost to the city, and to evaluate several sites.

Pete Moore and Scott Rohrman with Hunter Equity provided an analysis of the three selected sites: 1) Hastings site (3 acres downtown across from the library); 2) Whiskey Springs site (116 acres on Hwy. 16 on the north side of IH-10); and 3) Gulf Coast site (69.5 acres on Hwy. 16 on the south side of IH-10). Mr. Rohrman estimated the cost at \$21 million for the MMF; \$14-17 million for a four-star hotel; for a total project cost of \$35-49 million.

The following persons were allowed to speak:

1. Sharon Walling requested more meetings for the public to receive information on funding sources for the project, the backup plan if the facility did not bring in revenue, the cost of maintenance, and the expense of providing transportation. She requested that council receive more public input and allow a vote before passing another bond issue; otherwise, wait and let somebody else pay for it.
2. Robert Naman questioned public funding for a \$35-49 million project and felt such a project should be undertaken by the private sector. He stated opposition to the process and felt that other bidders had been denied due process, and the bid specifications had been changed after the bids were received. One goal of the project was to bring in new business, but he was concerned that bringing in new business would harm existing businesses. He questioned that the facility could generate the business and dollars being proposed.

3. David Tritenbach noted that all studies in the past ten years proposed a MMF in the central city to attract more business to the downtown area. He encouraged council to reconsider the downtown area and not place the facility in such remote locations where infrastructure was inadequate and would pull more business away from downtown. The city's greatest asset was the river, and if a facility is built, it should be within walking distance of the river. Other alternatives were more practical and cost effective.

Mayor Wampler noted that council was performing due diligence based on a study by the CVB that documented potential lost revenue. Council desired to maintain the same level of services to the citizens without increasing the ad valorem tax. Despite public opinion, no deal was on the table, and council never contemplated that the city would finance the entire project; rather, the commitment of the city would be limited to a percentage of the hotel occupancy tax and sales tax. The city was not getting into the hotel business.

7B. Library renovation update.

Jeana Krause, executive director of the Mary Elizabeth Holdsworth Library Foundation, noted that goals had been set for the endowment that would cover future maintenance and programming. The goal was to raise \$7.75 million; to date \$2,065,695 had been committed to the project and several grants were pending. The foundation would begin identifying naming opportunities.

7C. Update regarding Lower Colorado River Authority Transmission Services Corporation's (LCRA-TSC) application for the proposed McCamey D to Kendall to Gillespie CREZ project (PUC Docket No. 38354).

Mr. Hayes noted the administrative law judges were expected to issue their opinion by the end of the year; PUC had two meetings scheduled January 13 and 20, 2011, to issue a final ruling. Property owners along the I-10 route were submitting letters, and he encouraged continued public support.

7D. Kerrville budget/economic update.

Mr. Erwin reported local unemployment remained unchanged at 5.9; median listing price was down and sales tax dropped 1% from October 2009 to October 2010.

**8. BOARD APPOINTMENT:**

8A. Appointments to the Food Service Advisory Board.

No appointments were made; council requested the appointments be rescheduled for the January 11, 2011 agenda.

8B. Appointments to the Planning and Zoning Commission. Matter was deferred to executive session.

9. **ITEMS FOR FUTURE AGENDAS:** No items were proposed.

10. **ANNOUNCEMENTS OF COMMUNITY INTEREST:** None discussed.

## **11. EXECUTIVE SESSION:**

Ms. Keeble moved for the city council to go into executive closed session under Section 551.071 (consultation with attorney), and Section 551.072 (deliberation regarding real property) of the Texas Government Code; the motion was seconded by Mr. Allen and passed 4-0 to discuss the following matters:

### Section 551.071:

- Consult with attorney about pending litigation or settlement regarding the application from the City of Kerrville before the Texas Commission on Environmental Quality to amend its Certificate of Convenience and Necessity (CCN) for its water utility, No. 12928 in Kerr County, Texas.
- Consult with attorney about Interlocal Agreements between the City of Kerrville and Kerr County.
- Consult with attorney regarding building permit for the property located at 407 Spring Mill Dr.

### Sections 551.071 and 551.072:

- Consult with attorney regarding request for Reversion Deed for property generally located at 819 Water St. and intended for use as Kerrville River Walk Trail.

At 7:09 p.m. the regular meeting recessed and council went into executive closed session at 7:16 p.m. At 8:52 p.m. the executive closed session recessed and council returned to open session at 8:58 p.m. The mayor announced that no action had been taken in executive session.

## **12. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION**

Consult with attorney about pending litigation or settlement regarding the application from the City of Kerrville before the Texas Commission on Environmental Quality to amend its Certificate of Convenience and Necessity (CCN) for its water utility, No. 12928 in Kerr County, Texas

Mr. Motheral moved to authorize staff to go through documentation necessary with Wiedenfeld Water Works with regard to Areas 2, 7A, and 14, and to formally request a 30 day extension to January 19 from TCEQ in order to continue negotiations with Aqua Texas. Further, to advise Aqua Texas that their proposal was not acceptable, but the city was open to continued discussions but not with those conditions specified by Aqua Texas. Mr. Allen seconded the motion and it passed 4-0.

Consult with attorney about Interlocal Agreements between the City of Kerrville and Kerr County. Ms. Keeble moved to appoint Mayor Wampler and Mr. Parton to talk with County Judge Tinley about the interlocal agreements. Mr. Allen seconded the motion and it passed 4-0.

Consult with attorney regarding building permit for the property located at 407 Spring Mill Drive.

Ms. Keeble moved to take no action and let the building permit stand. Mr. Motheral seconded the motion and it passed 4-0.

The following persons spoke:

1. Alan Cone questioned the next course of action available to citizens before the permit would be allowed to continue, noting violation of several ordinances; i.e. setbacks and drainage. He stated that allowing the neighbor's structure to remain had a potentially damaging effect on his property. If the city allowed construction to continue, it would be more expensive to remove the structure later than to have it removed now. He disagreed with the legality of allowing the structure to remain and requested council table the motion for 60 days and allow the stop work order to remain in effect and put a hold on construction before more money was spent on construction; this could possibly avoid a lawsuit that may result in the tearing down of the structure, but at least would avoid additional expenditure by the neighbor. When questioned by Mayor Wampler if there was any alternative to the situation that would be acceptable to him, Mr. Cone noted the following options: 1) construct a 20 foot high concrete brick fence along the entire length of the neighbor's property line as shared with him and at least one other neighbor; 2) tear down the building; or 3) reimburse him for the amount of money he had spent on his property. He was disappointed in council's lack of action.

Mayor Wampler noted that after lengthy discussion of the issue, the city council had decided not to take any action on the permit that would stop construction or revoke the permit and cause the neighbor to tear down a structure that he had received a permit to construct and for which he had a considerable investment. He acknowledged that staff may have issued the permit in error; however, there was confusion in that two standards existed, the platted line that required a six foot setback, and the zoning line that required a 25 foot setback. City staff had issued the permit based on the plat line, and he noted previous permits had been granted using plat lines. He noted that other cases existed in Riverhill where the plat line prevailed; in the past, the Riverhill Homeowners Association had visited the issue of plat line versus city setback and had not expressed opposition to the plat line. He also noted that staff did not deem drainage to be an issue, and a stop work order was not in effect at this time and construction could continue.

2. Peggy McKay questioned how structures could be built without standards in place and felt that city staff did not follow the guidelines in effect. She lived in the same section of Riverhill as the property in question and her deed required a 25 foot setback. She also noted that staff would not return phone calls or provide information, and construction was allowed to continue. Now, because it was not addressed at the beginning, council's ruling was based on the fact that one neighbor had made a large investment. This was favoritism and allowed the neighbor to continue to illegally construct on his property.

Mayor Wampler noted there were two standards in place, there was confusion about how to apply two different standards. There was a six foot setback on the platted line in Riverhill subdivision filed in 1967 and the city zoning setback of 25

foot. Council had not been informed by staff that the construction was illegal; rather, the two standards were in conflict and the permit was issued in good faith based on the Riverhill platted line of six foot, and the neighbor built the structure under that permit. Council had not been told it was illegal to observe the six foot or 25 foot setback, in fact, the city had observed the platting setback lines for construction of ancillary buildings in Riverhill in the past.

Consult with attorney regarding request for Reversion Deed for property generally located at 819 Water Street and intended for use as Kerrville River Walk Trail.

Ms. Keeble moved to grant the request for the reversion deed at 819 Water Street; Mr. Allen seconded the motion and it passed 4-0.

**11. EXECUTIVE SESSION:**

Ms. Keeble moved for the city council to go into executive closed session under Section 551.074 (personnel matters); the motion was seconded by Mr. Motheral and passed 4-0 to discuss the following matters:

Section 551.074:

- Appointment to the Planning and Zoning Commission.
- Evaluation of City Manager.
- Evaluation of City Attorney.

At 9:19 p.m. the regular meeting recessed and council went into executive closed session at 9:19 p.m. At 10:34 the executive closed session recessed and council returned to open session at 10:35 p.m. The mayor announced that no action had been taken in executive session.

**8B. Appointments to the Planning and Zoning Commission.**

Mr. Motheral moved to reappoint James Kessler to the regular board member position with term to expire January 1, 2013, and to postpone the appointment of other members to the January 11, 2011 meeting; Mr. Allen seconded the motion and it passed 4-0.

Evaluation of City Manager and City Attorney. The consensus of the council was that Mayor Wampler would convey the evaluations to Mr. Parton and Mr. Hayes.

**ADJOURNMENT.** The meeting adjourned at 10:36 p.m.

APPROVED: \_\_\_\_\_

\_\_\_\_\_  
David Wampler, Mayor

ATTEST:

\_\_\_\_\_  
Brenda G. Craig, City Secretary