

CITY COUNCIL MINUTES
REGULAR MEETING

KERRVILLE, TEXAS
APRIL 13, 2010

On April 13, 2010, the Kerrville City Council meeting was called to order by Mayor Bock at 6:00 p.m. in the city hall council chambers, 800 Junction Highway. The invocation was offered by Reverend Patty Edwards of the Unity Church of the Hill Country, followed by the Pledge of Allegiance led by Bill Nolan of the Retired Military Officers Association.

MEMBERS PRESENT:

Todd A. Bock	Mayor
R. Bruce Motheral	Mayor Pro Tem
Chuck Coleman	Councilmember
T. Scott Gross	Councilmember
Stacie Keeble	Councilmember

MEMBER ABSENT:

STAFF PRESENT:

Todd Parton	City Manager
Mike Hayes	City Attorney
Brenda G. Craig	City Secretary
Charvy Tork	Information Technology
Kevin Coleman	Director of Development Services
Charlie Hastings	Director of Public Works
Kim Meisner	Director of General Operations
Malcolm Matthews	Director of Parks and Recreation
Mike Erwin	Director of Finance
Stuart Barron	Water and Wastewater Manager

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

1. VISITORS/CITIZENS FORUM: No one spoke.

2. RECOGNITION AND COMMENDATIONS:

2A. Recognition of Melanie Gross for outstanding community service. (Mayor Bock)

2B. Resolution of commendation to Ben Modisett for serving on the economic improvement corporation.

2C. Recognition of achievement of Schreiner University and Schreiner University staff.

2D. Proclamation proclaiming April 12-17, 2010, as Kerrville Public School Foundation Week and supporting the KPSF Great Duck Race on April 17.

3. CONSENT AGENDA:

Mr. Gross moved for approval of items 3A through 3D; Mr. Motheral seconded the motion and it passed 5-0:

3A. Approval of minutes of the city council meetings of February 9, February 12, February 23, March 9, and March 23, 2010.

3B. Authorize a contract with Nelson Lewis Construction for construction of the landfill water main extension in an amount not to exceed \$400,000.00.

3C. Authorize the purchase of digital audio/video in-car camera systems utilizing Criminal Justice Division grant funds in the amount of \$38,344.00.

3D. Amendment to Hewitt Engineering, Inc. contract to address the final design modifications associated with the realignment in the Oak Hollow drainage project in the amount of \$13,880.00.

END OF CONSENT AGENDA.

4. PUBLIC HEARING AND RESOLUTION:

4A. Resolution No. 011 -2010 making findings pursuant to the requirements of the Texas Parks and Wildlife Code Chapter 26; that there is no feasible and prudent alternative to the city's change in use of an approximately 0.307 acre tract currently known as Martin Pool from its use as a public park to that of an entrance to the city's public works service utility yard; and that this project includes all reasonable planning to minimize harm to the land as a park or recreation area resulting from the proposed use.

Mayor Bock read the resolution by title only.

Mr. Matthews cited state law requirements under Texas Parks and Wildlife Code, Chapter 26, Protection of Public Parks and Recreational Lands, including a public hearing prior to council action.

AND

4B. Resolution No. 010-2010 concerning an approximately 9.842 acre tract of land out of the J.S. Hays Survey No. 117, Abstract No. 182, within the City of Kerrville, Kerr County, Texas, and generally located north of McFarland Street and between Hays Street and Paschal Avenue, otherwise known as 310 McFarland Street, and located within the 20-C zoning district; by permitting said city-owned property to be used for major utility facilities and local utility services purposes. Mayor Bock read the resolution by title only.

Kevin Coleman noted the city could not change the land use at this site to a city utility yard without passage of a resolution by the city council. The planning and zoning commission approved the proposed resolution on April 1, 2010; staff recommended approval.

Council discussed the following:

- The history behind the name "Martin Pool." Staff noted it was named in honor of Theodore Martin, a prominent high school educator in the community. The city would continue to honor the memory of Mr. Martin through a plaque in the area.
- Where would funding come from for the public works building and yard? Mr. Barron noted the utility building and yard would be funded through utility rates.

Mayor Bock declared the public hearing open for both items 4A and 4B; no one spoke, and Mayor Bock closed the public hearing.

Mr. Coleman moved for approval of Resolution No. 011-2010; Mrs. Keeble seconded the motion and it passed 5-0.

Mr. Coleman moved for approval of Resolution No. 010-2010; Mrs. Keeble seconded the motion and it passed 5-0.

5. PUBLIC HEARING AND ORDINANCE FIRST READING:

5A. An ordinance creating a specific use district (SUD) for the temporary housing and fostering of domestic cats on an approximate 0.74 acre tract of land consisting of Lots 4, 5, 6, and 7, Block 67, J.A. Tivy Addition, within the city of Kerrville, Kerr County, Texas, and otherwise known as 1524 5th Street, and located within a residential cluster zoning district; adopting conditions related to the development and use within said district; containing a cumulative clause; containing a savings and severability clause; establishing a penalty or fine not to exceed \$2,000 for each day of violation of any provision hereof; ordering publication; and providing other matters relating to the subject. Mayor Bock read the ordinance by title only.

Kevin Coleman noted the purpose of a SUD was to allow a specific use not generally allowed in the district by placing certain requirements and conditions as stated in the ordinance in addition to those requirements that already applied to the existing district. In this specific request, the applicant proposed to house up to 12 cats in a structure behind their primary residence. Staff had notified all property owners within 200 feet, and a public hearing was held before the planning and zoning commission; PZC recommended approval of the SUD subject to the conditions stated in the ordinance.

Mayor Bock declared the public hearing open at 6:34 p.m. and the following persons spoke:

1. Jonathan Lusher and Chelle Dainas, applicants, noted they owned the property and the adjoining nine acres of undeveloped land. They proposed to construct a structure containing three large kennels sufficient to care for up to 12 cats and allow them space to run. They would be on site to maintain the kennels and property and care for the cats. The goal was to provide housing for cats waiting to be adopted.
2. Mary Burchell, representing the Animal Welfare Society, noted AWS and the Big Fix program had volunteers and veterinarians who worked to salvage homeless cats. Both organizations had limited resources and housing and were very supportive of this project and would help the applicants care for the cats. They supported Big Fix "trap, neuter, and shots" program.
3. Charlotte Silver, president of the Big Fix Homeless Cat Project, noted their program of "trap, neuter, and release" was good for the community, and she supported the Lusher/Dainas housing project. Their members would also volunteer to feed, clean and maintain the facility upon request by the owner.

No one else spoke and Mayor Bock closed the public hearing at 6:39 p.m.

Council also discussed the following points:

- Current city ordinance limited the number of cats to four per residence. Kevin Coleman noted that code enforcement investigation would be on a complaint basis. Regarding this SUD, if the applicant wanted to increase the number of cats above 12, they would have to come back before the council to amend SUD.
- Questioned why staff proposed a SUD (specific use district) rather than a CUP (conditional use permit). Kevin Coleman noted the proposed use was not allowed by right or condition in the RC district. The property was not eligible for a CUP and it would require an ordinance change thereby allowing such cat facility in all residential cluster districts throughout the city.
- A CUP was basically a change in zoning, which would be permanent with the property essentially resulting in spot zoning.
- Concern that the operation may become a nuisance for neighbors in the future if the use ever ceased, council questioned if the SUD ordinance could impose a six month clause. Kevin Coleman noted the SUD would terminate after two years of non activity, as stated in the zoning ordinance. A CUP would terminate six months after the operation ceased but was transferable with the property.

Mr. Hayes noted if the council wanted the SUD to be revoked after six months of non-use such as a CUP, council would have to amend the zoning ordinance to reduce the period from two years to six months; however, such change would be effective for the entire city, not just specific to this property. Mr. Hayes also noted that the owner/applicant had to apply to the city council in order to end a SUD.

Kevin Coleman noted the council could amend the zoning ordinance to change the termination clause to six months instead of two years; however, an amendment to the zoning ordinance would require public hearings before PZC and city council and two ordinance readings, which would take several months. ZOIC could consider an amendment to the SUD section of the zoning ordinance in the zoning ordinance rewrite.

Mr. Motheral proposed that the applicant's request be tabled until the zoning ordinance could be amended.

Mrs. Keeble moved for approval of the ordinance on first reading, subject to the conditions stated in the ordinance; Mr. Coleman seconded the motion and it passed 4-1 with Members Keeble, Coleman, Bock, and Gross voting in favor of the motion; and Mr. Motheral voting against the motion.

6. CONSIDERATION AND POSSIBLE ACTION:

6A. Resolution No. 009-2010 determining what issues, activities, and matters constitute "competitive matters" relating to the management and operation of the city of Kerrville's electric utility with respect to the application of exceptions to disclosure of

public information and deliberation of public business in open meeting pursuant to Chapters 551 and 552 of the Texas Government Code. Mayor Bock read the resolution by title only.

Tracy McCuan, general manager and CEO of KPUB, advised that the KPUB board had approved their Resolution 10-05 adopting and approving the definition of “competitive matter” and the exceptions for disclosure of “competitive matters.” He requested city council approve a similar resolution thereby allowing KPUB to discuss certain matters in open session that were previously designated for discussion only in executive closed session, and make non-competitive information available to the public. He noted the Texas legislature deregulated the electric utility business in 1999, thus utilities like KPUB could be in competition with private enterprises offering the same types of services. Private enterprises were not subject to the open meetings act and the public information act; therefore, the state legislature gave the same protection to municipally-owned utilities. Mr. McCuan requested competitive matters such as bidding, electric generation and systems operations information remain confidential; if such information became public, bidders would not respond. He also noted that such exemptions would not apply to other utility services like water and wastewater; the exemptions applied only to electric and gas.

Mr. Hayes noted this resolution stated the city adopted specific provisions that allowed certain things to be designated as competitive matters and that KPUB was obligated to keep that information confidential pursuant to its supply contracts. Without the resolution, KPUB would have no basis to withhold the information; this procedure and language was set out by state law.

Mr. Coleman moved for approval of Resolution No. 009-2010; Mr. Motheral seconded the motion and it passed 5-0.

6B. Interim management services for the airport for FY11.

Ms. Meismer noted the Kerrville-Kerr County Airport Board requested the city submit a proposal for airport management services for FY11. Staff prepared a proposal for services; she requested council authorize staff to submit the proposal for a sum of \$242,880, a decrease of \$8,120 from FY10, and noted the contract could be further decreased by \$1,800 by eliminating administrative support, i.e. preparing and posting agendas, and recording minutes of board meetings.

Mr. Motheral moved for approval of the airport management services for FY11 as presented. Mr. Gross seconded the motion and it passed 5-0.

6C. Direction to staff concerning the city’s application to the Texas Commission on Environmental Quality for a Certificate of Convenience and Necessity (CCN) for water service.

Mr. Hastings noted on February 9 the council approved the CCN map removing all requests received by the deadline; council also instructed staff to clean up the map and remove any disconnected areas. Since that time, staff received several

additional opt out requests. He presented a revised map showing the latest opt out requests received and discussed specific requests. He noted the county requested the city remove the proposed Upper Guadalupe River Authority Center Point water service area that overlapped into the city's CCN area, the city's existing ETJ, and a portion of the city limits in the airport area. He recommended this request be denied as intentions for that area were unknown at this time. Headwaters Groundwater Conservation District and UGRA had not submitted any concerns.

Mr. Hastings noted the city of Ingram requested that the area included in their city limits and ETJ, and an area north of their ETJ be removed from the CCN. Mr. Hastings recommended removing the area inside Ingram's city limits and ETJ; however, the portion outside of Ingram's ETJ (northwest of Goat Creek Cutoff) remain in the city of Kerrville's CCN. Existing CCN holders Aqua Texas and Weidenfeld Water Works would continue to contest the city's CCN on the basis they were in the business of selling water and the city's application competed with potential customers.

Mr. Parton noted conversations would continue with the county and UGRA for how water service would be provided to the Center Point area; one option discussed was a mutual service agreement for the area.

Mr. Hastings recommended council authorize staff to revise the CCN map to reflect the following:

1. Remove areas in the original CCN map that became disconnected with the main service area as a result of granting other opt out requests.
2. Remove the two existing water service providers (Saddle Mountain Water System and Weidenfeld Water Works, Inc.) within the proposed CCN area that had been operating without a CCN and had requested to be removed.
3. Deny four additional opt out requests (Gordon Polk, Roy Kelly, Carl Mertz, and Four-T Ranch) received after the December 2009 opt out deadline. Mr. Hastings noted Mr. Mertz's property was located in the disconnected area described in Item 1 that staff had recommended be removed.
4. Remove areas within the city of Ingram's city limits and ETJ as requested by the city of Ingram.
5. Deny city of Ingram's request to remove the area outside their ETJ (northwest of Goat Creek Cutoff Road).

Council discussed the following issues:

- Stated reasons behind the CCN application and noted it was not an attempt to annex but rather to protect the people by providing sustainable water sources and fire protection.
- City water lines could be expanded into the Four-T Ranch area; if the city allowed it to opt out, it would cut off service to the area beyond Four-T.
- Areas that were allowed to opt out may develop with substandard infrastructure and without fire protection.

The following person spoke:

- Rit Jons noted council previously allowed his property to be opted out; however, neighboring properties owned by family members (Polk and Kelly) had failed to submit their opt out request by the deadline; he requested council still allow the two properties to opt out, noting the deadline had been a moving target and there were several deadlines that were not enforced by staff. If Mr. Polk and Mr. Kelly had submitted their requests by the deadline, they would have been opted out. It was a matter of property rights, they did not want to be restricted, and they could protect themselves as far as water and fire protection.

Mr. Hastings was concerned that allowing late opt outs would set precedence for other opt outs that were submitted late; also, staff had received phone calls from others who requested to opt out, but were informed that the deadline had passed.

Mrs. Keeble moved to revise the map to exclude all areas that requested to opt out. The motion died for lack of a second.

Mr. Motheral moved to adopt Mr. Hastings' recommendation except a portion of Item 3, thereby allowing the Polk and Kelly properties to opt out. The motion was seconded by Mr. Coleman and passed 4-1 with Messrs. Motheral, Coleman, Bock, and Gross voting in favor of the motion; and Mrs. Keeble voting against the motion.

6D. Discuss appointments to the building and trade boards.

Kevin Coleman noted the functions of the building and trade boards (i.e. electrical, plumbing, mechanical, etc.): 1) served as appeals board for their respective codes; 2) served as the advisory board for code amendments prior to council adoption; 3) were vital to the enforcement and interpretation of codes; and 4) the building board was the hearing body for building abatement or dilapidated structure enforcement. The total number of positions on all building boards was 28 including alternates, which were added to each board to ensure a quorum would be available to hear all matters. Staff's efforts to solicit applications to fill positions on the building trade boards had resulted in 10 applications for 17 positions currently vacant or expired, and 3 more were due to expire in May. He presented three options for consideration:

1. Leave current boards in place; appoint as many applicants as available; council recruit to fill vacancies.
2. Use option 1 and eliminate single board membership restriction established in the board rules and procedures, thereby allowing qualified persons to serve on multiple boards; this would require amendments to the board rules and procedures for building trade boards only and amendments to the specific ordinances.
3. Abolish the existing board structure, replacing the four current boards with one multi-code building board; this board would have representation from each licensed trade or professional requirement. This would require council to approve amendments to the current ordinances deleting the existing boards and creating one multi-code board. He reviewed the duties and makeup of a multi-code board.

Mr. Motheral moved to direct staff to prepare the necessary documents to adopt option 3, a 7 member board with three alternate members, one each from the three major trades of plumbing, electrical, and mechanical. Mr. Gross seconded the motion and it passed 5-0.

7. INFORMATION AND DISCUSSION:

7A. Economic Update. Mr. Erwin reviewed the financials for the period ending April 7, 2010. Mr. Motheral requested future updates include a year-to-year percentage comparison.

8. BOARD APPOINTMENTS

8A. Appointment to the Kerrville Public Utility Board. Matter was deferred to executive session.

8B. Appointments to the parks and recreation advisory board. Mrs. Keeble moved to reappoint Rustin Zuber, and to appoint Lisa Nye-Salladin, and Susan Sander, all with terms to expire March 31, 2012. Mr. Gross seconded the motion and it passed 5-0.

8C. Appointment to the golf course advisory board.

Mr. Motheral moved to appoint Matthew Walden with term to expire July 1, 2011. Mrs. Keeble seconded the motion and it passed 5-0.

8D. Appointment to the economic improvement corporation. Matter was deferred to executive session.

9. ITEMS FOR FUTURE AGENDAS: None

10. ANNOUNCEMENTS OF COMMUNITY INTEREST:

- Upcoming candidate forums: 1) April 20, 5:30 p.m., at Schreiner College, sponsored by the board of realtors and chamber of commerce; and 2) April 22, 7:00 p.m. at KPUB office, sponsored by the League of Women Voters.
- Great Duck race April 17 (Item 2D).
- Congratulations to Travis and Kat Cochrane on the birth of their son, Noah.

11. EXECUTIVE SESSION:

Mr. Coleman moved for the city council to go into executive closed session under Sections 551.071 (consultation with attorney), 551.072 (deliberation regarding real property), 551.073 (deliberation regarding gifts), 551.074 (personnel matters), 551.076 (deliberation regarding security devices) and 551.087 (deliberation regarding economic development negotiations) of Chapter 551 of the Texas Government Code of the State of Texas; the motion was seconded by Mr. Motheral and passed 5-0 to discuss the following matters:

Section 551.071, 551.072, and 551.087:

- Discuss the purchase, exchange, lease, sale, or value of real property for use as a city facility, the public discussion of which would not be in the best interests of the

city's bargaining position with third parties.

Section 551.074:

- Appointment to the Kerrville Public Utility Board.
- Appointment to the economic improvement corporation.
- Evaluation of city manager.

At 8:29 p.m., the regular meeting recessed and council went into executive closed session at 8:33 p.m. At 9:22 p.m., the executive closed session recessed and council returned to open session at 9:23 p.m. The mayor announced that no action had been taken in executive session.

12. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION:

8A. Appointment to the Kerrville Public Utility Board. Mr. Motheral moved to appoint Fred Gamble with term to expire April 21, 2015. Mrs. Keeble seconded the motion and it passed 5-0.

8D. Appointment to the economic improvement corporation. Mr. Coleman moved to appoint Gregg Appel, with term to expire June 1, 2012. Mr. Gross seconded the motion and it passed 5-0.

ADJOURNMENT. The meeting adjourned at 9:24 p.m.

APPROVED: _____

Todd A. Bock, Mayor

ATTEST:

Brenda G. Craig, City Secretary