



City of League City, TX

300 West Walker
League City TX 77573

Meeting Minutes City Council

Monday, August 22, 2016

6:00 PM

Johnnie Arolfo Civic Center
400 West Walker Street

Council Work Session

The City Council of the City of League City, Texas, met in a special work session in the Johnnie Arolfo Civic Center at 400 West Walker Street on the above date at 6:00 p.m.

Mayor:

Pat Hallisey

City Council Members:

**Dan Becker
Hank Dugie
Heidi Hansing
Todd Kinsey
Geri Bentley
Keith Gross
Nick Long**

City Manager:

Mark Rohr

Deputy City Manager:

John Baumgartner

Asst. City Manager/Director of Finance:

Rebecca Underhill

City Attorney:

Nghiem V. Doan

City Secretary:

Diana M. Stapp

Chief of Police:

Michael Kramm

Director of Engineering:

Earl Smith

Director of Human Resources/Civil Service:

Queenell Fox

Director of Parks & Cultural Services:

Chien Wei

Director of Planning & Development:

Paul Menzies

Director of Public Works

Gabriel Menendez

1. CALL TO ORDER AND ROLL CALL OF MEMBERS

Mayor Hallisey called the meeting to order at 6:00 p.m. and called the roll. All members of Council were present.

Present 8 - Mayor Pat Hallisey, Mr. Dan Becker, Mr. Hank Dugie, Ms. Heidi Hansing, Mr. Todd Kinsey, Ms. Geri Bentley, Mr. Keith Gross and Mr. Nick Long

2. **CONSIDER AND POSSIBLY ACT TO ADOPT PROCEDURES BY WHICH A DEVELOPER WHO APPEALS THE CITY OF LEAGUE CITY'S DETERMINATION THAT DEDICATIONS REQUIRED OF THE DEVELOPMENT ARE ROUGHLY PROPORTIONATE TO THE DEVELOPMENT'S IMPACT MAY PRESENT EVIDENCE AND TESTIMONY**

Nghiem Doan, City Attorney, said the item before you is actually a first step that we will need to take in advance of the next item which is to conduct a hearing on a developer's appeal of the City's determination that certain dedications that we required by plat. They are appealing our determination that those dedications are roughly proportionate to the impact that their development will have on our infrastructure. So under State Law, Local Government Code Section 212.904 there is a procedure by which the developer can appeal such determination but that appeal, basically the hearing that we are going to have should have procedures adopted by the governing body, being city council, by which that hearing is to take place. In visiting with the Director of Planning/Development Paul Menzies I inquired if we had any such procedures adopted before and this is apparently the very first time we have ever conducted one of these hearings. And so what I have done is put together some simplified procedures by which we could be guided tonight when we have this hearing. Under Exhibit A of the resolution, paragraph 1 simply states the standard for city council's evaluation and clarifies that the burden of proof tonight is upon the party who has filed the appeal, the developer. The developer appeals the city's determination so the developer will have that burden of proof to come forward with evidence and testimony to contest that determination. Paragraph 2 will go through the order by which the hearing will take place. You have it opened by the presiding officer and will have the developer have the opportunity to give his presentation and that will consist of written evidence, oral written testimony. After the developer finishes that presentation City Council and the city's representative, which I here as the city's representative, will have an opportunity to ask questions of the developer regarding the evidence and testimony that was introduced. After that the city may give a presentation as well on its determination of rough proportionality. After the city's presentation the city council has an opportunity to ask questions of city staff and representatives. After council asks their questions then the developer have a chance to cross examine the city's witnesses. After that the city council will have a chance to ask any further questions. The developer will then have a chance to ask further questions and then the hearing will be closed. We will start the 30-day time clock by which the council has to render its decision.

A motion was made by Mr. Long, seconded by Mr. Kinsey, to approve Resolution No. 2016-93 to adopt procedures by which a developer who appeals the City of League City's determination that dedications required of the development are roughly proportionate to the development's impact may present evidence and testimony. The motion passed by the following vote:

For: 8 - Mayor Hallisey, Mr. Becker, Mr. Dugie, Ms. Hansing, Mr. Kinsey, Ms. Bentley, Mr. Gross and Mr. Long

3. CONDUCT A HEARING TO RECEIVE EVIDENCE AND TESTIMONY FROM BUTLER DEVELOPMENT, LLC PERTAINING TO ITS APPEAL OF THE ROUGH PROPORTIONALITY OF CERTAIN DEDICATIONS THAT IT HAS BEEN REQUIRED TO MAKE BY PLAT

Mayor Hallisey opened the hearing at 6:23 pm.

The developer's legal counsel requested that both hearing items (Item 3 and Item 4) be consolidated.

At 7:02 pm the City Council adjourned to executive session.

At 7:15 pm the City Council reconvened in open session.

Micki Morris, Partner with the law firm of Rogers, Morris & Grover, represented League City United Methodist Church and Butler Road Development LLC.

Mr. Lynn Watkins represented both League City United Methodist Church and Butler Road Development.

Ms. Morris proceeded with the following PowerPoint presentation:

What is a "Physical Taking"

- By law, a "physical occupation" to construct permanent improvements on private property without compensation is a "taking per se" and a categorical condemnation
- By law, obtaining and exercising a "right of entry" to construct on private property without paying compensation is a "taking per se" and a categorical condemnation
- In such cases, the landowner's right to compensation is earned when government obtains and/or exercises right of entry for construction of improvements
- In inverse condemnation suit to collect fair market value and other compensation that the government failed to pay, landowner also recovers attorney's fees and costs
- There are no rough proportionality, substantial interest or other government defenses in physical taking cases, only in regulatory takings cases
- Neither LCUMC nor Butler had sought plat approval at the time the physical takings occurred in this case

What is a "Regulatory Taking"

- A exaction or condition imposed by a City on a developer that must be satisfied as in order to obtain plat or permit approval (i.e., making of dedications, payment of construction costs, payment of fees)

- City's power to impose conditions during platting is not absolute:
 - There must be a legitimate governmental purpose to support the imposition of the condition, and there must be an essential nexus between the governmental purpose and the exaction (U.S. Supreme Court "Nollan Test")
 - Each condition imposed (exaction) must be roughly proportionate to a corresponding impact of the development, both in nature and extent (U.S. Supreme Court "Dolan Test")
- Texas Supreme Court has adopted Nollan/Dolan tests, and places burden on cities to make "individualized determination" of rough proportionality for each exaction sought (Town of Flower Mound v. Stafford)
- Stafford holding was codified in Texas Local Gov't Code Section 212.904, which places burden on City to establish, through licensed engineer, that each regulatory exaction meets rough proportionality test
- Exactions that fail roughly proportionality test are "regulatory takings," and developer is entitled to just compensation
- Developer who prevails in court is awarded attorney's fees and expert costs

LCUMC Takings

- 15-foot Sanitary Sewer easement (Physical Taking)
- 20-foot ROW along Turner Road (Physical Taking)
- 8-foot Hike and Bike Trail easement along League City Parkway (Regulatory Taking)

Butler Takings

- 7-foot ROW along League City Parkway (Physical Taking)
- 8-foot wide Sanitary Sewer easement with Hike and Bike Trail Easement along League City Parkway (Physical Taking)
- 15-foot Sanitary Sewer easement running north and south along east boundary of tract (Physical Taking)
- 5-foot Sidewalk easement along Butler (Regulatory Taking)

2014

- City made repeated inquiries and requests to purchase rights of way (ROW) and easement from LCUMC for City-planned projects:
 - Improvements at Calder Road-Ervin to League City Parkway
 - City-wide 30-inch Gravity Sewer project
 - Butler/Turner Improvements (Widening of Turner Road)
- On multiple occasions, City wrote LCUMC representatives to advise that appraisals were underway, and offers to purchase the ROW and sanitary sewer easement for the above projects would be forthcoming (Exhibit 1)

February 2015

- February 20, 2015 City made initial offer of \$220,785.50 for the ROW and sewer easement needed by the City for the upcoming projects; City's offer was based on proposed fair market value (FMV) of \$5.00 per square foot (Exhibit 3)

- City provided Texas Landowner's Bill of Rights to LCUMC, acknowledging its legal obligation to pay fair market value and other just compensation for the ROW and easement takings (Exhibit 4)
- On February 27, 2015, LCUMC agreed, upon City's request, to grant the City of Right of Entry to construct the ROW and sanitary sewer improvements prior to completion of land value negotiations (Exhibit 5)

March 2015

- City executed Right of Entry Agreement on March 17, 2015, which granted physical occupation of all ROW and sanitary sewer easement areas City was seeking to purchase (Exhibit 17)
- City guaranteed, in Right of Entry Agreement, that granting right to occupy for construction would "in no way jeopardize LCUMC's right to receive just compensation for any interest in land"
- By acquiring absolute right to enter and perform permanent construction, physical taking occurred for all ROW and Sanitary Sewer easement areas

June-July 2015

- On June 5, 2015, City made final offer of \$230,681.38 for the ROW and sewer easement takings, using a proposed FMV of \$5.25 per square foot (Exhibit 6)
- City had begun sewer trunk-line construction and clearing of ROW as of June 2015
- LCUMC rejected compensation offer as inadequate and requested eminent domain proceedings to adjudicate value (Exhibit 7)
- By this time, LCUMC had sold a portion of its site to Butler (occurred in April, 2015)
- Butler filed original plat application on July 7, 2015 (Exhibit 8)

September 25, 2015, Exhibit 9

John Baumgartner informs Butler, in writing, that if it desires to plat its development, then all ROW and easement areas already taken City must be dedicated for zero compensation due, stating that:

- "Dedication of easements and right-of-way as part of the subdivision process does not provide for additional compensation..."
- "If that is not satisfactory, then the plat will need to wait until we complete the eminent domain process."

Both statements above are legally incorrect:

- ☐ Right to compensation became an irrevocable right at the time the City acquired irrevocable right of entry to construct on March 17, 2015
- ☐ City cannot deprive lawful right to compensation for a taking that has already occurred as a condition of subsequent plat/permit approval

October 2015

- John Lothrop advises Butler and LCUMC, in writing, that City is updating surveys to reflect the newly split ownership, and that new compensation offers will be complete in about 3-4 weeks (Exhibit 10)

- John Lothrop advises Butler/LCUMC that if “mutually agreeable terms cannot be negotiated, the City will proceed with the eminent domain process for a determination of compensation due
- During same time, John Baumgartner tells Butler that plat would not be approved without requested dedications

November-December 2015

- City attorney declares that, due to platting, LCUMC and Butler are no longer entitled to compensation for the ROW and easements taken by City in March 2015
- Butler and LCUMC agree to “conditional” dedications (under protest), in order to obtain plat approval, reserving all rights to appeal its entitlement to just compensation for the takings (Exhibit 17)
- Butler plat is approved with conditional dedications, made under protest

February-March 2016

- LCUMC plat application is filed on February 1, 2016, and approved with same conditional dedications (made under protest)
- City engineering department waives LCUMC’s requirement to provide a Traffic Analysis, confirming that “development does not necessitate a traffic study” (Exhibit 12)
- In March 2016, City furnishes Rough Proportionality Analysis (“RPA”) performed by Freese & Nichols, which claims that cost of traffic impacts exceed value of land taken by City (Exhibit 13)
- City sends revised final offers to Butler and LCUMC for the ROW and easements condemned in March 2015, offering \$0 compensation (Exhibit 14)

Argument #1, City is Improperly Treating Plat Dedications as “Exactions”, and not Completed “Takings” Per Se

- Prior to any plat application, City had already condemned and occupied the ROW and sanitary sewer easements, as a matter of law
- City cannot use platting process to refuse to pay compensation already owed for a taking that had already occurred
- City cannot withhold compensation already owed, for a taking that has already occurred, with the intent to offset it against potential future development impacts

Argument #2, Assuming “Exactions” were even Possible, RPA was not Individualized for Each Exaction, as Required by Law

- City only performed one combined RPA study that aggregated LCUMC and Butler takings and purported impact
- City failed to comply with legal obligation to evaluate rough proportionality of each type of exaction separately, and for each developer separately

- **RPA only evaluates traffic impact:** City failed to meet legal obligation and burden to justify the rough proportionality of each exaction (i.e., that roadway exactions are roughly proportionate to roadway impact; that sidewalk exaction and construction costs are roughly proportionate to pedestrian impact; that hike/bike trail exactions are roughly proportionate to pedestrian and bicycle impact)
- **Per the U.S. and Texas Supreme Court, “rough proportionality” requires an individualized determination that each regulatory exaction is related both in nature and extent to the impact of the proposed development**
- **Freese and Nichols acknowledges these requirements (Exhibit 16)**

Argument #3, Assuming “Exactions” were even Possible, RPA Methodology was not Consistent with Ordinances

- **Per City ordinance, City may not hold developers responsible for any costs of “traffic impact improvements on public streets for which a funded capital improvement project is scheduled to be completed within three years of the TIA review.” (102-5 at Appendix A, Section 1(g)(ii))**
- **RPA uses “system wide” area to calculate traffic impacts, while ordinances define a much smaller area to be used for determination of traffic impact**

Argument #4, Assuming “Exactions” were even Possible, Traffic Data Assumptions in RPA are Unsupported

- **RPA assumes that one-half of church attendees are coming to church from work, rather than from home, resulting in a longer trip length (resulting in overestimation of impact)**
- **RPA uses trip length data source that is not supported by evidence, and which could exceed City limits if measured from Butler/LCUMC property**
- **City incorrectly assumes that 68% of the average trip length to the Butler/LCUMC site occurs on roads funded by League City, rather than County, State or Federal gov’t (resulting overestimation of impact)**
- **RPA mischaracterizes future “Support Building” portion of LCUMC development as commercial “Office Building” (resulting in overestimation of impact)**
- **RPA significantly underestimates the actual capacity of existing City roadways (resulting in overestimation of traffic impact created by Butler/LCUMC)**

Argument #5, Assuming “Exactions” were even Possible, Figures used to Calculate Developers’ Share of Road Costs are Flawed

- **Regulatory takings may only offset impact to infrastructure funded by municipality**
- **RPA assumes City is incurring infrastructure costs that City is NOT actually incurring (i.e., costs contributed by County for joint road projects, such as Calder Road project) (Examples in Exhibit 2)**
- **Per City, 37% of City’s Road Program is funded by Galveston County and Grant Funds, a fact not accurately reflected in RPA**

- RPA fails to accurately reflect amount of STP-MM City is receiving (and thus NOT incurring) for road projects

Argument #6, Assuming “Exactions” were even Possible, RPA Should Have Only Used Capital Recovery Method to Calculate Impact

- RPA uses an Incremental Method to calculate a cost per unit of traffic impact for Butler and LCUMC, despite the fact that Freese and Nichols has given public presentations warning cities NOT to use the Incremental Method (Exhibit 16)
- The Capital Recovery method is the method Freese and Nichols state should be used, and is the method being used for the City’s Traffic Impact Fee Study

Argument #7, Assuming “Exactions” were even Possible, RPA Fails to Accurately Calculate Cost of Development Impact

■ Step One:

of Development Units x Vehicle-miles per Development Unit = # of Service Units

In RPA, both factors are inflated, so # of Service Units is inflated

■ Step Two:

of Service Units x Cost per Service Unit = Cost of Development Impact

In RPA, both factors are inflated, so Cost of Development Impact is inflated

- RPA improperly aggregates purported Cost of Development Impact for both LCUMC and Butler, rather than making separate RPA determination for each

Argument #8, Assuming “Exactions” were even Possible, RPA Fails to Use Accurate Fair Market Value of Properly Dedicated

- RPA assumes a value of \$5.00 per square foot for Church Property and \$9.75 per square foot for Butler Property.
- Comparables used by City for FMV are not comparable and out of date
- RPA fails to include the value of land dedications and construction costs for Hike and Bike trail or sidewalks
- Actual FMV of Church Property is \$9.00 per square foot, as determined by appraisal (Exhibit 18)
- Actual FMV of Butler Property is \$13.00 per square foot, as determined by appraisal (Exhibit 19)

Conclusion #1: As a Matter of Law, the City Must Compensate Butler and LCUMC for the March 2015 Takings

■ Butler

Sanitary Sewer Easement: 12,876 sq. ft. X 6.50 p.s.f. = \$83,694*

***Not including surface taking for overlapping Hike and Bike Trail portion**

League City Parkway ROW: 2630 sq. ft. X 13.00 p.s.f. = \$34,190

- LCUMC
Sanitary Sewer Easement: 5558 sq. ft. X 4.50 p.s.f. = \$25,011
Turner Road ROW 34,338 sq. ft. 9.00 p.s.f = \$309,042

Conclusion #2: City Has Failed to Meet Legal Obligation to Establish Rough Proportionality for Attempted Hike and Bike, Sanitary Sewer and Sidewalk Exactions

- No RPA performed for exaction for Butler Sidewalk easement or construction costs
- No RPA performed for exaction of Hike and Bike Trail easements or construction costs (either site)
- No RPA performed for exaction of Sanitary Sewer easements (either site)

Therefore, under U.S. and Texas Supreme Court law, the above required dedications are "takings," and not proper "exactions," entitling LCUMC and Butler each to just compensation:

Butler: \$13.00 p.s.f. for Sidewalk easement area plus any construction costs

\$13.00 p.s.f. for combined Hike and Bike/sewer easement area plus any Hike and Bike trail construction costs

LCUMC: \$9.00 p.s.f. for Hike and Bike easement area plus any construction costs

4. **CONDUCT A HEARING TO RECEIVE EVIDENCE AND TESTIMONY FROM LEAGUE CITY UNITED METHODIST CHURCH PERTAINING TO ITS APPEAL OF THE ROUGH PROPORTIONALITY OF CERTAIN DEDICATIONS THAT IT HAS BEEN REQUIRED TO MAKE BY PLAT**

A motion was made by Mr. Gross, seconded by Mr. Long, to abate the hearing until the next work session. The motion passed by the following vote:

For: 8 - Mayor Hallisey, Mr. Becker, Mr. Dugie, Ms. Hansing, Mr. Kinsey, Ms. Bentley, Mr. Gross and Mr. Long

5. **CONDUCT A WORK SESSION OF THE CITY COUNCIL TO RECEIVE INFORMATION CONCERNING AGENDA ITEMS APPEARING ON THE MEETING AGENDA FOR THE AUGUST 23, 2016 MEETING OF THE CITY COUNCIL OF THE CITY OF LEAGUE CITY.**

NO VOTE OR ACTION WILL BE TAKEN ON ANY ITEM UNDER CONSIDERATION

6. ADJOURNMENT

At 9:20 p.m. Mayor Hallisey said, there being no further business this meeting is adjourned

**PAT HALLISEY
MAYOR**

**DIANA M. STAPP
CITY SECRETARY**

(SEAL)

MINUTES APPROVED: