



City of League City, TX

300 West Walker
League City TX 77573

Meeting Minutes City Council

Monday, September 12, 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 except Mr. Long and Mr. Gross.

Absent 2 - Mr. Keith Gross and Mr. Nick Long

Present 6 - Mayor Pat Hallisey, Mr. Dan Becker, Mr. Hank Dugie, Ms. Heidi Hansing, Mr. Todd Kinsey and Ms. Geri Bentley

2. **CONTINUE THE HEARING ON BUTLER DEVELOPMENT, LLC AND LEAGUE CITY UNITED METHODIST CHURCH'S APPEALS OF THE ROUGH PROPORTIONALITY OF CERTAIN PLAT DEDICATIONS REQUIRED BY THE CITY OF LEAGUE CITY**

Nghiem Doan, City Attorney presented the following powerpoint presentation:

City of League City's Response to Appeals by League City United Methodist Church & Butler Road Development, LLC under Local Government Code 212.904

LCUMC and Butler's conclusions:

- 1) City "took" land in March 2015 for which it owes compensation;
- 2) City has failed to establish rough proportionality for the plat exactions

Guiding Principles:

- 1) There are laws that apply;
- 2) The rules apply to everyone;
- 3) Transparency promotes trust and cooperation

The Laws that Apply

☐ Fifth Amendment, U.S. Constitution

If property is taken by City, just compensation is due

☐ Texas Constitution, Art. 3, Sec. 52

Cannot make grants of public money (tax dollars)

☐ Tex. LGC Sec. 212.004

A Plat is required when property is subdivided

☐ Tex. LGC Sec. 212.010

A plat can be approved only if it conforms with the City's future infrastructure plans

☐ City Code Sec. 102-13

No permits may be issued nor utility service provided in a subdivision for a plat that has not been approved and recorded

Complete Factual Background

☐ 2014

☐ Watkins asks City to clarify how City's future plans impact LCUMC's 22 acre tract

☐ John Lothrop works to solidify City's needs so an appraisal can be commissioned to begin acquisition

☐ 2015

2/16/15: Integra completes appraisal of 22 acre tract

2/19/15: Nothing happens

2/20/15: City tenders initial offer to LCUMC for 22 acre tract

2/27/15: LCUMC grants City a right of entry onto its land

3/13/15: Watkins has survey prepared showing 4.85 acres being carved out of LCUMC's 22 acre tract

3/31/15: LCUMC divides its 22 acre tract to sell Butler the 4.85 ac tract

4/22/15: Watkins emails City rejecting offer and criticizing appraisal
5/05/15: Integra revised appraisal to incorporate input
5/22/15: DCM emails Watkins what ordinances and Master Thoroughfare Plan require
6/04/15: City's contractor moves equipment onsite
6/05/15: City tenders final offer for LCUMC's 22 ac tract
6/23/15: Watkins emails City LCUMC's rejection of final offer and request for eminent domain
7/02/15: Watkins submits plat for just the 4.85 ac Butler tract
7/07/15: City notifies Watkins that plat dedications are needed
9/25/15: DCM emails Watkins that Butler needs to make the dedications on the plat, or can wait for condemnation
11/12/15: City notifies Watkins that the Butler plat needs to show the parent tract (the remaining LCUMC property)
12/07/15: Parties agree to allow Butler plat to proceed provided remaining LCUMC property is platted in 60 days
12/07/15: Butler plat is approved by City
1/29/16: LCUMC submits plat of remainder tract

LCUMC and Butler's conclusions:

- 1) City "took" land in March 2015 for which it owes compensation;**
- 2) City has failed to establish rough proportionality for the plat exactions**

LCUMC and Butler's conclusions:

- 1) City "took" land in March 2015 for which it owes compensation;**
***City reserves its argument that this point is not within scope of a 212.904 appeal.**

Critical Facts

2/19/15: Nothing happened

***Deadline to submit plat for approval on 3/21/15**

2/27/15: LCUMC grants City the right of entry (ROE)

***LCUMC voluntarily granted this permission; City did not and could not have forced it**

*** Agreement states that ROE was being granted "prior to the execution of formal conveyance documents"**

*** No promise (or even mention) of condemnation in the terms!**

3/31/15: LCUMC divides its 22 acre tract to sell Butler the 4.85 ac tract

*** This division of land was illegal (required a plat, none was filed)**

*** Had plat been filed as required, dedications would have been shown thereon**

9/25/15: DCM emails Watkins that Butler needs to make the dedications on the plat, or can wait for condemnation

City's response:

- 1) City never took LCUMC's property, since the ROE was voluntarily given in February 2015, pending execution of formal conveyance documents; if landowner gives consent, there is no taking as a matter of law;
- 2) No taking means no compensation is owed, except as part of the rough proportionality analysis;
- 3) A plat is a conveyance document because it dedicates property rights for public use;
- 4) City offered to continue to pursue condemnation if Watkins would withdraw his plat; Watkins refused.
- 5) A plat can be approved only if it includes the dedications required by City's future infrastructure plans.
- 6) Once the plats dedicated the strips that City needed, there is nothing left for City to condemn.
- 7) Once the plats dedicated the strips that City needed, City cannot pay for those properties without violating the Texas Constitution.
- 8) The timeline and outcome are the result of Watkins' decisions, not City's.

LCUMC and Butler's conclusions:

- 2) City has failed to establish rough proportionality for the plat exactions

Critical Points

- Exactions must be "roughly proportional" to the development's impacts;
- Texas Supreme Court stated (in *Town of Flower Mound v. Stafford Estates*):
"No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development".
- Per LGC 212.904, City retained a PE (Freese and Nichols) to prepare a rough proportionality analysis;
- City has been transparent and shared all of its data with Watkins and LCUMC through this process;
- Watkins never presented City with any competing appraisal or engineer's report to consider until 8/22/16;
- Watkins has presented a letter from a PE that challenges City's RPA, but letter does not bear that PE's seal and offers no contradictory finding regarding cost of impact;
- Watkins challenges City's valuation of the properties by offering appraisals dated Aug. 10, 2016;
- City requested Freese and Nichols to address the challenges raised by Watkins' PE.

City's response:

- 1) "Rough proportionality" is exactly that: a rough approximation;
- 2) Texas Supreme Court ruled that no precise mathematical calculation is required; in other words, the value of the exactions must only be roughly approximate to the impact created by the development;
- 3) City's retained PE performed an RPA determining that the exactions are roughly proportional to the development impacts;

- 4) Watkins' PE did not perform his own RPA to contest City's determination; he merely wrote a letter criticizing some of the methodology used by Freese and Nichols;
- 5) Freese and Nichols stands by their methodology, which often utilized the more conservative approach.
- 6) Freese and Nichols separated the two properties to address that concern about their original RPA, and in only one contingency do the exactions exceed the impacts;
- 7) City has established "rough proportionality" of its exactions to the development's impacts, even if value of exactions and development's impact are not exactly equal.
- 8) Watkins' appraisals are not valid evidence of values in 2015, when the exactions occurred.

Conclusions

- LCUMC gave City access to its property; there was no taking that triggers just compensation.
- City was always willing to proceed with condemning the property, even after the illegal subdividing of the tracts that triggered platting.
- City lost the ability to condemn and compensate for the properties once they were dedicated to City by plat as required by law.
- City's retained PE has taken a conservative approach in his calculations of development impacts.
- City's PE has determined that the dedications exacted are roughly proportional to costs of developments' impacts.
- City has been upfront and transparent in its dealings with Watkins and LCUMC. Watkins has been less so.

Guiding Principles:

1. There are laws that apply;
2. The rules apply to everyone;
3. Transparency promotes trust and cooperation.

Micki Morris, Partner with the law firm of Rogers, Morris & Grover, representing League City United Methodist Church and Butler Road Development LLC, was allowed to present rebuttal information.

3. CONDUCT A WORK SESSION OF THE CITY COUNCIL TO RECEIVE INFORMATION CONCERNING AGENDA ITEMS APPEARING ON THE MEETING AGENDA FOR THE SEPTEMBER 13, 2016 MEETING OF THE CITY COUNCIL OF THE CITY OF LEAGUE CITY.

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

4. ADJOURNMENT

At 8:47 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: