

MINUTES OF THE

COMMISSIONERS' COURT

SPECIAL JOINT MEETING - SEPTEMBER 27, 2018

On the 27th day of September, 2018, there was a Special Joint Meeting of the Commissioners' Court and the City Council at the Aquarium Education Center, located at 706 Navigation Circle, Rockport, Aransas County, Texas, with the following members present: **C. H. "Burt" Mills, Jr.**, County Judge; **Jack Chaney**, Commissioner, Precinct 1; **Leslie "Bubba" Casterline**, Commissioner, Precinct 2; **Brian Olsen**, Commissioner, Precinct 3; **Betty Stiles**, Commissioner, Precinct 4; and **Valerie K. Amason**, County Clerk.

City of Rockport Council Members: **Pat Rios**, Mayor; **Rusty Day**, Ward 1; **J. D. Villa**, Ward 2 and Mayor Pro-Tem; **Barbara Gurtner**, Ward 4;

Other County Officers present were **Pam Heard**, District Clerk; **John Strothman**, Pathways Project Manager; **Carrie Arrington**, Office & Contracts Manager for the County District Attorney;

Long-Term Recovery: **Kim Foutz**, Long-Term Recovery Specialist;

Members of Local City Government, Community Groups and other Interested Parties present:

Other City of Rockport Representatives/Employees: **Terry Biamonte**, City Attorney; **Kevin Carruth**, City Manager; **Teresa Valdez**, City Secretary; **Mike Donoho**, Public Works Director;

Kevin E. Jamison, Director & Vice-President of Elsley, LLC, Residential/Commercial Housing Plans & Builder/Developer;

Mike Probst, Editor and Publisher of the Rockport Pilot Newspaper; **Karen Mella**; Real Estate Agent; **Susan Jamison**; Pension Advisory Group, Inc, First United Methodist Church;

The Meeting was convened at 2:00 p.m. at which time a quorum was declared by Judge Mills and Mayor Rios declared all City Council Members present and agreed that court was now in session, WHEREUPON, the following proceedings were had and done to wit:

ITEMS FOR DELIBERATION AND/OR ACTION

1. Discuss, approve or disapprove housing opportunities in general after Hurricane Harvey, including but not limited to any pending proposals specifically and discuss options and collaborations of Aransas County and the City of Rockport.
2. Discuss, approve, or disapprove and authorize County Judge to sign a Memorandum of Understanding (MOU) with the City of Rockport regarding a Chapter 380 Economic Development Agreement with Elsley LLC.

Judge Mills: Kim you get the floor.

Kim Foutz: Ok, I'm going to talk locally about the agreements that are before you, what the development is like, what the proposal is, and what the obligations are from the developer, as well as the City and County and then I'll kind of break off a little bit because we have some things that are not exactly the same in both agreements. First I want to talk about how we made this journey, how we made it here today, I specifically want to talk about it in a global point of view. We started with data analysis back in October of 2017 and then we had workshops in December 2017 with a consultant and followed up with more workshops and focus groups in January, 2018. As a result of that, we took data and put it into the Long Term Recovery Plan

and all of these ideas and concepts that were generated from that process are now in the plan and we are currently operating off of that. We don't have an incentive policy on housing or a light industrial technology type policy, that is not done yet, and this is something we need in order to move forward. Usually the first thing that will happen is the Developers will contact City or the County and they say "I've got a project I want to come over and talk to you about". The entities have been talking to those developers and then sending them to me to try to vet some things out, make sure we were sending the same exact message and maintaining a global look at what is happening and what level of interests there are. We want affordable housing for the most part, yes we will entertain the incentives on a case by case basis, based upon what the proposal is. We have done tons of research on available lots, policies, everything to educate the individual that was seeking the possibility of development. We met with dozens of developers that were interested and helped from a research point of view. So, all of the proposals had to be affordable housing, they could be for lease or sale, and they needed to talk about what their timeframe was. So, I got the same responses across the board, and that is, "Hmmm, I think I'll go to the General Land Office and put in one of these applications" and our response was, "Ok, that's great, if there is any way we can help facilitate that process, we will be happy to do so". So that's one of the answers that we got, the other is, " Uh, I don't want to have to meet those affordability requirements, I don't want to have to put that on paper, that I'm to going to provide a certain amount at a certain rate, I think I'm just going to go build Market Rate", and that is across the board, very few other answers. We

only received one proposal for affordable housing the others went with market value, Kevin Jamison, Vice President of the Project Elsley, LLC, the location that they are looking at is the SW corner of 2165 & 35 Bypass, the land that he owns encircles the School District property at that intersection. Phase 1, that is the subject of this proposal is 6.8 acres out of a 49 acre tract. He has actually received a planned unit development passed from the City and has platted this first space, but the total lot build is set at about 189 lots and the subdivision name is "Villages of Logan's Crossing PUD". In the contract it calls for a 3 million dollar investment in the first four years and that is \$750,000 per year, the number of units in the first phase is nineteen, they can be for sale or for lease, primarily he's hoping to accomplish the for sale in the phase one. If you remember, we had a preliminary round where we had a General Land Office (GLO) call for projects, in that call we did get 3 of 5 projects awarded in Aransas County. Mr. Jamison was a proposer. I was told by the GLO that all of the projects that applied in Aransas County were going to receive an award and something happened within about a week and a half before the announcement was made and 3 of the 4 ended up being awarded and Mr. Jamison's did not make it through that cut but he is eligible to apply again. We are in that last 30/30/30 round with GLO, so the first 30 days was just for rehabs, primarily for apartments, the second was for total rebuilds and we will not have anything that is awarded under that because the first rebuild which was the Salt Grass Apartments, that was awarded in that preliminary round. So we are in the last of the 30 day tranches and the last day that anyone can apply is October 21st and that is going to be a key date for some other things that we

are working on. So, I talked to Mr. Jamison and we added an additional clause because we heard the counsel and the County, they would like to see some more units involved, so by contract he is obligated to go in and make another proposal to the GLO during this round or any future rounds, the reason I mention future rounds is because there is another appropriation that is working through the process again which will allocate additional funding for housing projects in all of the qualified counties. Term of Contract is very much the same, 8-10 years. Just some of the affordability requirements, 51% of the units have to meet the affordability requirements, it's very tied to the industry standards, so they have to meet Housing and Urban Development standards, they have to not require more than 10% and meet the monthly payment schedule that a person of that income can qualify for. The rent can be no more than 36% of the household family's monthly income, they can only sell or lease affordable units to eligible buyers and lessees that have been income qualified. There was some expression of concern, and this has been in the contract since day one, that someone might turn right around and flip the property since it was coming in affordable and subsidized, but we have a provision in there that the first two owners have to be owner occupied and be their principle homestead. There is also another provision about what percent has to be done early on in the development. As far as construction, as soon as the Public Infrastructure is complete the development has to start within 30 days. We put a by-local provision in and there are triggers, it is a reporting function in both contracts, so if they go over a certain dollar amount and there is a differential and they don't go local, that's addressed in there. For County and City residents there is an

employment requirement. Other contract provisions deal with the Appraisal District Assessment, access to the property in order to verify all the terms and conditions, there are reports that are done by Elsley on all of these items that are in the contract. There is not an automation assignment clause, it's one of the typical languages where the other party has to agree to the assignment and not unreasonably withheld. There is standard language that I pulled out of your Economic Development Agreements as well as Tax Abatement Agreements, as it relates to default, recapture, all the general verbiages. City and County Attorneys have been and will be looking at all of that language and making sure that it is sufficient.

The Chapter 380 Grant Agreement from the City is contingent on the County entering into a 381 Agreement. There is no specificity about the terms of those agreements, but it does say that each agreement and the passage of it is contingent upon one another. Also, only in the City Contract, the City has to obtain financing, a grant, or a combination thereof, \$850,000 worth of Public Infrastructure and I want to emphasize that's only Public Infrastructure. The items that won't be dedicated to the City, that is still the responsibility of the developer to install and dedicate as appropriate, and to pay for as appropriate. What we are looking at is water, sewer, gas, streets, and drainage. Utilities and Infrastructure, electric lights and that type of thing are not included. The Developer, because it is within the City, he is required to develop the engineering plans consistent with the City Code and to provide those plans to the City, free of charge, for their review and execution. Based on the feedback that we received on Monday, the County had almost exactly the same contract as the City,

since that time we redid the contract and the feedback we received is that the County prefers to do tax abatement. So, the current structure that we have, and we've talked to the developer about this, it's not technically tax abatement, because there is a very specific legal process that you have to do in order to do tax abatement, it is done under the Local Government Code 381, just like the City's is Chapter 380. So, it looks and smells like tax abatement, it has the same function where the quote "incentive payment" is a percentage of the taxable value and the taxes that are generated, so that's actually what happens on the ground.

So, the scale starts at 100%, in the first few years it ratchets down to 80%, then 75, and then ultimately down to 70 percent. You might ask why doesn't the scale go down more dramatically, it's because the numbers don't work, it really ratchets back the portion that the County is contributing, even at these high numbers. So, what that does is, it shifts the burden to the Developer, if he doesn't take in enough to make those utility loan payments, he has to make up the difference, he has to cut a check and pay the City, so all he's doing is taking the abatement he has received from the County and pretty much giving it over to the City for the payment.

Commissioner Chaney: Could you explain that again?

Kim Foutz: So, the County's arrangement is, every year there will be an assessment calculation by the Appraisal District, you will be doing an abatement equal to the 100/100, the 80/70 schedule. That, like any other tax abatement agreement, goes to the developer. The developer is still covering the City though, because if for any reason his development does not generate

enough taxes to make that utility payment, he has to pay what is called a debt differential payment, he pays the difference, whatever it is. Then for some reason he doesn't make the payment, then the City will take ownership of lots equivalent to that value and there's a specific process that is outlined in there. That's a separate transaction than from the County, this agreement, there is no interaction between the City and the County except that both have to approve an agreement. In addition to that, because of the contribution change that's affected by the tax abatement agreement, there is also a provision for Roll Back Taxes. Mr. Jamison went to the Appraisal District to try to get an estimate on that and it's \$950 for three years.

Commissioner Casterline: Kim, the County's contract is a ten year term?

Kim Foutz: Yes. Going back to the City obligation, it's to secure a loan or grant for \$850,000 to install the Public Infrastructure. There is a provision in the contract, if it's legal and we have to make sure of that, for the contractor or the developer to bid the utilities himself and do the installation, but they have to follow all of the State Procurement. That option helps with interaction, because you have certain utilities that the developer is putting in and certain utilities that the City is putting in and so it helps with that installation coordination if it's done that way. But that's an option and there is a caveat to that.

Commissioner Casterline: Do you have in these category things, there was mention in some of the other meetings that I sat in on, do you have the ability to give certain groups of workers

priority or preference, like law enforcement, first responders, School teachers?

Kim Foutz: Oh, you mean for the benefactor of the houses, no, we have to be real careful about that because, as part of this whole federal process, we have to follow the affirmative fair housing laws. Now there are ways that we can help to facilitate that and we've got some other program ideas, in fact we are proposing to start a working group next week for some objective housing opportunities and there may be some ways to do it there. The other way is there is an Agency called the Texas State Affordable Housing Corporation, it was put together by the State Legislature, it operates independently, they issue bonds for their projects, they do have a down payment assistance program specifically directed towards teachers, police officer, any kind of public safety personnel and veterans. The problem we've had so far is we don't have anyone doing a project, so there is nothing to advertise and we can't go out and start promoting down payment assistance, because we don't have anything to sell. So, we are trying to get past this first stage, to get something on the ground. What I do know, and it's concerning to me from looking at the market, I have no knowledge that anybody is proposing anything through the GLO, except for apartments. There is no other mix of housing, no duplex, no townhome, I could be totally wrong, we try to know what's being turned in, but nobody has an obligation to talk to any of us about what they are doing with their proposal. So as far as I'm aware that mix of housing that makes for a more solid economy is not going to be yielded through that General Land Office process. Not only that, it absolutely has to be rental, the program that all of these are proposing for, there can be no sales, it has to be rental. So,

we have that affordable housing to purchase deficit that we need to work on. This is one of the projects that is proposing to do it and then the other kind of goes back to what we talked about for a Pilot Program. So that's pretty much it, I'm here to answer any questions, let me say one other thing about the documents, all of this happened very fast, Monday, Tuesday, and Wednesday I went back to my desk and started pounding out contracts and term sheets, and all kinds of things, the City Attorney has not been able to take a look at the few changes I've made to it yet. There is a provision in the City contract that uniformly no one is comfortable with, Kevin and I, and in talking with the City Attorney, it needs to be vetted more. The vetting part is, now that the County is not involved with those differential payments and not receiving any kind of reimbursement, that needs to be changed some and we have not been able to think it through. So, that's one point that I want to make about the City contract, the County contract I had to start totally over from scratch, it's probably about a 16 page document or something, so I worked as hard as I could but I just didn't have a lot of time, therefore, I dumped it on the County Attorney's office and for them there was not enough time as well. So, the memo I sent out regarding the term sheet, what was out there, and my take away today would be to find out, the City contract has not hardly changed at all we just have a couple of things to muddle through, how do we close that link? The County's has changed so we've need to find out what the General Consensus is, about the terms and conditions that we placed before you. Then we can turn it back to the County Attorney's office and say, ok, can we get more memorializing on this paper right, or did I miss some things, did I miss some

Legislative things that have to be incorporated, all those good things and services that they provide and help us with, so that's just kind of where we are at on both.

Commissioner Chaney: We keep using the term Ad valorem on here, but this is really just M&O, right? Because I&S and.....

Kim Foutz: It's a hundred percent of yours, but it doesn't generate anything otherwise.

Commissioner Chaney: I&S and drainage are both debt service that we already have, M&O is not a debt service and as a general rule I would suspect that when you are obligating something, you would not obligate something that is debt oriented.

Kim Foutz: The problem that we have.....

Commissioner Chaney: That may not be a problem, it may be a legal issue.

Kim Foutz: Well, and if that needs to be discussed...

Commissioner Chaney: The reason I bring that up is, San Patricio County ran into that issue whenever they were talking about the term ad valorem, because they had debt obligations that are covered with very little of the tax being for operations within that particular entity, but your debt service is nothing but that, and so, how can you abate debt?

Kim Foutz: What I would suggest on that, because the numbers won't work at all, I mean the County's commitment starts and it was supposed to be, originally when the discussion was happening and as it relates to the debt service, it was supposed to be between \$15,000 to \$20,000 per year and that's three steps down the road if for some reason the taxes didn't come in

collectively, that he didn't pay the debt differential payment, and that he didn't pay the lot bill. If you look at just the 100% in the first year, that's \$3,000, at 100% percent; the second year is \$6,000; and then it goes up to \$12,000.

Commissioner Chaney: Kevin, wouldn't that be your case too, that you could only commit M&O? Because you can't commit debt to debt.

Kevin Carruth: I have never run across that objection before.

Carrie Arrington: I think School Districts can, but everybody else cannot, I'm not positive about that.

Commissioner Chaney: I don't think you can, you know we could use drainage money for doing drainage within the area, think we could do that, but I don't think we can use drainage or I&S because those are for specific issues that are not to my knowledge, expandable, except to do like services.

Kim Foutz: Which means if that's the case, then it's not lawful for you to offer tax abatement. You would have to consider something else.

Commissioner Casterline: I think we need to get the attorneys to take a look at it, if you have abatement then you abate everything that there is, so at this point there is probably minimal taxes due on the property.

Kim Foutz: Let me make one point though, you are not doing tax abatement agreement, if you were doing a tax abatement agreement, we're going to go through and create an enterprise zone and then you'll go through some public hearings and make certain findings and that type of thing, so then that begs the

question, if you want to do something, what do you want to do and what form is it?

Commissioner Casterline: I think you need to look at the legal side of it and lay it out for us.

Kim Foutz: What we were trying to do is to be responsive to the feedback that we received, which is, we would rather do tax abatement and we would rather do down payment assistance programs. With down payment assistance programs, you're going to have to pull cash out of your pocket and put into a fund and then we have to set up the right mechanism in order to do that. So, we are months out for being able to set something up like that, and I'm also hearing across the board, we don't have any cash. So, at this point and time, until we can find some other programs, and we are working on that, we think we now have some information that will help us in that regard, but the hands we have right now is, we don't have any cash to put in for that, we are trying to get it so that you're not having to come up with cash, if the client performs then they get a payment, so that's why we went with the tax abatement.

Kevin Carruth: Jack, I understand what you're saying and you are absolutely correct, but conceptually, you are not obligating debt, what you are doing is committing the value of that abatement.

Commissioner Casterline: You're just subsidizing that amount.

Judge Mills: That's the way I understood it.

Commissioner Chaney: If it comes out of the General Fund or out of the M&O's there is absolutely no question, but Interest and Sinking is a legal obligation.

Kevin Carruth: You're not dedicating that.

Judge Mills: You're not dedicating that.

Commissioner Chaney: But our total Ad Valorem includes those areas. What I'm saying, if we're going to.....

Kevin Carruth: You're using that 42 cents or that 44 cents, or whatever that number is to calculate the value of the abatement, you're not dedicating that actual amount.

Commissioner Chaney: But you are calculating the value of that abatement whenever you give out....

Kevin Carruth: The value of that abatement, what that dollar calculation is.

Commissioner Casterline: We just need the Attorney's to pull up the stuff and show it to us and make sure everything....

Kim Foutz: What we need to know is that we are using our time wisely and make sure everybody is conceptually aligned and then we figure out how to get there.

Commissioner Casterline: Do you have something worked up with a dollar amount?

Kevin Jamison: We are shooting for the \$170,000 and under range right now, but that's a moving target. Until all of this gets worked out we are in limbo.

Judge Mills: I think we can get this done in a short period of time.

Commissioner Stiles: How does the City feel about theirs?

Mayor Rios: The City is prepared to go forward with what we have proposed, what we've filed, what we have amended, and we are ready to go.

Judge Mills: Ok, so this is another possible 8-9 day delay and he has been under the gun for a while, I don't want to jeopardize, does the County need to think about another meeting?

Kim Foutz: Kevin needs to think about how that will affect him, by I do have to say, we met with the USDA specifically about this project, but others as well. They just received a notice of funding availability and we sold some ideas about utilities, and that is a grant program, first come, first serve. So, they have told us to get an application in now.

Commissioner Chaney: Judge, can we approve it pending the definition of what we can use to fund it with....

Commissioner Casterline: No, I think before we approve it we need to see the final proposal.

Mayor Rios: Terry, do you need to look at that again, do you know what that is?

Terry Baiamonte: Yes, it has to do with how we work the pay back, but it's all contingent on the County, if for some reason the 381 hasn't been worked then we are back at the drawing board. As I understand it, the County is going to effectively dedicate the dollars that would otherwise be abated and so that is technically, probably a dollar amount to a certain degree. But we can't really finish ours until we know how the County is going to structure it, but the minute they do we can plug that into ours.

Kim Foutz: The County's dollar amount is going to float because it is affected by the market and what you can exceed that number.

Councilman Day: I think the County needs to hear the legal aspect of whether it's just a calculation and whether it's actually applying to, and that's satisfactory to all.

Judge Mills: I don't think we are obligating tax now, but I think you've got it right.

Councilman Day: Can we come to an agreement then, if she finds that it is the way the County was describing it, we would have to approve it today pending a positive outcome of that research.

Judge Mills: No, I don't think we can say that without messing with the law, we have to wait to pass in Commissioners' Court meeting.

Carrie Arrington: I don't know why they can't start working on preparing the grant.

Kim Foutz: USDA Grant, yes we can get started working on that.

Judge Mills: So, where are we at now?

Mayor Rios: We have already done ours we just have to plug in the County's numbers.

Commissioner Stiles: I think that is a Texas Association of Counties (TAC) question, I don't think you have to do a lot of research.

Mayor Rios: So we don't need to enter another motion to negotiate the next queue, the Amended?

Terry Baiamonte: Well the authority that apparently was to negotiate and execute, and the way I see it is what's being negotiated is only thing now is just the way that the County is going to contribute, the original way that the County is going to contribute has been changed, it's still being negotiated, so that aspect is being negotiated.

Mayor Rios: So we're ok?

Terry Baiamonte: I think we're ok.

Judge Mills: As soon as I find out when I can call a Special Meeting that will be done, but we need to do that right away.

No further business presenting, the Court adjourned at 2:46 p.m. on a motion made by Commissioner Casterline and seconded by Commissioner Olsen and on a Motion made by Councilman Villa and seconded by Councilman Day.



A handwritten signature in black ink, appearing to read "C. H. Mills, Jr.", is written over a horizontal line.

C. H. "BURT" MILLS, JR., COUNTY JUDGE



A handwritten signature in black ink, appearing to read "Valerie K. Amason", is written over a horizontal line.

VALERIE K. AMASON,
EX-OFFICIO CLERK OF THE
COMMISSIONERS' COURT