

MINUTES OF THE

COMMISSIONERS' COURT

SPECIAL MEETING - DECEMBER 16, 2019

On the 16th day of December, 2019, there was a Special Meeting of the Commissioners' Court in the Justice of the Peace Courtroom, 2840 Hwy 35 N, 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; **Charles Smith**, Commissioner, Precinct 3; **Wendy Laubach**, Commissioner, Precinct 4; and **Valerie K. Amason**, County Clerk.

Other County Officers present were **Kristen Barnebey**, County District Attorney; **Jeri Cox**, Tax Assessor-Collector; **Bill Mills**, Sheriff; **Diana McGinnis**, Justice of the Peace, Pct. 2; **Jacky Cockerham**, Interim County Auditor; **Latisha Murphy**, Assistant Auditor; **David Klanica**, Executive Administrative Assistant to the County Judge; **Russ Walker**, IT Tech; **Linda Doane**, Human Resources Director; **Tana Taylor**, First Assistant County Auditor; **Anna Marshall**, Chief Deputy Tax Assessor-Collector;

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

City of Rockport Council Members: **Barbara Gurtner**, Ward 4;

Aransas County Citizens: **Russell Cole; Mark Uhr; Pat Rousseau; Jeffery Hutt;**

The Rockport Pilot Newspaper: **Mike Probst**, Editor and Publisher;

Linebarger Goggan Blair & Sampson, LLP: **Steven De Saucedo**, Tax Attorney;

The Meeting was convened at 9:00 a.m. at which time a quorum was declared by Judge Mills, WHEREUPON, the following proceedings were had and done to wit:

PUBLIC HEARING/CITIZENS TO BE HEARD

1. Public comments regarding the PACE (Property Assessed Clean Energy) Program for Aransas County.

Pat Rousseau: I am a voter and tax payer in this community and I just want to reflect on this PACE Program, I had not heard of it before it was on the last Agenda Meeting on December 9, 2019 which was just about a week ago and there was a presentation. Then two days later this Public Workshop Meeting, the notice was sent out with the agenda so that you could have the meeting today. Having a workshop to get public input is a great idea however, after the workshop the first item of business on the agenda is the Resolution to approve this Program and the second item is a professional service agreement to be signed so this creates an appearance that there is a pre-determination rather than really a public hearing to see what are the pros and cons and then thoughtfully considering them before you make a decision. Having a meeting scheduled ten days before Christmas on the busiest day of the workweek discourages a lot of business owners attendance, I see there are some business owners here who probably have a vested interest in the passage of this, my concerns are that the program, while it might offer a lot of benefits to developers and realtors, does not really offer anything to single family residents, there is no benefit for them to improve the energy levels in their homes and that's what we desperately need in this county right now. Also with this close time frame, it does not serve to build trust in our community. Thank you.

Charlene Heydinger, President of Texas PACE Authority: Thank you, I'm so pleased to be here today, I wanted to build on the presentation that was made in the last meeting that you had and if I may answer the issue about single family homes, the statute does not authorize Counties or Cities to use this program for single resident homes. Multi-family homes with at least five units do qualify so we would love to help your community with apartment complexes with energy efficiency. (Charlene then went over the power point presentation explaining the procedures and what happens if a property owner does not pay the loan, the lien will be placed against the property and a notice will be sent out with the Tax Statement but there is no risk for the County, the PACE Assessment stays with the property.)

Commissioner Smith: The entire intent of the Legislature in making this available to counties was to promote and restrict, to a certain extent, that technology lets us do this, the use of electricity, the use of water, the use of these resources. I think, in reading the questions and answers, the Legislature had pretty much protected the counties, as far as being out of pocket.

Charlene: You are right.

Mark Uhr: From a developers point of view, I believe that PACE is a great tool for the whole county, not just our project that we are working on, but going back to if you have to foreclose, it's only on the installment that would be delinquent, it's not a foreclosure on the whole loan that is being sought for the whole project, so it's only for that one sector. Believe me, they are not loaning money to people who can't pay their bills. It's a very vetted process, and we've had to go through a great deal of exercise on getting our financing for the whole project that we

are working on right now and for this also, so it all kind of dovetails together.

Commissioner Smith: Mark, can you tell me, having this plan available in our county, does this program make it more friendly for development?

Mark Uhr: Absolutely.

Commissioner Casterline: I think that most people assume this whole Program is for new construction, but what percentage is revitalization for older buildings?

Charlene: We've only done one new construction project, the statute prohibits the use of this program on undeveloped lots or lots undergoing development, so there are only three situations that qualify for new construction: **1)** an addition to an existing building; **2)** where there is one facility on the property and they are adding another facility; **3)** it has been demonstrated that there is something on that property that was previously developed and they can tear down and rebuild, but the vast majority of what we are doing is taking older buildings and updating them.

Commissioner Casterline: Does some of the backing come from the Federal Government?

Charlene: No, we have a program that is the most flexible free market program and yet has the highest bar of consumer underwriting and technical standard protection, it's unique in that, Texas was one of the first states to say "We don't want the government developing these projects, providing the money, picking the lenders, and so there's a firewall in Texas between the oversight of this program and the market we are trying to develop, and that

has been copied by pretty much every other state since we did this in 2013.

Commissioner Laubach: I have two questions, what is the rush, why are we having to decide at this meeting on a week's notice, can we not consider this over the holidays and come back to it in 2020? The second question is, my understanding is we do not currently have a contract with a law firm that will collect these for us and we don't yet know of one that will, why can we not hold off until we know how this works?

Charlene: Most businesses will not even consider this program until you take the action to create it and once you create this program, and there may be one exception, but when there is a project ready to go it takes a year to put a real estate project together and to put that capital stack together, the PACE pieces of these financing agreements have been more quickly, but we will sit and wait for six months for all of the other pieces of a real estate deal to come together for everybody to be ready to close. So you might not see much activity in this for a year, but until you create it nothing is going to happen, once you do create it we will come in and we'll do engineering, architect, contractor training workshops, we'll ask to speak to the rotary clubs, chambers, and economic development, this takes time, people have to hear it, have the time to see how it will work for their businesses.

Commissioner Laubach: I'm not hearing why we can't wait until January.

Judge Mills: Let me ask Linebarger, right now they are not in our contract and they are not going to want to be participating in this, is that true?

Steven De Saucedo: Right now our contract does not cover this kind of collections Judge, our Firm, at this time, would need more time to research, analyze, and vet this issue to be able to determine all of the legal issues surrounding us being able to take on that kind of work or whether we would even be able to take that type of work on. We do need additional time to look into that before we could give you legal advice.

Commissioner Casterline: Steve do you know if there are other people that are doing it in this state?

Steven: Some of the managing partners may, I personally do not feel knowledgeable enough to comment, I think there might be one in El Paso, but I'm not sure.

Charlene: One of my projects for 2020 is to go back to the local governments to make sure that these contracts have been negotiated, again you wouldn't see this until somebody missed a payment, which is a year after they do a project, which is probably a year after you adopt the program, so all of the local governments, the 21 counties and 14 cities that have established this program have all agreed in the reports that have been issued, that the same documents that are in front of you today to do this enforcement in the same manner as back taxes and the flexibility in how to do that and none of them made that a prerequisite in creating the program.

Commissioner Laubach: How many of them did it on a week's notice?

Charlene: All but, I would really have to go back and look at my notes but, of the 35 local governments that have this program, maybe seven didn't do it with the Resolution of Intent one week followed by the hearing for the Resolution to Establish and the

professional services contract in the second week, and part of that was the ones that took longer, the early ones, now that the projects are closing and the model is proving itself local governments are more comfortable because your counterparts are doing this, so frankly, I would say that in the last seven months nobody has done it any other way than to do the Resolution in one week and the Resolution to Establish in the following meeting.

Commissioner Smith: You know, you keep talking about a week's notice, this information on the PACE act was in my inbox over three weeks ago, so I was looking at it over three weeks ago.

Commissioner Laubach: We certainly knew it existed.

Commissioner Smith: The packet was that thick (motioned about a half inch to an inch?) and I went through a lot of it.

Commissioner Chaney: (Directed towards Jeri Cox) You've had time to look at this, I don't know what all you've done and everything, you haven't made any comments, could you kind of advise us about what your opinion is on this as far as your office is concerned?

Jeri Cox: Well, I spoke at the last Commissioner's Court Meeting and had some questions and Marina answered my questions and I followed up with Charlene by e-mail, my concern was if it came to a foreclosure for an assessment, how would that assessment be collected? What happened at foreclosure? When a tax sale happens on the courthouse steps for delinquent taxes and it doesn't sell and is struck off to the entities as a trustee to hold that property until it can be offered at the next sale, sometimes they are sold, sometimes not, they stay on the struck off list. At the time they are struck off, the property becomes tax exempt, so it's not benefitting any entities to be on a struck off list. Once it's

Sold, delinquent taxes are collected at that time and all of the costs for the foreclosure are collected. So my question was, if this goes to foreclosure for an assessment is the property struck off to the county, because the county was part of this PACE Program, and Charlene stated that there is nothing that says it is struck off in the Legislative law, but my main question was, when it's held because it did not sell, would the county become responsible for that delinquent PACE Assessment? Charlene assured me that it will not because the county government has been cleared, not sure if that is the terminology.

Commissioner Casterline: Well Jeri, when you have a tax sale how many mortgagees or lenders are there at the sale, or you're talking about when they are struck off? In most cases when someone has a mortgage they are going to step up and pay that, is that the common thing?

Jeri: Well, that's what Linebarger does, part of their services is to do a title search on properties that are in a delinquent tax law suit and they find out if there are other liens, and if they are included in notice that is giving them the opportunity to protect their lien and they can come in and pay the taxes, and then they can foreclose.

Commissioner Casterline: The ones that I've encountered, if a property gets struck off, it's because what's levied against it is more than it's worth.

Jeri: Not necessarily, because on the courthouse steps we have to sell at what's owed or value at the time of the judgment, whichever is lower, is that correct? (Directed to Steven)

Steven: Correct.

Jeri: I was just concerned that a delinquent assessment might keep someone from bidding, but there are no established properties out there that we could look back and see what happened and that history.

Commissioner Chaney: So you've had your questions answered?

Jeri: When I went to court last week my main goal was to let you, as Commissioners, know that the Tax Office was not going to be the one, that I read in that thick stack of papers, I wasn't going to be the authorized representative. Charlene said that in their study, when they were trying to get this program going back in 2013 - 2015, they could see that the Texas Government wasn't set up to have all of these types of assessments on a tax statement because of the way the tax statement laws are written and so we differ from other states, so the only part that I would be involved in is sending an annual assessment, provided by the authorized representative to the County Judge to me, with the tax statement if the person with that PACE Assessment chooses to be notified that way.

Mark Uhr: I think our primary lender is not going to let this happen, number one, I mean this is a 1/10th of the amount of money that we are using towards this project. I spoke with our lender and they are willing to pay any cost associated with trying to collect anything at all.

Judge Mills: So if their lender were to sign that agreement then we wouldn't need Linebarger, right? But that doesn't solve the problem in the future though.

Charlene: So there are two types of Collections here, one is who is doing the servicing of collecting the annual payments during

the life of the loan that need to be properly gotten to the lender? Since it can't be added to the tax statement PACE Financial Working Group, that figured out how we are doing this with private money, said let's instead have the local government delegate back to the lender the job of collecting those annual payments so the Tax Assessor doesn't have to be involved. The only issue is if one of these fails and someone misses a payment under the contract between the County and the PACE Lender, the PACE Lender is required to send two notices, notify the mortgage holder and then come to us and we would validate that the payment had been missed and then I would notify Jeri and we would talk to the Law Firm and get that process started. The other thing that everybody clarified before we started this was that if one of these unfortunately goes into that collection process it will be done in the same manner as back taxes, meaning the same calendar so nobody is trying to collect something in April when everybody else's calendar starts at the end of January, so that is as easy as possible for everybody.

Judge Mills: Ok, any other discussion? If not, do I have a motion to close this meeting?

At 9:55 a.m. a motion was made by Commissioner Casterline and seconded by Commissioner Chaney to adjourn the Public Hearing.

Question. Motion carried with Commissioner Laubach voting against the motion.

It is so ordered.

ITEMS FOR DELIBERATION AND/OR ACTION

2. Motion was made by Commissioner Casterline and seconded by Commissioner Smith to approve Resolution #R42-2019, a Resolution of Aransas County establishing the Aransas County PACE (Property Assessed Clean Energy) Program.

Question. Motion carried with Commissioner Laubach voting against the motion.

It is so ordered.

3. Motion was made by Commissioner Laubach to TABLE this item and the Motion died for lack of a second.

Motion was made by Commissioner Chaney and seconded by Commissioner Smith to approve and authorize the County Judge to sign a Professional Services Agreement by and between Aransas County, Texas and Texas Property Assessed Clean Energy Authority once the County Attorney looks over the document and approves it.

Question. Motion carried with Commissioner Laubach voting against the motion.

It is so ordered.

4. Motion was made by Commissioner Casterline and seconded by Commissioner Smith to approve and authorize the County Judge to sign a Professional Services Agreement by and between Aransas County and Tyler Technologies, Inc. to implement SB (Senate Bill) 346 mandatory fee changes for all Aransas County courts into the Odyssey Database to take effect on 01/01/2020.

Question. Motion carried unanimously.

It is so ordered.

5. Acknowledge receipt of and record in the Minutes of the Commissioners Court the Acknowledgement of District Judge's Appointment of Jacky Cockerham Interim County Auditor position effective December 16, 2019 at Salary and Benefits levels approved in 2020 Budget.

6. Acknowledge receipt of and record in the minutes of Commissioners Court, District Judge's Salary Order for the County Auditor and Auditor Staff for Fiscal Year 2020.

Question. Motion carried unanimously.

It is so ordered.

7. Motion was made by Commissioner Chaney and seconded by Commissioner Casterline to approve Budget Line Item Transfers of which there were none.

Question. Motion carried unanimously.

It is so ordered.

8. Motion was made by Commissioner Casterline and seconded by Commissioner Smith to approve Accounts Payable and Payroll/Payroll Liabilities of which there were none.

Question. Motion carried unanimously.

It is so ordered.

No further business presenting, the Court adjourned at 10:11 a.m. on a motion made by Commissioner Smith and seconded by Commissioner Casterline.



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

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



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

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