

MINUTES OF SPECIAL CITY COUNCIL MEETING CITY OF TOMBALL, TEXAS



**MONDAY, JUNE 11, 2012
4:30 P.M.**

1.0 Call to Order

The Council meeting was called to order by Mayor Gretchen Fagan. Other members present were:

Councilman Stoll
Councilman Brown
Councilman Dodson
Councilman Hudgens

Councilmembers absent:

Councilman Townsend – Excused Absence

Others present:

City Manager – George Shackelford
Assistant City Manager – Christal Weber
City Secretary – Doris Speer
City Attorney – Scott Bounds
City Planner – Rebecca Guerra
Assistant City Engineer – Lori Lakatos

2.0 New Business:

Mayor Fagan provided opening comments regarding the procedures to be followed in the Special meeting and the notice given to the residents of Tomball Hills Subdivision. Mayor Fagan asked for comments from interested/concerned parties

The following public comments were accepted:

Dennis Bell
31215 Antonio Lane, 77375

- Copy of his email included in the agenda packet. Mr. Bell expressed his concerns and opposition to the proposed settlement.

John Black
31427 Stella Lane, 77375

- Expressed his concerns and opposition to the proposed agreed final judgment and the expansion of Mr. Hildreth's business.

Rhonda Bolton
28111 Camille Drive, 77375

- Stated that she had sent Mayor and Council an email at 11:45 a.m. on June 11, 2012, expressing her opposition to the proposed settlement and requested that they read the email.

No further comments being received, Mayor Fagan announced that the City Council would begin the Executive Session.

Scott Bounds requested that the Council recess into Executive Session to discuss Items 2.2 and 2.3 under the Attorney-Client Privilege provided under the Texas Government Code 551, Section 551.071, regarding pending litigation.

Councilman Dodson advised Council that he would abstain from entering the Executive Session and would also abstain from deliberation and voting on Items 2.2 and 2.3, having previously filed a conflict of interest statement with the City Secretary.

2.1 Executive Session: The City Council entered into Executive Session at 4:39 p.m., as Authorized by Title 5, Chapter 551, Government Code, the Texas Open Meetings Act, for the Following Purpose(s):

- Sec. 551.071 – Consultation with Attorney Regarding Litigation (Attorney-Client Privilege)

Upon reconvening into Special session at 5:40 p.m., Mayor Fagan stated, for the record, that no action had been taken during Executive Session.

Scott Bounds addressed Mayor and Council and presented the followed recommendation regarding items 2.2 and 2.3:

“I (Scott Bounds) would ask that City Council approve the Judgment and Settlement documents in the two cases related to Peter Hildreth and Hilltop Rental, listed on the agenda as Items 2.2 and 2.3. With regard to the eminent domain item, the judgment would approve the purchase of a lot for \$40,000 for the City’s lift station site. With regard to the second Judgment, it would approve judgment in the City’s Chapter 54 litigation regarding Hilltop Rental.

In my opinion, the Judgments are fair to the City and represent the reasonably anticipated outcome of any additional litigation of these matters before the courts and will save the City the expense of that additional litigation.

In the first, the City acquires the lot for \$1,500 more, or 3.75% more, over the City’s own appraised value of the property. We have already acquired the property and constructed a lift station site on it and are using it for public purposes.

With regard to the second suit, Mr. Hildreth started Hilltop Rentals about 1985, before the City of Tomball was a home-rule city and, shortly after, Tomball Hills was developed in 1978.

In 2001, Hildreth acquired Lots 44 and 45 and, starting in 2002, Hildreth has had disputes with his neighbors and with the City over the use of that property. In 2002, 2004, 2006, 2007, 2008, 2009 and 2010, Mr. Hildreth had various disputes with his neighbors and the City that we have documented and have in the file.

In December 2010, the City Council authorized me to file suit on behalf of the City to enforce the City's ordinances related to health/safety issues, with regard to Mr. Hildreth's property, as permitted by Chapter 54 of the Texas Local Government Code.

It was at that time that I researched the history of Hildreth's business; I made site visits to Hildreth's business, and I have periodically advised City Council of the status of this matter. Although I have encouraged Hildreth and the homeowners association to seek an agreement regarding the possible replatting or rezoning of the property, that has not happened. Moreover, it appears to me that, given the time constraints in the City's actions that would be necessary for replatting or rezoning, even if there were an agreement between the homeowners and Mr. Hildreth, it is unlikely to happen soon.

The proposed Judgments do not preclude or, in my opinion, hinder any future agreement between the homeowners association and Mr. Hildreth regarding the replat or rezoning of the property. Any future replatting or rezoning of the property would have to be approved by City Council. The proposed Chapter 54 agreement does resolve various issues between the City and Hildreth:

1. The Judgment makes clear the zoning uses permitted for Lots 36, 43, 44, and 45;
2. The Judgment requires the removal of the only unlawful, unpermitted structure on those lots;
3. The Judgment requires compliance with the City's laws;
4. The Judgment does not bar the City's future enforcements of any of its ordinances; and
5. The Judgment establishes some minimum guidelines for the future replatting, if any, of the property. But, as I indicated before, any future replatting or rezoning of the property is still subject to the discretionary approval of City Council.

I recommend City Council approve the agreed Judgments in both of these cases."

- 2.2 Motion was made by Councilman Hudgens, second by Councilman Stoll, to approve Agreed Judgment with Regard to Cause #969752, City of Tomball v. Hildreth, County Court at Law #1, Harris County, Texas. Vote was as follows:

Councilman Hudgens	<u>Aye</u>
Councilman Stoll	<u>Aye</u>
Councilman Brown	<u>Aye</u>
Councilman Townsend	<u>Absent</u>
Councilman Dodson	<u>Abstain</u>

Motion carried unanimously.

- 2.3 Motion was made by Councilman Brown, second by Councilman Hudgens, to approve Agreed Judgment with Regard to Cause #2011-10102, City of Tomball v. Hildreth et al, 270th Judicial District Court, Harris County, Texas. Vote was as follows:

Councilman Hudgens	<u>Aye</u>
Councilman Stoll	<u>Aye</u>
Councilman Brown	<u>Aye</u>
Councilman Townsend	<u>Absent</u>
Councilman Dodson	<u>Abstain</u>

Motion carried unanimously.

- 3.0 Motion was made by Councilman Hudgens, second by Councilman Stoll, for adjournment.

Motion carried unanimously.

Meeting adjourned.

PASSED AND APPROVED this 4th day of June 2012.

Doris Speer
Doris Speer, TRMC, CMC
City Secretary

Gretchen Fagan
Gretchen Fagan
Mayor