



STATE OF TEXAS \*  
COUNTY OF HAYS \*

ON THIS THE 3<sup>rd</sup> DAY OF FEBRUARY A.D., 2004, THE COMMISSIONERS' COURT OF HAYS COUNTY, TEXAS, MET IN REGULAR MEETING. THE FOLLOWING MEMBERS WERE PRESENT, TO-WIT:

JAMES L. POWERS	COUNTY JUDGE
DEBBIE GONZALES INGASLBE	COMMISSIONER, PCT. 1
H. S. "SUSIE" CARTER	COMMISSIONER, PCT. 2
WILLIAM "BILL" BURNETT	COMMISSIONER, PCT. 3
RUSS G. MOLENAAR	COMMISSIONER, PCT. 4
LEE CARLISLE	COUNTY CLERK

WHEN THE FOLLOWING PROCEEDINGS WERE HAD, THAT IS:

Judge Powers called the meeting to order and gave the invocation. Commissioner Burnett led the Court in the Pledge of Allegiance to the Flags.

**21557 APPROVE PAYMENT OF COUNTY INVOICES**

A motion was made by Commissioner Burnett, seconded by Commissioner Molenaar to approve payment of county invoices in the amount of \$ 368,957.74 as presented by the County Auditor. All voting "Aye".

**21558 APPROVE BUDGET AMENDMENT NO. #04-11**

The County Auditor proposed the following amendments to the FY2004 budget: Tax Office – transfer \$495 from office supply line item to office equipment maintenance for maintenance agreement-security cameras/Diebold. Park Bond '03 Proceeds - separate commitments from available budget - \$300,000 for Buda Park and \$700,000 for Bluehole/Wimberley. Sheriff Drug Forfeiture – Re-budget FY03 carryover of \$11,604 and decrease other expenses \$6,500 to increase Mounted Patrol \$11,104 and Law Enforcement Equipment \$7,000. A motion was made by Commissioner Burnett, seconded by Commissioner Molenaar to approve Budget Amendment No. 04-11 as proposed by the County Auditor. All voting "Aye".

**21559 APPROVE UTILITY PERMITS #01695 & #01696**

A motion was made by Commissioner Burnett, seconded by Commissioner Molenaar to approve Utility Permit #01695 on Trail Driver issued to Hill Country Water Supply Corp. and #01696 on Laurel Hill issued to Hill Country Water Supply Corp. as submitted by the Hays County Road Department. All voting "Aye".

**21560 APPROVE REFUND OF OVERPAYMENTS ON TAXES**

A motion was made by Commissioner Burnett, seconded by Commissioner Molenaar to approve overpayment of taxes submitted by the County Tax Assessor-Collector as follows: \$587.09 for Lot 11 Plum Creek Phase 1 Section 3A Blk B [R99763] and \$636.93 for Lot 19 Blk H Leisurewood #5 [R34486]. All voting "Aye".

**21561 APPROVE REAPPOINTMENT OF JAMES HUCKABY TO THE NORTHEAST HAYS COUNTY RURAL FIRE PREVENTION DISTRICT**

A motion was made by Commissioner Burnett, seconded by Commissioner Molenaar to reappoint James Huckaby to the Northeast Hays County Rural Fire Prevention District. All voting "Aye".

**21562 APPROVE REAPPOINTMENT OF LYLE BOLLINGER AND BETH SMITH TO THE HAYS COUNTY RURAL FIRE PREVENTION DISTRICT #5**

A motion was made by Commissioner Burnett, seconded by Commissioner Molenaar to approve reappointment of Lyle Bollinger and Beth Smith to the Hays County Rural Fire Prevention District #5. All voting "Aye".

**21563 APPROVE REAPPOINTMENT OF JESSE LOGAN AND RALPH RICE TO THE NORTHEAST HAYS COUNTY EMERGENCY SERVICES DISTRICT #2**

A motion was made by Commissioner Burnett, seconded by Commissioner Molenaar to approve reappointment of Jesse Logan and Ralph Rice to the Northeast Hays County Emergency Services District #2. All voting "Aye".



**21564 APPROVE REAPPOINTMENT OF COMMISSIONER DEBBIE GONZALES INGALSBE TO THE CAPITAL AREA RURAL TRANSPORTATION SYSTEM BOARD OF DIRECTORS**

A motion was made by Commissioner Burnett, seconded by Commissioner Molenaar to approve reappointment of Commissioner Debbie Gonzales Ingalsbe to the Capital Area Rural Transportation System Board of Directors. All voting "Aye".

**21565 APPROVE TRANSFER OF VAN FROM HAYS COUNTY VETERANS SERVICES TO HAYS COUNTY JUVENILE PROBATION DEPARTMENT**

A motion was made by Commissioner Burnett, seconded by Commissioner Molenaar to approve transfer of van from Hays County Veterans Services to the Hays County Juvenile Probation Department. All voting "Aye".

**21566 APPROVE LEASE OF COPIER FOR HAYS COUNTY HEALTH DEPARTMENT**

A motion was made by Commissioner Burnett, seconded by Commissioner Molenaar to approve lease of copier for the Hays County Health Department. All voting "Aye".

**21567 AWARD BID #2004-B4, "ANNUAL CONTRACT FOR A/C & HEATING SERVICES" TO TEJAS REFRIGERATION, INC.**

This bid was originally awarded to Alpha & Omega A/C and Heating. They decided to decline the contract after performing one repair job for us, therefore, Purchasing recommends awarding the contract to the next lowest bidder which would be Tejas Refrigeration Inc. References checked were favorable and they have provided copies of insurance requirements including worker's compensation. **A motion was made by Commissioner Burnett, seconded by Commissioner Molenaar to award Bid #2004-B4 "Annual Contract for A/C & Heating Services" to Tejas Refrigeration Inc. All voting "Aye".**

**21568 AWARD BID #2004-B7R, "HAULING OF SOLID WASTE FOR TRANSFER STATION" TO BFI**

A motion was made by Commissioner Burnett, seconded by Commissioner Molenaar to award Bid #2004-B7R "Hauling of Solid Waste for Transfer Station" to BFI. All voting "Aye".

**TRANSFER OF FUNDS FROM THE COUNTY'S LEGAL SERVICES LINE ITEM TO THE HAYS COUNTY JUVENILE BOARD**

The Court recessed into closed executive session to discuss this Item. Upon completion of the closed session the Court reconvened into open meeting at 9:30 a.m. NO DISCUSSION AND NO ACTION REGARDING ITEM #10

**PUBLIC COMMENTS**

[T1-31] Matt Duffy spoke of the Heatherwood development – he spoke of due diligence that was done to determine suitability of this property for his proposed development. He spoke of TCEQ requirements and timeline followed. TCEQ advised him that he was in compliance.

[T1-83] Barbara Irvine spoke of Heatherwood development which is adjacent to where she resides. She spoke of her concerns regarding peace & quiet, wildlife, noise, and pollution. She submitted her comments in writing.

[T1-132] Paul Watkins spoke of accusations made by Ms. Cook last week – he spoke of his having attended Commissioners court for several years and voiced his opinion of Commissioner Carter. He spoke of interpretation of words. He submitted his comments in writing.

**21569 APPROVE OUTSIDE LEGAL COUNSEL AGREEMENT WITH DAVID BROOKS TO AUTHORIZE HIS ASSISTANCE WITH POSSIBLE AMENDMENTS TO THE HAYS COUNTY SUBDIVISION AND DEVELOPMENT REGULATIONS [T1-203]**

Charles O'Dell (Executive Director of Hays CAN) spoke of county subdivision rules being clear as they are and he does not want anything done to make a loop hole for developers. David Baker (candidate for Commissioner Pct. 3) spoke in support of citizens having a voice in community planning and he recommended a citizens committee to assist in developing/amending rules and regulations. **A motion was made by Commissioner Molenaar, seconded by Commissioner Carter to approve outside legal counsel agreement with David Brooks and to authorize his assistance with possible amendments to the Hays County Subdivision and Development Regulations. All voting "Aye".**



**PUBLIC HEARING AND ACTION TO APPROVE PROPOSED RULES FOR INFRASTRUCTURE REGULATIONS FOR MULTI-UNIT DEVELOPMENTS** [T1-352]

Commissioner Molenaar read from the Local Government Code §232.100 & §232.101. Judge Powers declared the public hearing open. Mathew Duffy spoke of need to understand what a subdivision is according to Chapter 232 and he spoke of conversations he had with Hays County Environmental Health Director Allen Walther regarding the county's concerns and the voluntary extras that he has put in which puts him in complete compliance already: (1) roads and drainage facilities are designed and will be constructed to standards that are reasonably necessary to permit ingress and egress for fire and emergency vehicles, (2) the on-site sewage facility complies with Chapter 285.4 & 285.5, (3) there are two aquifers that are going to be tapped into – an unofficial water availability study has already been done and they will do an official study if necessary, and (4) the boundary survey and site plan have already been done. He stated that he is for managed growth but against controlled growth. [T1-498] Charles O'Dell felt like the existing subdivision rules already cover this particular project (Heatherwood) and county oversight is not meant to control growth, it is meant to manage growth. He supports clarifying the existing rules. Commissioner Carter spoke of rules in Travis County and Comal County regarding condominiums, townhouses, apartments, etc. that they regulate through their subdivision rules. She read from Attorney General's Opinion JC260 (which deals with LGC 232.0015a), Jim Maddox Opinion (regarding the authority of commissioners' court to amend subdivision ordinances to exempt certain kinds of subdivisions from the provisions of the articles of the law), and Local Government Code 232.007(b). Commissioner Molenaar read from LGC 232.105(a). [T1-862] Paul Watkins made reference to Property Code Chapter 82 regarding condominiums. He stated that he believes in standards and they are making voluntary compliances. Chapter 82 of the Property Code spells out the differences between a condo plat and subdivision plat. He read from Black's Law Dictionary the definitions of "subdivision" and "condominium". Mr. Watkins spoke of municipalities having more authority than counties – specific authority regarding condos has not been given to counties by the legislature - there is no authority given in Chapter 232 of the Local Government Code, therefore he does not feel like the county has the authority to regulate condos and multi-unit developments. In a condominium development there is one lot and it is owned jointly by all people who own a condominium. [T1-1262] Jack Hollon (VP for the Board of the Hays Groundwater District in Wimberley) advised that the board supports the proposal that the water availability applies to a multiple unit developments like this, however, the water availability study does not address the long term sustainability issues, a cooperative relationship is necessary between the county and the groundwater district to make sure we don't overtax our ground water resources. They are concerned about density and reliance on one wastewater system and furthermore are concerned about the joint ownership in the land. He spoke of need to look at long range issues. [T1-1350] William F. "Dub" Smith (real estate appraiser) spoke of having developed three small subdivisions in full compliance and he has experience in the process required. He spoke of conflicts that exist in the current rules – condos are different from subdivisions - and he suggested planned unit development guidelines. He read from the proposed rules and spoke of problems he sees with it. Environmental Health Director Allen Walther advised that comments can be made to him through the county website. He spoke of going beyond issues of ownership – we have a multi-unit development and the focus is to make sure there are minimum standards for owners protection. We are looking at circumstances in which land is not being sold but housing/commercial units are being sold and we must address public health and safety issues. David Brooks will be meeting with Jacqueline Cullom Murphy and Allen Walther on Thursday of this week. Commissioner Ingalsbe asked that the Commissioners be made aware of comments, etc. being provided to staff. Judge Powers closed the public hearing.

**21570 INDIAN HILLS RANCH LOT 4 \* PRELIMINARY PLAN APPROVED** [T1-1687]

Environmental Health Director Allen Walther gave staff recommendation for preliminary plan approval. **A motion was made by Commissioner Carter, seconded by Commissioner Molenaar to approve preliminary plan of "Indian Hills Ranch Lot 4". All voting "Aye".**

**21571 SHADY VALLEY SECTION 2 \* ACCEPT COMPLETION OF ROAD AND DRAINAGE IMPROVEMENTS, RELEASE OF CONSTRUCTION FISCAL SECURITY AND ACCEPT MAINTENANCE FISCAL SECURITY** [T1-1699]

County Road Supt/Engineer Jerry Borcharding gave staff recommendation for acceptance. **A motion was made by Commissioner Molenaar, seconded by Commissioner Burnett to accept completion of road and drainage improvements, release of construction fiscal security and accept maintenance fiscal security for "Shady Valley Section 2". Commissioner Ingalsbe, Commissioner Burnett, Commissioner Molenaar, and Judge Powers voting "Aye". Commissioner Carter abstained.**

**21572 SHADY VALLEY SECTION 3 \* APPROVE FINAL PLAT , ACCEPT COMPLETION OF CONSTRUCTION OF ROAD AND DRAINAGE IMPROVEMENTS, AND ACCEPT THE MAINTENANCE FISCAL FOR A PERIOD OF TWO YEARS** [T1-1747]

Environmental Health Director Allen Walther gave staff recommendation for acceptance. **A motion was made by Commissioner Molenaar, seconded by Commissioner Ingalsbe to approve final plat, accept completion of construction of road and drainage improvements, and accept the maintenance fiscal security for a period of two years for "Shady Valley Section 3". Commissioner Ingalsbe, Commissioner Burnett, Commissioner Molenaar, and Judge Powers voting "Aye". Commissioner Carter abstained.**



**21573 SILVERADO PHASE I \* APPROVE FINAL PLAT, ACCEPT COMPLETION OF CONSTRUCTION OF ROAD AND DRAINAGE IMPROVEMENTS, AND ACCEPT MAINTENANCE FISCAL SECURITY FOR A PERIOD OF TWO YEARS [T1-1771]**

Environmental Health Director Allen Walther gave staff recommendation for approval and acceptance. A motion was made by Commissioner Molenaar, seconded by Commissioner Burnett to approve final plat, accept completion of construction of road and drainage improvements, and accept maintenance fiscal security for a period of two years for "Silverado Phase I". Commissioner Ingalsbe, Commissioner Burnett, Commissioner Molenaar, and Judge Powers voting "Aye". Commissioner Carter voting "No".

**21574 K-BAR-MAC LOT 2A & 2B REPLAT \* APPROVE FINAL PLAT AND WAIVE PUBLIC NOTIFICATION AND PRELIMINARY REQUIREMENTS [T1-1818]**

Environmental Health Director Allen Walther advised that this is a reconfiguration of lot line and does not require public notification. A motion was made by Commissioner Molenaar, seconded by Commissioner Burnett to approve final plat and waive public notification and preliminary requirements for "K-Bar-Mac Lots 2A & 2B Replat". All voting "Aye".

**21575 ROAD NAME DESIGNATION \* RENAME A FORMER SEGMENT OF WINDY HILL ROAD TO HATTERS COVE [T1-1835]**

Environmental Health Director Allen Walther spoke of request from residents on that section of roadway – gave staff recommendation for approval. A motion was made by Commissioner Carter, seconded by Commissioner Ingalsbe to approve road name designation – rename a former segment of Windy Hill Road to "Hatters Cove". All voting "Aye".

**21576 WILLOW CREEK SECTION 10A & 10B \* APPROVE RELEASE OF THE ROAD CONSTRUCTION FISCAL SECURITY [T1-1854]**

Environmental Health Director Allen Walther advised that this road has been annexed into the City of San Marcos and action is needed to release the road construction bond. A motion was made by Commissioner Burnett, seconded by Commissioner Molenaar to approve release of road construction fiscal security for "Willow Creek Section 10A & 10B". All voting "Aye".

**21577 RIVER CREEK SUBDIVISION \* RELEASE CONSTRUCTION/MAINTENANCE FISCAL SECURITY FOR ROAD AND DRAINAGE IMPROVEMENTS [T1-1877]**

County Road Supt/Engineer Jerry Borcharding advised that this is a private subdivision. Release of fiscal security is needed in order to clean up the bond records. A motion was made by Commissioner Burnett, seconded by Commissioner Molenaar to release road construction/maintenance fiscal security for subdivision road and drainage improvements in "River Creek Subdivision". All voting "Aye".

**21578 OLD OAK ESTATES \* RELEASE MAINTENANCE FISCAL SECURITY [T1-1894]**

County Road Supt/Engineer Jerry Borcharding advised that this is a county maintained road and the action is needed to clear up the records. A motion was made by Commissioner Molenaar, seconded by Commissioner Ingalsbe to release road maintenance fiscal security for "Old Oak Estates". All voting "Aye".

**21579 ORDER IMPROVEMENTS TO "CREEKSIDE TRAIL" AND PREPARE LIENS AGAINST THE PROPERTY OWNERS PURSUANT TO CHAPTER 253 TEXAS TRANSPORTATION CODE [T1-1921]**

County Clerk Lee Carlisle advised that 20 property owners were sent ballots and 15 responses were received as follows: 15 IN FAVOR -0- NOT IN FAVOR. Commissioner Ingalsbe read from the statute – assessments will be made after the construction has been done and actual costs are determined – we think it will cost about \$60,000 and the maximum we can assess the property owners is \$3000 paid at \$300 per year for 10 years. Special Counsel Jacqueline Cullom Murphy advised that she would like to proceed with the liens (up to \$3,000) and begin assessment after cost has been determined. A motion was made by Commissioner Ingalsbe, seconded by Commissioner Molenaar to order the improvements to Creekside Trail and to prepare the liens against the property owners. The actual assessment will be done after the improvements to the road are completed and actual costs are determined. Commissioner Ingalsbe, Commissioner Carter, Commissioner Molenaar, and Judge Powers voting "Aye". Commissioner Burnett voting "No".



**21580 AUTHORIZE THE COUNTY JUDGE TO SUBMIT GRANT APPLICATION TO THE BULLETPROOF VEST PARTNERSHIP PROGRAM OF THE U.S. OFFICE OF JUSTICE PROGRAMS FOR UP TO \$6,125 AND TO EXECUTE CONTRACT [T1-1999]**

Grant and matching funds will be used to purchase custom bulletproof vests for county deputies, constables, and other law enforcement officers. No administration funds are included in the grant. Total grant request is for \$6,125 and Hays County will have to provide matching funds of \$6,125. Bulletproof vests have to be replaced after 5 years and each is custom fitted to the person. **A motion was made by Commissioner Molenaar, seconded by Commissioner Ingalsbe to authorize the County Judge to submit a grant application to the Bulletproof Vest Partnership Program of the U.S. Office of Justice Programs for up to \$6,125.00 and to execute a contract. All voting "Aye".**

**21581 APPROVE APPOINTMENT OF MARK L. IBERG TO THE NORTHEAST HAYS COUNTY ESD#2, REPLACING JOYCE (TOMMY) POER [T1-2075]**

A letter of resignation was submitted by Joyce (Tommy) Poer and a resume for Mark L. Iberg. **A motion was made by Commissioner Carter, seconded by Commissioner Ingalsbe to approve appointment of Mark L. Iberg to the Northeast Hays County Emergency Services District #2 replacing Joyce (Tommy) Poer. All voting "Aye".**

**21582 APPROVE INTERLOCAL AGREEMENT WITH THE VILLAGE OF WIMBERLEY FOR ANIMAL CONTROL SERVICES [T1-2097]**

Brad Bailey advised that this would get us through the end of this year and discussions will be had with cities regarding funding for next year. The Sheriff's Dept. is putting together a distribution chart to be used in future discussions. **A motion was made by Judge Powers, seconded by Commissioner Carter to approve interlocal agreement with the Village of Wimberley for animal control services. All voting "Aye".**

**21583 AGREED JUDGMENT IN CAUSE NO. 4608, HAYS COUNTY V. SAPP AND CALL FOR A PUBLIC HEARING REGARDING THE PROPOSED ABANDONMENT OF A PORTION OF BLISS SPILLAR ROAD [T1-2171]**

Attorney Elly Del Prado Dietz spoke of agreement with adjoining property owner who is willing to accept the abandonment and she is recommending approval of the agreed judgment as presented. A public hearing will be held on March 23, 2004 regarding the proposed abandonment. **A motion was made by Commissioner Molenaar, seconded by Commissioner Carter to accept the Agreed Judgment in Cause No. 4608 Hays County v. Sapp and call for a public hearing on March 23, 2004 regarding the proposed abandonment of a portion of Bliss Spillar Road. All voting "Aye".**

**DISCUSSION REGARDING VIOLATIONS OF HAYS COUNTY SUBDIVISION & DEVELOPMENT REGULATIONS [T1-2286]**

Charles O'Dell stated that he feels like the county should enforce their subdivision rules and he hopes the developer in this case would voluntarily comply with those rules. Paula Renfro spoke of the various opinions and readings of the law and spoke of the action taken by the court regarding issuance of permits and went through the chronology of this particular project (Heatherwood). Commissioner Carter read from letter written by David Brooks regarding steps that should be taken to satisfy requirements for a subdivision. She provided a powerpoint presentation showing language of various laws and pictures of development occurring in the Heatherwood project. [T1-2560] Judge Powers spoke of backup materials on this agenda item did not mention the Heatherwood development and he felt like it was inappropriate to address an issue if the court was not made aware of what was to be addressed – he advised not to spend all our time talking about Heatherwood. Commissioner Molenaar left the meeting at this time. Commissioner Carter continued to go through the powerpoint presentation. Judge Powers warned Commissioner Carter to not mention Heatherwood again in her presentation or he would adjourn. Commissioner Carter continued and Judge Powers adjourned the meeting.

**Court was Adjourned.**

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**I, LEE CARLISLE, COUNTY CLERK and EXOFFICIO CLERK OF THE COMMISSIONERS' COURT, do hereby certify that the foregoing contains a true and accurate record of the proceedings had by the Hays County Commissioners' Court on FEBRUARY 3, 2004.**



**LEE CARLISLE, COUNTY CLERK AND EXOFFICIO  
CLERK OF THE COMMISSIONERS' COURT OF  
HAYS COUNTY, TEXAS**