



STATE OF TEXAS \*  
COUNTY OF HAYS \*

ON THIS THE 14<sup>TH</sup> DAY OF SEPTEMBER A.D., 2004, THE COMMISSIONERS' COURT OF HAYS COUNTY, TEXAS, MET IN REGULAR MEETING. THE FOLLOWING MEMBERS WERE PRESENT, TO-WIT:

<b>JAMES L. POWERS</b>	<b>COUNTY JUDGE</b>
<b>DEBBIE GONZALEZ INGALSBE</b>	<b>COMMISSIONER, PCT. 1</b>
<b>H. S. "SUSIE" CARTER</b>	<b>COMMISSIONER, PCT. 2</b>
<b>WILLIAM "BILL" BURNETT</b>	<b>COMMISSIONER, PCT. 3</b>
<b>RUSS G. MOLENAAR</b>	<b>COMMISSIONER, PCT. 4</b>
<b>LINDA C. FRITSCHÉ</b>	<b>DEPUTY COUNTY CLERK</b>

WHEN THE FOLLOWING PROCEEDINGS WERE HAD, THAT IS:

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

**PRESENTATION OF \$700,000 TO THE VILLAGE OF WIMBERLEY FOR THE BLUE HOLE PARK PROJECT**

Grants Administrator Richard Salmon spoke of previous court action on January 20, 2004 awarding \$700,000 from the county park bond funds to the Village of Wimberley for the Blue Hole Park Project. On August 26, 2004, the Parks & Wildlife Commission approved a grant request in the amount of \$1,908,500. Commissioner Burnett presented a check to the Village of Wimberley Mayor Steve Klepfer. Mr. Klepfer spoke of support of this project – they have raised \$3.5 million – he thanked the court for their support.

**PUBLIC COMMENT**

[T1-85] **RE: ESTATE OF SAN MARCOS** Larry Watts spoke of road work done in the Estates of San Marcos – they want the same type of roads that were put in Willow Creek, Turkey Hollow and Country Estates (paved roads). Commissioner Burnett advised that he has spoken with some people who have called him about this matter and he will get with Mr. Watts to discuss possible solutions. Mike McCallick provided the court with photos of recent road work in the Estates of San Marcos and explained problems with that work – he would like some resolution to the problems. Dugan Taylor spoke of safety issues with kids in the neighborhood playing on the road. Commissioner Burnett spoke of chip seal roadways – there are progressive steps that need to be taken or we may possibly have to go to a hot mix roadway.

[T1-193] **RE: HIGH RIDGE SUBDIVISION** Linda Anderson spoke of problems with High Ridge Subdivision – she feels like this subdivision does not comply with county rules and regulations. David Jones spoke of possible fraud or a mistake in approving the High Ridge Subdivision. He asked the court to do something about this subdivision.

**22044 APPROVE PAYMENT OF COUNTY INVOICES**

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Carter to approve payment of county invoices in the amount of \$1,185,020.97 as presented by the County Auditor. Commissioner Ingalsbe, Commissioner Carter, Commissioner Molenaar, and Judge Powers voting "Aye". Commissioner Burnett not present for vote.

**22045 APPROVE BUDGET AMENDMENT #04-32**

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Carter to approve Budget Amendment No. 04-32 as proposed by the County Auditor. Commissioner Ingalsbe, Commissioner Carter, Commissioner Molenaar, and Judge Burnett voting "Aye". Commissioner Burnett not present for vote.

**22046 APPROVE UTILITY PERMITS #01727 & 01728**

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Carter to approve Utility Permit #01727 on CR169/Bell Springs Road issued to Pedernales Electric Coop. and #01728 on Ted Burger Road issued to Oak Rx as submitted by the Road Department. Commissioner Ingalsbe, Commissioner Carter, Commissioner Molenaar, and Judge Burnett voting "Aye". Commissioner Burnett not present for vote.

**22047 [PCT. 2 #04-2-050, 19 LOTS] ELM CREEK RANCH – APPROVE FINAL PLAT [T1-332]**

Environmental Health Director Allen Walther gave staff recommendation for final plat approval. These are large lots (5-10 acres) and complies with our rules regarding access. Commissioner Carter felt like this is an excessive use of shared access driveways. Allen Walther advised that our rules allow up to 3 houses that do not have independent access onto a public roadway – there are 19 lots in the subdivision and 11 have direct frontage onto a public roadway (6 of those are flag lots). **A motion was made by Judge Powers, seconded by Commissioner Molenaar, to approve final plat of "Elm Creek Ranch". Commissioner Ingalsbe, Commissioner Burnett, Commissioner Molenaar, and Judge Power voting "Aye", and Commissioner Carter voting "No".**



**22048** [PCT. 3 #04-3-055, 2 LOTS] **SKYLINE ACRES RESUBDIVISION OF LOT 10 – APPROVE FINAL PLAT** [T1-429]

Environmental Health Director Allen Walther advised that Skyline Acres is an unrecorded subdivision – the lots will be renamed as Lot 10A & 10B on recorded plat. **A motion was made by Commissioner Burnett, seconded by Commissioner Molenaar to approve final plat of “Skyline Acres Resubdivision of Lot 10”. All voting “Aye”.**

**22049** **ROAD NAME DESIGNATION - NAME A PRIVATE EASEMENT “BECKER RUN” OFF PROCHNOW ROAD** [T1-445]

Environmental Health Director Allen Walther advised that the owners of property in Walker Ranch (an unrecorded subdivision) have presented a written request to name their private easement “Becker Run”. He gave staff gave recommendation to approve this road name designation. **A motion was made by Commissioner Molenaar, seconded by Commissioner Ingalsbe To designate road name of “Becker Run” to a private easement located in Walker Ranch off Prochnow Road. All voting “Aye”.**

**22050** **ROAD NAME DESIGNATION – NAME A PRIVATE EASEMENT “WALKER RANCH ROAD” OFF PROCHNOW RD.** [T1-456]

Environmental Health Director Allen Walther gave staff recommendation to approve the road name designation of “Walker Ranch Road” as requested by property owners on in Walker Ranch. **A motion was made by Commissioner Molenaar, seconded by Commissioner Ingalsbe to designate road name of “Walker Ranch Road” to a private easement located off Prochnow Road. All voting “Aye”.**

**22051** **APPROVE OUT-OF-COUNTY VEHICLE USE FOR THE CODE ENFORCEMENT OFFICER** [T1-464]

Environmental Health Director Allen Walther advised that the new code enforcement officer lives in Luling. Since he is expected to be on call in case of possible hazardous spills or illegal dumping, it is important that he be able to respond quickly. The court approved the same authorization for the previous officer. Commissioner Carter suggested reimbursement for mileage if the CEO needs to use his own personal vehicle. Allen Walther spoke of not having emergency equipment in his personal vehicle that might be needed for hazardous material spills, etc. **A motion was made by Commissioner Molenaar, seconded by Commissioner Ingalsbe to approve out-of-county vehicle use for the Code Enforcement Officer. Commissioner Ingalsbe, Commissioner Burnett, Commissioner Molenaar, and Judge Powers voting “Aye”. Commissioner Carter voting “No”.**

**22052** **APPROVE THE PURCHASE OF ONE METAL BUILDING FOR THE HAYS COUNTY ROAD DEPARTMENT** [T1-522]

This metal building will be located at the Yarrington Yard and will be assembled by county personnel. The primary use will be storage of materials, equipment and wet weather maintenance of equipment. Road Dept. Mechanic Gary Ingalsbe advised that it would also house road workers. **A motion was made by Commissioner Molenaar, seconded by Commissioner Ingalsbe to approve purchase of one metal building for the Hays County Road Department. All voting “Aye”.**

**22053** **APPROVE \$222,500, FROM COUNTY PARK BOND FUNDS, FOR THE CITY OF KYLE’S STEEPLECHASE PARK PROJECT IN THE FORM OF A LETTER OF COMMITMENT** [T1-545]

Kyle Parks & Rec. Director Kerry Urbanowicz gave a powerpoint presentation regarding “Steeplechase Park” located on the east side of IH35 along Plum Creek. This 31 acre park has Plum Creek running along the entire southern border. Partners in this project are: Hays County, City of Kyle, Emmett & Miriam McCoy, Wells Fargo Bank, and KB Homes. Where is the money coming from: private donations = \$17,000 City of Kyle General Fund & Park Improvement Fund = \$205,500 Hays County Park & Open Space Grant = \$222,500. Phase 1 includes: roadway, restroom, utilities, covered pavilion, picnic tables, bar-b-cue grills, trash receptacles, and equipment storage. Phase 2 includes: parking, trails, playscape, Frisbee disc golf, beach volleyball, field improvements, and benches & lighting. Phase 3 includes: 2 additional restroom facilities, shade structure over playscape, additional picnic tables, additional BBQ grills, washer & horseshoe pits, and additional landscaping. County bond funds disbursement would be as follows: \$108,500 on October 1, 2004; \$45,000 on October 1, 2005; and \$52,000 on October 1, 2006. The City of Kyle will match county funds as per disbursements and will commit to make improvements and maintain the property. **A motion was made by Commissioner Carter, seconded by Commissioner Ingalsbe to approve \$222,500 from County Park Bond Funds for the City of Kyle’s Steeplechase Park Project in the form of a Letter of Commitment. All voting “Aye”.**



**22054 APPROVE RENEWAL LEASE AGREEMENT WITH LYNX PROPERTY SERVICES FOR THE LEASE OF OFFICE SPACE FOR THE HAYS COUNTY ADULT PROBATION DEPT. AND AUTHORIZE THE COUNTY JUDGE TO EXECUTE SAME [T1-902]**

County Auditor Bill Herzog advised that they are offering a 3-year renewal at \$1.06 per square foot plus utilities. This is an increase from .91 cents per sq. ft. and reflects an increase in lease payment from \$7,046.50 to \$8,215.00 per month. Commissioner Molenaar spoke of this being a standard contract. Bill Herzog advised that it would cost even more to go on a month to month lease. **A motion was made by Judge Powers, seconded by Commissioner Ingalsbe to approve renewal lease agreement with Lynx Property Services for the lease of office space for the Hays County Adult Probation Department and authorize the County Judge to execute the same. Commissioner Ingalsbe, Commissioner Carter, Commissioner Burnett, and Judge Powers voting "Aye". Commissioner Molenaar not present to vote.**

**22055 APPROVE RESOLUTION AUTHORIZING THE COUNTY JUDGE TO SUBMIT A GRANT APPLICATION TO THE OFFICE OF RURAL AFFAIRS – COMMUNITY DEVELOPMENT PROGRAM FOR UP TO \$250,000 FOR A WATER IMPROVEMENT PROJECT FOR CEDAR OAKS MESA [T1-919]**

Don Connally, Manager of the Cedar Oaks Mesa Water Company, thanked everyone that made this become a reality. Grants Administrator Richard Salmon explained the grant. Grant and matching funds will be used to carry out a water improvement project for Cedar Oaks Mesa Subdivision near Wimberley. The project consists of installation of water distribution lines within the subdivision. A previous grant for \$250,000 was used to drill a well, build a storage tank and install fire hydrants. The resident of Cedar Oaks Mesa will be providing \$25,000 to Hays County for a 10% match. Commissioner Burnett spoke in support of this grant application. **A motion was made by Commissioner Burnett, seconded by Commissioner Carter to approve resolution authorizing the County Judge to submit a grant application to the Office of Rural Affairs – Community Development Program for up to \$250,000 for a Water Improvement Project for Cedar Oaks Mesa. All voting "Aye".**

**22056 APPROVE RESOLUTION AUTHORIZING THE COUNTY JUDGE TO SUBMIT A GRANT APPLICATION TO THE TEXAS JUDICIAL COUNCIL-TASK FORCE ON INDIGENT DEFENSE FOR UP TO \$50,538 [T1-976]**

Grants Administrator Richard Salmon explained the grant. Under provisions of the Fair Defense Act, 77<sup>th</sup> Regular Session, some counties are eligible to receive financial assistance from the Task Force on Indigent Defense. For FY2004 Hays County is eligible to receive \$50,538. No county match is required. Grant funds may be used for attorney fees, expenses for licensed investigators, experts, forensic specialist, or mental health experts related to the criminal defense of indigent defendants. **A motion was made by Commissioner Ingalsbe, seconded by Commissioner Carter to approve resolution authorizing the County Judge to submit a Grant Application to the Texas Judicial Council – Task Force on Indigent Defense for up to \$50,538. All voting "Aye".**

**22057 APPROVE AGREEMENT FOR ENGINEERING SERVICES WITH TURNER, COLLIE & BRADEN, INC. AND AUTHORIZE THE COUNTY JUDGE TO EXECUTE SUPPLEMENTAL WORK AUTHORIZATION NO. 4 TO WORK AUTHORIZATION NO. 12 - HAYS COUNTY / TC&B / FUGRO - GEOTECHNICAL SERVICES (WIMBERLEY BYPASS) AND CONSTRUCTION MATERIALS TESTING (CENTERPOINT RD/MCCARTY LANE, HEIDENREICH LANE, AND MT. GAINOR/MT.SHARP/PUMP STATION ROADS) [T1-1004]**

The work to be performed by the Engineer under this contract shall consist of performing a geotechnical investigation for the Wimberley Bypass and construction phase services (on-site construction materials testing) for Centerpoint Rd, McCarty Lane, Heidenreich Lane, Mt. Gainor, Mt. Shart, and Pump Station roads. **A motion was made by Commissioner Burnett, seconded by Commissioner Ingalsbe to approve agreement for engineering services with Turner, Collie & Braden Inc. and authorize the County Judge to execute Supplemental Work Authorization No. 4 to Work Authorization No. 4 to Work Authorization No. 12 – Hays County/TC&B/Fugro - Geotechnical Services (Wimberley ByPass) and Construction Materials Testing (Centerpoint Rd/McCarty Lane, Heidenreich Lane, and Mt.Gainor/Mt. Sharp/Pump Station Roads). All voting "Aye"**

**22058 APPROVE AGREEMENT FOR ENGINEERING SERVICES WITH TURNER, COLLIE & BRADEN, INC. AND AUTHORIZE THE COUNTY JUDGE TO EXECUTE SUPPLEMENTAL WORK AUTHORIZATION NO. 2 TO WORK AUTHORIZATION NO. 11 - HAYS COUNTY/TC&B/KC ENGINEERING (HILLSIDE TERRACE) [T1-1063]**

The work to be performed under this contract shall consist of providing additional engineering and surveying services. Additional surveying is required for the engineering analysis of the drainage structure in front of the Julia Joseph Sawyer tract and the storm sewer infrastructure outfall alternative on FM2001. **A motion was made by Commissioner Carter, seconded by Commissioner Ingalsbe to approve agreement for engineering services with Turner, Collie & Braden Inc. and authorize the County Judge to execute Supplemental Work Authorization No. 2 to Work Authorization No. 11 – Hays County/TC&B/KC Engineering (Hillside Terrace). All voting "Aye".**



**22059 ADOPT RESOLUTION REGARDING SECTION 147 (F) – APPROVAL OF BONDS FOR ADVENTIST HEALTH SYSTEM/SUNBELT [T1-1090]**

Nichiksib Meind (Jenkins & Gilchrist) spoke of public hearing that was held – no public appeared – approval by the court is required and there is no liability to the county. Portions of the proceeds are intended to be used in Hays County for the Central Texas Medical Center. **A motion was made by Commissioner Ingalsbe, seconded by Commissioner Carter to adopt Resolution regarding Section 147(f) Approval of Bonds for Adventist Health System/Sunbelt. All voting “Aye”.**

**22060 APPROVE CONTRACTS WITH THE ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCE (OCDEF) AND THE HAYS COUNTY SHERIFF’S DEPARTMENT’S NARCOTICS TASK FORCE AND AUTHORIZE THE HAYS COUNTY SHERIFF TO BE THE DESIGNATED SIGNATORY ON FUTURE CONTRACTS OF THIS NATURE**

[T1-1125] Chief Deputy Sheriff Regis DeArza advised that the contract is to pay overtime for the Detective on the Organized Crime Drug Enforcement Task Force. **A motion was made by Commissioner Molenaar, seconded by Commissioner Ingalsbe to approve contracts with the Organized Crime Drug Enforcement Task Force (OCDEF) and the Hays County Sheriff’s Department’s Narcotics Task Force and authorize the Hays County Sheriff to be the designated signatory on future contracts of this nature. All voting “Aye”.**

**22061 ACCEPT A DONATION FROM THE HAYS COUNTY YOUTH LIVESTOCK ASSOCIATION FOR 164 ALUMINUM BLEACHERS [T1-1180]**

Commissioner Molenaar spoke of Hays County Youth Livestock Association helping to make improvements to the Civic Center. **A motion was made by Commissioner Molenaar, seconded by Commissioner Carter to accept a donation from the Hays County Youth Livestock Association for 164 aluminum bleachers. All voting “Aye”.**

**22062 ESTABLISH GUIDELINES FOR ALLOCATING THE FY2005 MERIT INCREASES**

[T1-1200] County Auditor Bill Herzog asked for direction from the Court regarding allocation of merit increases for vacant positions and positions that have already reached their maximum. The Dept. Head will determine the amount of money given to their employees. **A motion was made by Commissioner Ingalsbe, seconded by Commissioner Carter to establish guidelines for allocating the FY2005 merit increases: no merit increase will be allocated for vacant positions or for positions that have already reached their maximum grade range effective Sept. 14, 2004. All voting “Aye”.**

**22063 ENACT AN ORDER OF THE HAYS COUNTY COMMISSIONERS’ COURT AUTHORIZING THE ISSUANCE OF HAYS COUNTY, TEXAS UNLIMITED TAX ROAD BONDS, SERIES 2004, AND ALL RELATED LEGAL REQUIREMENTS FOR THE ISSUANCE OF \$15,000,000 IN ROAD BONDS AS APPROVED BY HAYS COUNTY VOTERS IN 2001 [T1-1280]**

Dan Wegmiller (First Southwest Company) explained the order being enacted – Hays County received a Triple A3 bond rating which lowers the interest costs charged by investors. **A motion was made by Commissioner Burnett, seconded by Commissioner Molenaar to enact an Order of the Hays County Commissioner’s Court authorizing the issuance of Hays County, Texas Unlimited Tax Road Bonds, Series 2004, and all related legal requirements for the issuance of \$15,000,000 in road bonds as approved by Hays County Voters in 2001. All voting “Aye”.**

**PRESENTATION REGARDING THE PROPOSED CREATION OF A TAX INCREMENT REINVESTMENT ZONE AND/OR TAX INCREMENT FINANCING DISTRICT ALONG PARTS OF THE INTERSTATE 35 CORRIDOR IN KYLE, TEXAS [T1-1438]**

Kyle City Manager Tom Mattis, spoke of FM1626/TIF District which will provide construction of new road to extend existing FM1626 from FM2770 intersection to I-35, including a railroad overpass, and construction of a new exit ramp and 6-lane overpass at Bunton Road. He spoke of TxDot involvement and TIF funding. The county’s contribution would be 100% of the property tax for improvements for 20 years. They estimate that the county should receive sales tax of approximately \$2.6 million per year in this district. The current tax revenues are: City of Kyle = \$10,982, County = \$12,913, Hays CISD = \$59,539, Kyle VFD = \$ 1,549, and Plum Creek CD = \$1,291 – this revenue will continue, only the improvements will not be taxed for 20 years. No action is being requested today – this presentation meets their statutory requirements to come before the court and they will follow up with written documentation for action by the court. They hope to begin construction by January 2005.



**22064 EXECUTIVE SESSION PURSUANT TO SECTION 551.071, TEXAS GOVERNMENT CODE, TO MEET WITH LEGAL COUNSEL TO DISCUSS AND DELIBERATE PAPALOTE HOMES, INC., V. HAYS COUNTY, CAUSE NO. 04-0325 WITH ACTION [T1-1885]**

Court convened into closed executive session at 11:15 a.m. and reconvened into open meeting at 11:50 a.m. Commissioner Burnett explained that Karen Watkins and Phillip Schmandt of McGinnis, Lochridge & Kilgore have asked the court to accept their resignation and their firm's resignation from representing the Court in the second lawsuit filed by Papalote Homes – they explained that because of the events that prompted the court last week to ask for an investigation of possible leaks from executive session, their representation of the Court in the lawsuit has been irretrievably compromised. They also explained that they potentially are witnesses in any investigation of leaks of privileged information from executive session. That possibility further reduces their ability to represent the Court effectively in the lawsuit and potentially creates conflict of interest problems for them. Commissioner Burnett advised that while he would like to see Karen and Phillip continue to represent the Court in the future, he does not believe we can ask them to continue to do the same good job if their ethical obligations require them to resign or if we cannot preserve the confidentiality of the advice and analysis they give to us. [T1-1930] **A motion was made by Commissioner Burnett, seconded by Commissioner Molenaar to accept the resignation of Karen Watkins, Phillip Schmandt and their firm McGinnis, Lochridge & Kilgore. All voting "Aye".**

Commissioner Burnett spoke of the money already spent on this lawsuit (\$25,000-30,000) and it will cost another \$30,000 if we continue with a second law firm starting from scratch. [T1-1965] **A motion was made by Commissioner Burnett, seconded by Judge Powers to instruct Special Counsel to extend our offer of settlement to Papalote Homes to include a payment of attorney fees totaling \$10,000, that was previously requested, and the following statement that was given to us by Phillip Schmandt: *In the matter of the case styled "Papalote Homes vs. Hays County" regarding an alleged violation of the Open Meetings act, while Hays County admits no guilt, it has agreed to settle the case and pay Papalote Homes its attorney fees rather than incur greater costs to defend the suit. The Hays County Commissioners Court regrets the circumstances made subject to the suit and affirms its commitment to uphold the provisions of the Open Meetings Act.* Commissioner Molenaar, Commissioner Burnett, and Judge Powers voting "Aye". Commissioner Carter voting "No" and Commissioner Ingalsbe abstained** MOTION PASSED.

**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 SEPTEMBER 14, 2004.**



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

