

**STATE OF TEXAS  
COUNTY OF HIDALGO  
CITY OF MCALLEN**

The McAllen Board of Commissioners convened in a Regular Meeting on **Monday, April 8, 2013**, at 6:00 pm, at McAllen City Hall Third Floor (3rd) Commission Chambers, with the following present:

Mayor Richard Cortez  
Hilda Salinas, Mayor Pro Tem  
Aida Ramirez, Mayor Pro Tem  
Scott Crane, Commissioner  
Marcus C. Barrera, Commissioner  
John Ingram, Commissioner  
Jim Darling, Commissioner

Staff: Mike R. Perez, City Manager  
Kevin Pagan, City Attorney  
Brent Branham, Deputy City Manager  
Roy Rodriguez, Assistant City Manager/PUB General Manager  
Wendy Smith, Assistant City Manager  
Annette Villarreal, City Secretary  
Yvette Barrera City Engineer  
Juli Rankin, Director of Planning  
Mike Hernandez, Deputy Director of Parks and Recreation  
Sandra Zamora, Director of Purchasing  
Eduardo Mendoza, Director of Traffic Ops  
Perla Zamora, Deputy City Secretary

**CALL TO ORDER**

Mayor Cortez called the meeting to order.

**PROCLAMATION:**

***MCALLEN EARTH DAY FESTIVAL/VIDA VERDE***

Mayor Pro Tem Ramirez read and presented a proclamation for *McAllen Earth Day Festival/Vida Verde*.

**1. PUBLIC HEARING:**

Mayor Cortez called the Public Hearing to order.

- A) ROUTINE ITEMS:** *[All Rezoning and Conditional Use Permits listed under this section come with a favorable recommendation from the Planning & Zoning Commission and will be enacted by one motion. However, if there is opposition at the meeting or a discussion is desired, that item(s) will be removed from the Routine Items section of the agenda and will be considered separately.]*

Mayor Cortez asked if anyone was present to speak in opposition to the items listed under this section of the agenda. No one appeared in opposition.

Mayor Pro Tem Ramirez moved to approve the items listed on the Routine Items section of the agenda. Commissioner Ingram seconded the motion. The motion carried unanimously.

**1. REZONE FROM A-O (AGRICULTURAL-OPEN SPACE) DISTRICT TO C-4 (COMMERCIAL-INDUSTRIAL) DISTRICT: 5.20 ACRES OUT OF LOT 3, SECTION 4, HIDALGO CANAL COMPANY SUBDIVISION, HIDALGO COUNTY, TEXAS; 5800 SOUTH 10TH STREET.**

Approved the C-4 zoning at 5800 South 10<sup>th</sup> Street, as per Planning and Zoning Commission.

**2. REQUEST OF TRINITY BAPTIST CHURCH FOR A CONDITIONAL USE PERMIT, FOR LIFE OF THE USE, FOR AN INSTITUTIONAL USE (CHURCH) AT THE 10.0 ACRES OUT OF LOT 10, SECTION 279, TEXAS MEXICAN RAILWAY COMPANY SURVEY, HIDALGO COUNTY, TEXAS; 2001 FREDDY GONZALEZ DRIVE.**

Approved the Conditional Use Permit, for life of the use, at 2001 Freddy Gonzalez Drive, as per Planning and Zoning Commission subject to compliance with the Subdivision and Zoning Ordinance, paving, Fire Department and building requirements. The proposed use must also comply with the Zoning Ordinance and specific requirements as follows:

- 1) The proposed use shall not generate traffic onto residential-size streets or disrupt residential areas, and shall be as close as possible to a major arterial. The property proposes direct access to Freddy Gonzalez Drive and it does not generate traffic into residential areas;
- 2) The proposed use shall comply with the McAllen Off-Street Parking Ordinance and make provisions to prevent the use of street parking, especially in residential areas. Based on the maximum seating capacity of 220, 55 parking spaces are required; 74 parking spaces are being provided;
- 3) The proposed use shall prevent the unauthorized parking of its patrons on adjacent businesses or residences by providing fences, hedges or reorientation of entrances and exits;
- 4) The proposed use shall provide sufficient lighting to eliminate dark areas, perimeter fencing, and an orientation of the building to provide maximum visibility from a public street in order to discourage vandalism and criminal activities;
- 5) Provisions shall be made to prevent litter from blowing onto adjacent streets and residential areas;
- 6) The number of persons within the building shall be restricted to the capacity for the building; and
- 7) Sides adjacent to commercially and residentially-zoned or used properties shall be screened by a 6 ft. opaque fence. A 6 ft. opaque fence will be required on the east and west sides.

**3. REQUEST OF TINA S. RUPANI, APPEALING THE DECISION OF THE PLANNING & ZONING COMMISSION OF THE MARCH 19, 2013 MEETING, DENYING A CONDITIONAL USE PERMIT, FOR ONE YEAR, FOR A PARTY CENTER AT LOT A, BLOCK 1, ROYAL PALMS SUBDIVISION, HIDALGO COUNTY, TEXAS; 2901 NORTH 10<sup>TH</sup> STREET, SUITE M.**

Granted a variance to the distance requirement and approved the Conditional Use Permit, for one year, at 2901 North 10<sup>th</sup> Street, Suite M, as per Planning and Zoning Commission. The establishment must also comply with requirements set forth in Section 138-118(4) of the Zoning Ordinance and specific requirements as follows:

- 1) The property line of the lot of any of the above-mentioned businesses must be at least 600 ft. from the nearest residence or residentially-zoned property, church, school, or publicly-owned property, and must be designed to prevent disruption of the character of adjacent residential areas, and must not be heard from the residential area after 10:00 p.m. The proposed establishment is within 600 ft. of residentially-zoned properties;
- 2) The property must be as close as possible to a major arterial and shall not generate traffic onto residential-sized streets. The establishment has direct access to North 10th Street;
- 3) The business must provide parking in accordance with the McAllen Off-Street Parking Ordinance at a minimum, and make provisions to prevent the use of adjacent streets for parking. Currently there is a multi-tenant commercial plaza on the property. The plaza is a mixture of retail, restaurants, office and Lacks Furniture Store. Based on the current uses, approximately 236 parking spaces are required; 295 spaces are provided on site as part of the common parking area. The proposed 2,070 sq. ft. party center would require 21 parking spaces for a total of 257 spaces for the plaza, leaving 38 available;
- 4) The business must do everything possible to prevent the unauthorized parking of its patrons on adjacent properties;
- 5) The business shall provide sufficient lighting to eliminate dark areas and maximize visibility from a public street in order to discourage vandalism and criminal activities;
- 6) The business must make provisions to keep litter to a minimum and keep it from blowing onto adjacent properties; and
- 7) The above-mentioned business shall restrict the number of persons within the building to those allowed by the Planning and Zoning Commission at the time of permit issuance, after

having taken into account the recommendations of the Fire Marshal, Building Official and Planning Director. The maximum occupancy of the establishment will be determined at time of building permit.

**B) CONDITIONAL USE PERMITS:**

**1. REQUEST OF MCALLEN SPANISH CENTRAL SDA CHURCH FOR A CONDITIONAL USE PERMIT, FOR LIFE OF THE USE, FOR AN INSTITUTIONAL USE (SCHOOL SOCCER FIELD) AT THE 3.386 ACRES OUT OF LOT 77, LA LOMITA IRRIGATION & CONSTRUCTION COMPANY SUBDIVISION, HIDALGO COUNTY, TEXAS; 6601 NORTH WARE ROAD.**

Staff recommended approval of a Conditional Use Permit, for one year, at 6601 North Ware Road, as per Planning and Zoning Commission, subject to compliance with the Subdivision and Zoning Ordinance, paving, Fire Department and building requirements. The proposed use must also comply with the Zoning Ordinance and specific requirements as follows:

- 1) The proposed use shall not generate traffic onto residential-size streets or disrupt residential areas, and shall be as close as possible to a major arterial. The property fronts North Ware Road and Nightingale Avenue;
- 2) The proposed use shall comply with the McAllen Off-Street Parking Ordinance and make provisions to prevent the use of street parking, especially in residential areas. Practice is only for school/church purposes – the church’s parking lot will be available;
- 3) The proposed use shall prevent the unauthorized parking of its patrons on adjacent businesses or residences by providing fences, hedges or reorientation of entrances and exits;
- 4) The proposed use shall provide sufficient lighting to eliminate dark areas, perimeter fencing, and an orientation of the building to provide maximum visibility from a public street in order to discourage vandalism and criminal activities;
- 5) Provisions shall be made to prevent litter from blowing onto adjacent streets and residential areas;
- 6) The number of persons within the building shall be restricted to those allowed by the Fire Marshal and Building Official at the time of permit issuance; and
- 7) Sides adjacent to commercially and residentially-zoned or used properties shall be screened by a 6 ft. opaque fence.

Mayor Cortez asked if there was anyone to speak in opposition to the permit. The applicant, Carlos Diaz, spoke in favor of the permit. Concerns were expressed about the installation of chain link fencing, landscaping, and irrigation. A lengthy discussion was held. After due consideration, a recommendation was made to include the condition that the applicant will install wrought iron fencing along Ware Road and Nightingale and install landscaping, irrigation and maintain the property.

Commissioner Barrera moved to approve the Conditional Use Permit for one year subject to installation of wrought iron fencing along Ware Road and Nightingale and subject to landscaping, irrigation and maintenance of the property. Commissioner Ingram seconded the motion. The motion carried unanimously.

**2. REQUEST OF CYNTHIA PEREZ RAMON, APPEALING THE DECISION OF THE PLANNING & ZONING COMMISSION OF THE MARCH 5, 2013 MEETING, DENYING A CONDITIONAL USE PERMIT, FOR ONE YEAR, FOR A HOME OCCUPATION (OFFICE) AT LOT 7-A, LA HACIENDA ESTATES SUBDIVISION, HIDALGO COUNTY, TEXAS; 2900 NORTH 29<sup>TH</sup> LANE #A.**

Staff recommended disapproval of the Conditional Use Permit, for one year, at 2900 North 29<sup>th</sup> Lane #A, as per Planning and Zoning Commission. The business must comply with requirements set forth in Section 138-118(1) of the Zoning Ordinance and other specific requirements as follows:

- 1) The home occupation must be clearly secondary to the residential use. The applicant does not live at the residence; however, an employee resides at the residence;
- 2) No signs are permitted. No signs are proposed;
- 3) There shall be no exterior display or alterations indicating that the building is being used for any purpose other than that of a dwelling;

- 4) There shall be no more than one additional unrelated employee other than immediate members of the family residing on the premises. The applicant is proposing additional employees, approximately 6 employees. Two employees are there in the office while the others are ambulance drivers. The applicant stated that 3 days out of the week no one is there in the office;
- 5) There shall be no outside storage of materials or products. The applicant proposes no outside storage;
- 6) The permitted use shall not create frequent or heavy traffic, not greater than ten percent (10%) of the average load per hour as determined by the City Traffic Engineer. The applicant is proposing to operate the occupation for office use only and no clients will be visiting the home occupation;
- 7) No retail sales (items can be delivered). No retail sales proposed;
- 8) No additions to the residence or accessory building specifically to accommodate the business. The applicant proposes no additions or accessory building to accommodate the business;
- 9) The business must take place in the primary residential structure on the property rather than in a detached garage or separate accessory building. The occupation is proposed to take place in the primary residential structure; and
- 10) The activity must take place at the location of which the permit was issued

Mayor Cortez asked if there was anyone to speak in opposition to the permit. The applicant, Jim Ramon, spoke in favor of the permit. Concerns were expressed

Commissioner Darling moved to approve the Conditional Use Permit for one year. Commissioner Barrera seconded the motion. The motion carried unanimously.

**C) AMENDING THE ZONING ORDINANCE OF THE CITY OF MCALLEN AS ENACTED MAY 29, 1979.**

Commissioner Crane moved to adopt the Zoning Ordinance for the approved tracts. Commissioner Barrera seconded the motion. The motion carried unanimously.

**END OF PUBLIC HEARING**

Mayor Cortez declared the public hearing closed.

**THE CITY COMMISSION HAS THE PREROGATIVE TO RECESS INTO EXECUTIVE SESSION AT ANY TIME DURING THE MEETING**

2. **CONSENT AGENDA:** *[All matters listed under Consent Agenda are considered to be routine by the Governing Body and will be enacted by one motion. There will be no separate discussion of these items; however, if discussion is desired, that item(s) will be removed from the Consent Agenda and will be considered separately.]*

Commissioner Darling moved to approve the items listed on the Consent Agenda. Commissioner Barrera seconded the motion. The motion carried unanimously.

**A) APPROVAL OF MINUTES OF REGULAR MEETING HELD MARCH 25, 2013.**

Approved the minutes of the Regular Meeting held March 25, 2013, as submitted.

**B) APPROVAL OF TAX REFUNDS OVER \$500 FOR:**

**1. VENTURA & MARIA GARZA**

Approved a tax refund in the amount of \$551.95.

**2. JASCAN CONSTRUCTION**

Approved a tax refund in the amount of \$613.42.

**3. BB&T MORTGAGE**

Approved a tax refund in the amount of \$522.84.

- C) **ORDINANCE PROVIDING FOR A BUDGET AMENDMENT FOR CONTRACTUAL OBLIGATIONS ASSOCIATED WITH THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF MCALLEN & CITY OF PHARR FOR DISPATCH SERVICES.**

Adopted an ordinance providing for a budget amendment in the amount of \$82,533 for the Interlocal Agreement between City of McAllen and City of Pharr, for dispatch services.

- D) **ORDINANCE DESIGNATING A SEGMENT OF NORTH BROADWAY STREET FROM A ONE-WAY SOUTH BOUND TO A TWO-WAY STREET NORTHBOUND AND SOUTHBOUND (VINE AVENUE TO TAMARACK AVENUE).**

Adopted an ordinance designating a segment of North Broadway Street from a one-way south bound to a two-way street northbound and southbound.

- E) **ORDINANCE PROVIDING FOR THE ABANDONMENT OF THE WEST 5 FT. OF THE 10 FT. UTILITY EASEMENT LOCATED ON THE WEST SIDE OF LOT 28, HERITAGE MANOR NO. 2 SUBDIVISION (AMENDED); 4513 NORTH 5<sup>TH</sup> STREET.**

Adopted an ordinance providing for the abandonment of a utility easement at 4513 North 5<sup>th</sup> Street.

- F) **ORDINANCE PROVIDING FOR THE ABANDONMENT OF A 0.05 ACRE PORTION OF A UTILITY EASEMENT OUT OF AN ABANDONED ALLEY TO THE NORTH OF LOT 47, MARGARET ESTATES SUBDIVISION; 1004 NORTH WARE ROAD.**

Adopted of an ordinance providing for the abandonment of a utility easement at 1004 North Ware Road.

- G) **CONSIDER APPROVAL OF A VARIANCE REQUEST TO THE SUBDIVISION PROCESS AT 6.04 ACRES OUT OF LOT 25, BLOCK 3, C.E. HAMMOND SUBDIVISION; 4601 SOUTH 23<sup>RD</sup> STREET.**

Approved a variance to the subdivision process at 4601 South 23<sup>rd</sup> Street, subject to providing the additional right-of-way along Idela Avenue and S. 23<sup>rd</sup> Street, as may be needed and providing public improvements as may be required.

### 3. BIDS/CONTRACTS:

- A) **AWARD OF SERVICE CONTRACT FOR TRAFFIC SIGNAL LOOP DETECTOR REPLACEMENT.**

Staff recommended award of service contract for Traffic Signal Loop Detector Replacement, to D&G Energy Corp., for one-year term. Additionally, staff recommended authorization to exercise the option to extend the contract for an additional two (2) years, in one (1) year increments, with City Manager approval and subject to performance of the successful bidder being satisfactory and the unit price(s) remaining unchanged.

Commissioner Ingram moved to award the contract as recommended. Mayor Pro Tem Ramirez seconded the motion. The motion carried unanimously.

- B) **CONSIDER APPROVAL OF CHANGE ORDER NO. 1 FOR BICENTENNIAL TRAIL.**

Staff recommended that said item be removed from the agenda.

Mayor Pro Tem Ramirez moved to remove said item from the agenda. Commissioner Ingram seconded the motion. The motion carried unanimously.

**C) CONSIDER APPROVAL OF CHANGE ORDER NO. 8 FOR BENTSEN ROAD PAVING IMPROVEMENTS FROM PECAN BOULEVARD (FM 495) TO 3 MILE LINE ROAD.**

Staff recommended approval of Change Order No. 8 in the amount of \$22,092.90 and 15 additional days, for the Bentsen Road Paving Improvements Project from Pecan Boulevard (FM 495) to 3 Mile Line Road, for a total revised contract amount of \$5,338,932.89 and 251 working days.

Commissioner Darling moved to approve the change order as recommended. Mayor Pro Tem Ramirez seconded the motion. The motion carried unanimously.

**4. ORDINANCES:**

**A) BUDGET AMENDMENT PROVIDING FOR ADDITIONAL FUNDING FOR VARIOUS PROJECTS THROUGH DEVELOPMENT CORPORATION.**

Staff recommended adoption of an ordinance providing for a budget amendment in the amount of \$2,625,472 for funding of various projects through Development Corporation.

Commissioner Crane moved to adopt the ordinance as recommended. Mayor Pro Tem Ramirez seconded the motion. The motion carried unanimously.

**B) BUDGET AMENDMENT FOR REWIRING OF EXPRESSWAY 83 FROM 23<sup>RD</sup> STREET TO EAST CITY LIMIT.**

Staff recommended adoption of an ordinance providing for a budget amendment in the amount of \$160,000 for the rewiring of Expressway 83 from 23<sup>rd</sup> Street to east city limit.

Concerns were expressed relating to the possible causes of deterioration and assurances for future damage. A lengthy discussion was held. After due consideration, staff was asked to have the Legislative Director report on this to Austin.

Commissioner Darling moved to adopt the ordinance as recommended. Commissioner Barrera seconded the motion. The motion carried unanimously.

**5. MANAGER'S REPORT:**

**A) REPORT ON ACTIVITIES AT CONVENTION CENTER.**

Commissioner Barrera moved to table this item for discussion in Executive Session pursuant to Chapter 551.071 Consultation with City Attorney. Mayor Pro Tem Ramirez seconded the motion. The motion carried unanimously.

After Executive Session, Commissioner Barrera moved to remove said item from the table and agenda. Mayor Pro Tem Ramirez seconded the motion. The motion carried unanimously.

**B) FUTURE AGENDA ITEMS.**

The items for upcoming workshops were briefly reviewed: Keep McAllen Beautiful Tree Advisory Committee; and Report on Unified Development Code.

**PUBLIC COMMENT SESSION**

No one appeared.

**6. EXECUTIVE SESSION, CHAPTER 551, TEXAS GOVERNMENT CODE, SECTION 551.071 (CONSULTATION WITH ATTORNEY), SECTION 551.087 (ECONOMIC DEVELOPMENT) AND SECTION 551.072 (DELIBERATION REGARDING REAL PROPERTY).**

On behalf of the Presiding Officer, the City Attorney recommended recessing into Executive Session pursuant to Chapter 551, Texas Government Code, Section 551.087 Economic Development for

Items 6A, 6B and 6H; Section 551.071 Consultation with Attorney for Items 5B, 6B, 6C, 6D and 6E; and Section 551.072 Deliberation regarding Real Property for Items 6F and 6G.

Mayor Pro Tem Ramirez moved to accept the recommendation for the basis of the discussion in Executive Session under the sections cited by the City Attorney. Commissioner Crane seconded the motion. The motion carried unanimously.

Mayor Cortez recessed the meeting at 6:50 pm to go into Executive Session. Mayor Cortez reconvened the meeting at 8:13 pm and announced the action on Executive Session items.

**A) DISCUSSION AND POSSIBLE ACTION REGARDING ECONOMIC INCENTIVES FOR PROJECT NEXT LEVEL. (SECTION 551.087, T.G.C.)**

No action was taken.

**B) CONSIDERATION AND CONSULTATION WITH LEGAL COUNSEL REGARDING ECONOMIC DEVELOPMENT PROJECT POMPEII. (SECTION 551.087 AND 551.071, T.G.C.)**

Commissioner Barrera moved to authorize the City Attorney to take the action discussed in Executive Session. Mayor Pro Tem Ramirez seconded the motion. The motion carried unanimously.

**C) CONSULTATION WITH CITY ATTORNEY REGARDING A POSSIBLE CONTRACT WITH VIANOVO RELATING TO INTERNATIONAL BRIDGE FACILITIES. (SECTION 551.071, T.G.C.)**

No action was taken.

**D) CONSULTATION WITH CITY ATTORNEY REGARDING PENDING LAWSUIT; DAHLILA GUERRA CASSO VS. CITY OF MCALLEN. (SECTION 551.071, T.G.C.)**

Commissioner Darling moved to authorize the City Attorney to prosecute the appeal of the Court of Appeal's opinion. Mayor Pro Tem Ramirez seconded the motion. The motion carried unanimously.

**E) CONSULTATION WITH CITY ATTORNEY REGARDING REQUEST FOR PROPOSALS FOR OLD CIVIC CENTER REDEVELOPMENT. (SECTION 551.071, T.G.C.)**

No action was taken.

**F) DISCUSSION AND POSSIBLE ACTION REGARDING A COUNTER OFFER TO ACQUIRE A TRACT OF LAND 60 FEET NORTH AND SOUTH AND 160 FEET EAST AND WEST OUT OF THE CORNER OF LOT 177, JOHN H. SHARY SUBDIVISION. (SECTION 551.072, T.G.C.)**

Commissioner Barrera moved to authorize the City Attorney and City Manager to offer the purchase of the property in the amount discussed in Executive Session. Mayor Pro Tem Ramirez seconded the motion. The motion carried unanimously.

**G) DISCUSSION AND POSSIBLE ACTION TO CONSIDER THE POSSIBLE SALE OF 300 ACRES ON WARE ROAD AND MONTE CRISTO. (SECTION 551.072, T.G.C.)**

Commissioner Barrera moved to authorize the Mayor to take the action discussed in Executive Session. Mayor Pro Tem Salinas seconded the motion. The motion carried unanimously.

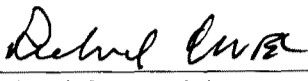
**H) DISCUSSION AND POSSIBLE ACTION REGARDING ECONOMIC INCENTIVES FOR PROJECT BEER. (SECTION 551.087, T.G.C.)**

Mayor Pro Tem Ramirez moved to authorize the director of McAllen Economic Development Corporation and City Attorney to continue negotiations for the lease and 380 Economic Incentive

Agreement and that a final lease and 380 Agreement be brought back for approval. Commissioner Ingram seconded the motion. The motion carried unanimously.

**ADJOURNMENT**

There being no other business to come before the Commission, the meeting was adjourned at 8:15 p.m.

  
Richard Cortez, Mayor

Attest:

  
Annette Villarreal, TRMC/CMC, CPM  
City Secretary