



City of Rowlett

Meeting Agenda

City Council

4000 Main Street
Rowlett, TX 75088
www.rowlett.com

City of Rowlett City Council meetings are available to all persons regardless of disability. If you require special assistance, please contact the City Secretary at 972-412-6115 or write 4000 Main Street, Rowlett, Texas, 75088, at least 48 hours in advance of the meeting.

Tuesday, March 15, 2016

6:30 P.M.

Municipal Building – 4000 Main Street

As authorized by Section 551.071 of the Texas Government Code, this meeting may be convened into closed Executive Session for the purpose of seeking confidential legal advice from the City Attorney on any agenda item herein.

The City of Rowlett reserves the right to reconvene, recess or realign the Regular Session or called Executive Session or order of business at any time prior to adjournment.

1. CALL TO ORDER

2. EXECUTIVE SESSION

- 2A.** The City Council shall convene into Executive Session pursuant to the Texas Government Code, §551.071 (Consultation with Attorney), to receive legal advice from the City Attorney and to discuss and receive updates on pending litigation: Xerox v. City of Rowlett, and City of Rowlett v. KMS Realty. (30 minutes)

3. WORK SESSION (7:00 P.M.) * Times listed are approximate.

- 3A.** Discuss approval of bylaws recommended by the Rowlett Long Term Recovery Committee. (30 minutes)

4. DISCUSS CONSENT AGENDA ITEMS

CONVENE INTO THE COUNCIL CHAMBERS (7:30 P.M.)*

INVOCATION

PLEDGE OF ALLEGIANCE

TEXAS PLEDGE OF ALLEGIANCE

Honor the Texas Flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.

5. PRESENTATIONS AND PROCLAMATIONS

- 5A.** Hear presentation of the Monthly Financial report for the period ending January 31, 2016.

5B. Update from the City Council and Management: Financial Position, Major Projects, Operational Issues, Upcoming Dates of Interest and Items of Community Interest.

6. CITIZENS' INPUT

At this time, three-minute comments will be taken from the audience on any topic. To address the Council, please submit a fully-completed request card to the City Secretary prior to the beginning of the Citizens' Input portion of the Council meeting. No action can be taken by the Council during Citizens' Input.

7. CONSENT AGENDA

The following may be acted upon in one motion. A City Councilmember or a citizen may request items be removed from the Consent Agenda for individual consideration.

7A. Consider action to approve minutes from the March 1, 2016 City Council Regular Meeting.

7B. Consider action to approve an Ordinance amending Chapter 66, Section 53, of the Code of Ordinances to establish speed limits of twenty-five miles per hour for the following streets and portions of streets: Homestead Boulevard, Ophelia Drive, Habershaw Drive, Montgomery Drive, Long Green Street, Trafalgar Drive, Chatham Drive, Kessler Drive, Abercorn Drive, Crockett Drive, and McDonough Drive.

7C. Consider action to approve a resolution adopting bylaws recommended by the Rowlett Long Term Recovery Committee.

8. ITEMS FOR INDIVIDUAL CONSIDERATION

8A. Conduct a public hearing and consider an ordinance approving text amendments to the City of Rowlett Form-Based Code as it pertains to lighting standards, as specified in FBC sections 2.3, 2.4, 2.6, 2.7, and 4: Lighting, Mechanical, and Utilities.

TAKE ANY NECESSARY OR APPROPRIATE ACTION ON CLOSED/EXECUTIVE SESSION MATTERS

9. ADJOURNMENT

Laura Hallmark

Laura Hallmark, City Secretary

I certify that the above notice of meeting was posted on the bulletin boards located inside and outside the doors of the Municipal Center, 4000 Main Street, Rowlett, Texas, as well as on the City's website (www.rowlett.com) on the 10th day of March 2016, by 5:00 p.m.



City of Rowlett
Staff Report

4000 Main Street
P.O. Box 99
Rowlett, TX 75080-0099
www.rowlett.com

AGENDA DATE: 03/15/16

AGENDA ITEM: 2A

TITLE

The City Council shall convene into Executive Session pursuant to the Texas Government Code, §551.071 (Consultation with Attorney), to receive legal advice from the City Attorney and to discuss and receive updates on pending litigation; Xerox v. City of Rowlett, and City of Rowlett v. KMS Realty. (30 minutes)

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

XEROX STATE & LOCAL SOLUTIONS, INC. f/k/a ACS STATE & LOCAL SOLUTIONS, INC.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 3:14-CV-2465-BH
	§	
CITY OF ROWLETT,	§	
Defendant.	§	Consent Case

ORDER

By order filed August 26, 2014, this matter has been transferred for the conduct of all further proceedings and the entry of judgment. Before the Court is *Plaintiff's Motion for Summary Judgment*, filed May 4, 2015 (doc. 16), and *Defendant City of Rowlett, Texas' Motion for Summary Judgment*, filed May 19, 2015 (doc. 21). Based on the relevant filings and applicable law, the plaintiff's motion is **GRANTED in part**, and the defendant's motion is **GRANTED**.

I. BACKGROUND

This action arises out of an alleged breach of a contract between Xerox State & Local Solutions, Inc. f/k/a ACS State & Local Solutions, Inc. (Plaintiff) and the City of Rowlett (Defendant).¹

A. Factual Background

On December 7, 2004, Plaintiff and Defendant entered into an Agreement for Management of the Digital Automated Red Light Enforcement Program (the Original Agreement). (doc. 18 at 4.)²

¹In 2010, Xerox Corporation (which later became Xerox State & Local Solutions, Inc.) purchased Affiliated Computer Services, Inc. and its subsidiary companies, including ACS State & Local Solutions, Inc. (doc. 18 at 1.)

²Citations to the record refer to the CM/ECF system page number at the top of each page rather than the page numbers at the bottom of each filing.

Under the Original Agreement, Plaintiff was to purchase, install, maintain, and operate digital automated red light cameras at five intersection approaches in Rowlett (the Program). (*Id.*) The initial term of the contract was for a period not to exceed five years, with an option to renew the Agreement for two successive one-year terms. (*Id.* at 8.) The parties agreed that the focus of the Program was to reduce red light violations, so the compensation to be paid to Plaintiff was not dependent on violation rates, but in consideration of the total services rendered in support of the Program. (*Id.* at 12.) The Program was intended to be “revenue neutral or ‘self-funding’ and therefore [Defendant’s] obligation for payment and total compensation paid to [Plaintiff] over the course of [the Agreement] shall not exceed the total amount of civil penalties received from violators.” (*Id.*) Defendant agreed to pay Plaintiff a monthly base fee of \$5,300.00 per intersection per month for the “acquisition, installation, implementation, maintenance, and on-going management and monitoring of red light violations.” (*Id.*) In Subsection 12.4 of the Original Agreement, Plaintiff agreed that Defendant’s obligation to pay the monthly base fees would be limited to the revenues generated by the Program. (*Id.* at 13.) If those revenues were not sufficient to make the full monthly base payment, the deficit or balance due would be carried forward to the next month until paid in full. (*Id.*)

The parties acknowledged that the Original Agreement was made and entered into in Rowlett, Texas, and would be performed in Rowlett, Texas. (*Id.* at 17.) They also agreed that Texas law would govern the interpretation and enforcement of the Original Agreement, and that any legal actions or proceedings relating to the Original Agreement would be brought in state or federal court in Dallas County, Texas. (*Id.*)

On December 7, 2004, the parties entered into an Amendment to the Original Agreement

(Amendment No. 1), which extended the term of the Agreement until March 10, 2013. (*Id.* at 26.) It also provided for the addition of at least five more intersection approaches. (*Id.* at 21, 26.) Additionally, Amendment No. 1 provided that Defendant would receive a 15% contingency fee for delinquent photo enforcement fines plus City-added fees collected per month (the Special Collections). (*Id.* at 25.)

The parties entered into a second Amendment effective December 1, 2007 (Amendment No. 2), which amended Subsection 12.4.³ (*Id.* at 31-32.) Amended Subsection 12.4 provided that Defendant's obligation to pay the monthly base fees for the original intersection approaches referenced in the Original Agreement (the Original Approaches) was limited to those revenues generated by the Original Approaches, collected by Plaintiff and received by Defendant (the Original Approach Revenues). (*Id.*) Plaintiff acknowledged that under the Agreement, Defendant was not making, and would not make, any current or future obligations for the Original Approaches other than the Original Approach Revenues. (*Id.*) However, if the Original Approach Revenues were not sufficient to make the full monthly base fee payment, the deficit would be carried forward to the next month until it was paid in full. (*Id.*) If the Original Approach Revenues exceeded the monthly base fee payments, the excess would be applied first to any cumulative deficits until all deficit balances were paid in full. (*Id.*) If all payments due to Plaintiff for the Original Approaches were current, Defendant would retain any excess Original Approach Revenues. (*Id.*) Plaintiff was to deliver to Defendant a final reconciliation of the monthly base fees for the Original Approaches and the Original Approach Revenues within thirty days of the expiration of the Agreement. (*Id.*) Any outstanding deficit balances due upon completion of the final reconciliation would be forgiven

³The Original Agreement, Amendment No. 1, and Amendment No. 2 are collectively referred to as the "Agreement."

by Plaintiff. (*Id.*) Amended Subsection 12.4 provided these same terms for the additional approaches added in Amendment No. 1 (the Expansion Approaches).

B. Procedural Background

On July 9, 2014, Plaintiff filed suit against Defendant. (doc. 1.) It filed an amended complaint on July 10, 2014, asserting a claim for breach of contract due to Defendant's alleged failure to fulfill its payment obligations under the Agreement and seeking attorney's fees and costs. (doc. 3.) On July 22, 2014, Defendant filed its answer and counterclaim to the amended complaint. (doc. 4.) It asserts that Plaintiff breached the contract by failing to remove camera equipment and masts installed pursuant to the Program from certain intersections. (*Id.*)

On May 4, 2015, Plaintiff moved for summary judgment on its breach of contract claim. (doc. 16.) Defendant filed a response on May 19, 2015, raising for the first time the affirmative defenses of a void debt under Article XI, Section 5 of the Texas Constitution and governmental immunity from suit. (*Id.* at 6-8.) That same day, Defendant filed its own motion for summary judgment as to its governmental immunity defense. (doc. 21.) The motions are ripe for determination.

II. OBJECTIONS

Plaintiff objects to Defendant's assertion of affirmative defenses and to its summary judgment motion. (doc. 25 at 1-2.) Defendant objects to the declaration filed in support of Plaintiff's summary judgment motion. (doc. 20 at 2-4.)

A. Waiver

Plaintiff argues that Defendant waived the governmental immunity defense and the void debt defense under Article XI, Section 5 of the Texas Constitution, by failing to plead them as affirmative

defenses in its answer. (*See* doc. 24 at 1-2, 6; doc. 25 at 2.)

An affirmative defense must be pled and proved by the defendant. *Pasco ex rel Pasco v. Knoblauch*, 556 F.3d 572, 577 (5th Cir. 2009) (citing *Gomez v. Toledo*, 446 U.S. 635, 640 (1980) and Fed. R. Civ. P. 8(c)). Generally, a party's failure to raise an affirmative defense in its first responsive pleading waives that defense. *See Pasco*, 556 F.3d at 577; *Lucas v. United States*, 807 F.2d 414, 417 (5th Cir. 1986). "Where the matter is raised in the trial court in a manner that does not result in unfair surprise ... technical failure to comply precisely with Rule 8(c) is not fatal," however. *Allied Chem. Corp. v. Mackay*, 695 F.2d 854, 855-56 (5th Cir. 1983). A defendant does not waive an affirmative defense if it is raised at a pragmatically sufficient time, and the plaintiff is not prejudiced in its ability to respond. *Id*; *Chambers v. Johnson*, 197 F.3d 732, 735 (5th Cir. 1999).

Here, Defendant did not raise its defenses in its answer. (*See* doc. 4.) Plaintiff had the opportunity to respond to the defenses, however, in its reply to the response to its own motion for summary judgment as well as in response to Defendant's motion. It has not argued that it has been prejudiced by Defendant's failure to assert them in its answer. Defendant therefore raised its defenses at a pragmatically sufficient time. *See Briggs v. Dallas Area Rapid Transit*, No. Civ. A. 3:02-CV-0015-N, 2003 WL 21804264, at *2 fn. 1 (N.D.Tex. Mar. 14, 2003)(finding the defendant did not waive its affirmative defense of res judicata by failing to plead the defense in its answer as the plaintiff was able to respond to the affirmative defense in its reply to defendant's motion for summary judgment and was therefore not prejudiced).

Additionally, governmental immunity deprives a court of subject-matter jurisdiction. *Nationwide Public Ins. Adjusters Inc. v. EdCouch-Elsa I.S.D., et al.*, 913 F. Supp. 2d 305, 309 (S.D. Tex. 2012). Subject-matter jurisdiction can never be waived or forfeited. *Arbaugh v. Y&H Corp.*,

546 U.S. 500, 514 (2006). Courts have an independent obligation to determine whether subject-matter jurisdiction exists, even if a party fails to challenge it. *Id.* Regardless of whether Defendant timely raised its governmental immunity defense, this action must be dismissed if jurisdiction is lacking. Fed. R. Civ. P. 12(h)(3); *Stockman v. Fed. Election Comm'n*, 138 F.3d 144, 151 (5th Cir. 1998). Accordingly, Defendant did not waive its defenses by failing to plead them in its answer, and Plaintiff's objection is **OVERRULED**.

B. Timeliness

Plaintiff also objects to Defendant's summary judgment motion as being untimely. (doc. 25 at 1.) The August 27, 2014 scheduling order imposed a May 4, 2015 deadline for filing dispositive motions. (doc. 9.) Defendant filed its summary judgment motion on May 19, 2015. (*See* doc. 21.)

Defendant did not seek to extend the filing deadline or leave to file its motion out of time. It raised its immunity defense in its response to Plaintiff's summary judgment motion, however, and the defense implicates subject-matter jurisdiction, which can never be waived or forfeited. *See Arbaugh*, 546 U.S. at 514. Trial has been continued pending determination of the summary judgment motions, and Plaintiff has not shown that it has been prejudiced as a result of the late filing. (*See* doc. 27.) Although the late filing is not condoned, the motion will be considered, and Plaintiff's timeliness objection is **OVERRULED**.

C. Admissibility

Defendant objects and moves to strike portions of the Declaration of Travis Tatum (the Tatum Declaration), filed in support of Plaintiff's summary judgment motion. (doc. 20 at 2-4.) Mr. Tatum avers that he is Plaintiff's Director of Operations and has access to all of its books and records. (doc. 18 at 1.) He is authorized to make the statements in the Declaration, which are based

on his review of the records. (*Id.*) He also testifies as to the amounts Defendant paid and the amounts due and owing under the Agreement. (*Id.* at 2-3.)

1. Interpretation

Defendant first argues that Mr. Tatum’s testimony regarding the “meaning, effect or interpretation” of the records attached to his declaration is conclusory. (doc. 20 at 2.)

Interpretation of an unambiguous contract is a question of law for the courts. *Gonzalez v. Denning*, 394 F.3d 388, 392 (5th Cir. 2004). “Only where a contract is first determined to be ambiguous may the courts consider the parties’ interpretation.” *Lagniappe Lighting, Inc. v. Bevolo Gas & Elec. Lights, Inc.*, No. H-11-4538, 2013 WL 3816591, at *6 (S.D.Tex. July 22, 2013)(citing *Nat’l Union Fire Ins. Co. of Pittsburg, PA v. CBI Indus., Inc.*, 907 S.W.2d 517, 520 (Tex. 1995)). No such determination has been made, so the opinion of witnesses should not be considered. *Gonzalez*, 394 F.3d at 392. Defendant’s objection to Mr. Tatum’s statements regarding the meaning and interpretation of the Agreement is **SUSTAINED**. To the extent the Tatum Declaration purports to interpret the meaning of the terms of the Agreement, it will not be considered.

2. Spreadsheet Summary

Defendant also objects to the spreadsheet summary attached to the Tatum Declaration. (doc. 20 at 3-4.) Defendant argues that the numeric totals in the Declaration presumably came from Plaintiff’s attached spreadsheet summary, but “nothing identifies the spreadsheet, makes reference to it, or explains it.” (*Id.* at 3.) It argues that Plaintiff’s “global business records statements” in the Declaration may authenticate the spreadsheet, but without more, do not render the spreadsheet admissible. (*Id.*) Defendant claims that it is inadmissible due to the complete absence of any testimony as to how Mr. Tatum arrived at the amounts, the lack of identification or description of the evidence, and the lack of facts that would suggest personal knowledge, and that it is speculative.

(*Id.* at 4.)

Plaintiff responds that the spreadsheet is a summary pursuant to Fed. R. Evid. 1006, and although the Rule provides that the documents on which the summary is based must be made available for inspection and copying, those documents, i.e., the billing statements, are equally available to the parties. (doc. 24 at 3.)

Under Fed. R. Evid. 1006, “[t]he contents of voluminous writings ... which cannot conveniently be examined in court may be presented in the form of a ... summary’, provided that the documents on which it is based are ‘made available for examination or copying, or both.’” *Love v. National Med. Enters.*, 230 F.3d 765, 776 (5th Cir. 2000)(quoting Fed. R. Evid. 1006)(emphasis omitted).

Here, the Tatum Declaration does not state that the records upon which the attached spreadsheet are based are voluminous or cannot be conveniently examined in court. It states no facts about the spreadsheet summary’s underlying documents, except that Mr. Tatum reviewed Plaintiff’s relevant records. It does not state that the underlying documents were made available to Defendant, or that all the underlying documents are billing statements, as Plaintiff asserts. It is not apparent from the Tatum Declaration that the underlying documents are themselves admissible. Therefore, the spreadsheet summary is not competent summary judgment evidence, and Defendant’s objection to it is **SUSTAINED**.

3. *Numeric Totals*

Defendant also objects to the numeric totals in paragraphs 6, 7, and 8 of the Tatum Declaration as insufficient, conclusory, and not based on personal knowledge because they are based on the spreadsheet summary, which it contends is inadmissible. (doc. 20 at 3-4.)

In paragraphs 6, 7, and 8, Mr. Tatum testifies as to the amount of the 15% contingency fee

owed to Plaintiff as part of the Special Collections, the amount of credit card processing fees or transFirst credit card passthrough fees owed to Plaintiff as part of the Special Collections, and the amount of fees Defendant has paid and owes under the Agreement. (doc. 18 at 2-3.) The Declaration does not state that the numeric totals in paragraphs 6, 7, or 8 are based on the spreadsheet, but only on his review of Plaintiff's relevant records. (*Id.* at 1.) Plaintiff has therefore provided competent summary judgment evidence as to the totals apart from the spreadsheet summary. Defendant is essentially arguing that the numeric totals are not well-supported, which is a credibility issue that runs to the weight of the evidence. Such a determination cannot be made on summary judgment. *See Honore v. Douglas*, 833 F.2d 565, 567 (5th Cir. 1987)(finding that a court should not "weigh evidence, assess credibility, or determine the most reasonable inference to be drawn from the evidence" when deciding a motion for summary judgment). Accordingly, Defendant's objection to the numeric totals in paragraphs 6, 7, and 8 of the Tatum Declaration is **OVERRULED**.

4. Paragraphs 6 and 7

Defendant objects to the statements in paragraph 6 regarding the Special Collections fees described in Amendment No. 1 as conclusory and not based on personal knowledge because the statements are not entirely accurate. (doc. 20 at 2-3.) It also objects to paragraph 7 as conclusory, not based on personal knowledge, and not based on records authenticated as part of summary judgment proof because it refers to credit card processing fees allowed under Amendment No. 1. (*Id.* at 3.) Defendant argues that Amendment No. 1 makes no reference to any such fee. (*Id.*) Again, Defendant's objections go to the credibility of Mr. Tatum's declaration, and a credibility determination cannot be made on summary judgment. Defendant's objections to Paragraphs 6 and 7 are therefore **OVERRULED**.

III. SUMMARY JUDGMENT

Plaintiff moves for summary judgment on its breach of contract claim. (doc. 16.) Defendant moves for summary judgment as to its governmental immunity defense. (doc. 21.)

Summary judgment is appropriate when the pleadings and evidence on file show that no genuine issue exists as to any material fact and that the moving party is entitled to judgment as a matter of law. FED.R.CIV.P. 56(c). “[T]he substantive law will identify which facts are material.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A genuine issue of material fact exists “if the evidence is such that a reasonable jury could return a verdict for the non-moving party.” *Id.* The movant makes a showing that there is no genuine issue of material fact by informing the court of the basis of its motion and by identifying the portions of the record which reveal there are no genuine material fact issues. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The pleadings, discovery and disclosure materials on file, and affidavits, if any, must demonstrate that no genuine issue of material fact exists. FED.R.CIV.P. 56(c).

Once the movant makes this showing, the non-movant must then direct the court’s attention to evidence in the record sufficient to establish that there is a genuine issue of material fact for trial. *Celotex*, 477 U.S. at 324. To carry this burden, the non-movant “must do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Instead, the non-movant must show that the evidence is sufficient to support a resolution of the factual issue in his favor. *Anderson*, 477 U.S. at 249.

While all of the evidence must be viewed in a light most favorable to the non-movant, *id.* at 255 (citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158–59 (1970)), neither conclusory allegations nor unsubstantiated assertions will satisfy the non-movant’s summary judgment burden,

Little v. Liquid Air Corp., 37 F.3d 1069, 1075 (5th Cir.1994) (en banc); *Topalian v. Ehrman*, 954 F.2d 1125, 1131 (5th Cir.1992). Summary judgment in favor of the movant is proper if, after adequate time for discovery, the non-movant fails to establish the existence of an element essential to his case and as to which he will bear the burden of proof at trial. *Celotex*, 477 U.S. at 322–23. “The party opposing summary judgment is required to identify specific evidence in the record and to articulate the precise manner in which that evidence supports his or her claim.” *Ragas v. Tenn. Gas Pipeline Co.*, 136 F.3d 455, 458 (5th Cir.1998).

A. Governmental Immunity⁴

Defendant moves for summary judgment on grounds that it has governmental immunity from suit against Plaintiff’s claims, except to the extent those claims operate only as an offset to reduce Defendant’s recovery. (doc. 20 at 7; doc. 22 at 3-4.) Plaintiff responds that Defendant waived its immunity from suit. (doc. 24 at 8-9; doc. 25 at 2-4.)

Sovereign immunity protects the state and its various divisions from suit and liability, while the ancillary doctrine of governmental immunity provides similar protection to political subdivisions of the state, such as counties, cities, and school districts. *Travis Cent. Appraisal Dist. v. Norman*, 342 S.W.3d 54, 57-58 (Tex. 2011)(citation omitted). Governmental immunity has two components: “immunity from liability, which bars enforcement of a judgment against a governmental entity, and immunity from suit, which bars suit against the entity altogether.” *Tooke v. City of Mexia*, 197 S.W.3d 325, 332 (Tex. 2006). “[B]efore a city may be sued for damages, its governmental immunity must first be waived.” *El Eso Water Supply Corp. v. City of Karnes City, Tex.*, SA-10-CA-0819-

⁴As noted, in response to Plaintiff’s motion for summary judgment and in its own motion for summary judgment, Defendant asserts its immunity from suit. (doc. 20 at 7; doc. 22 at 3-4.) It also argues in its response to Plaintiff’s motion that is entitled to the defense of a void debt pursuant to Article XI, Section 5 of the Texas Constitution. (doc. 20 at 7.) Because these defenses, if valid, will dispose of Plaintiff’s claims, they are considered first.

OLG, 2011 WL 9155608, at *3 (W.D. Tex. Aug. 30, 2011). It is within “the Legislature’s sole province” to waive or abrogate sovereign or governmental immunity. *Texas Natural Resource Conservation Com’n v. IT-Davy*, 74 S.W.3d 849, 853 (Tex. 2002) (citing *Federal Sign v. Texas S. Univ.*, 951 S.W.2d 401, 409 (Tex. 1997)); see *Tooke*, 197 S.W.3d at 332; *City of San Antonio ex rel. City Public Service Board v. Wheelabrator Air Pollution Control, Inc.*, 381 S.W.3d 597, 601 (Tex. App.–San Antonio 2012, pet. filed). A governmental entity may not be sued unless the Legislature expressly consents to suit, whether by statute or resolution.⁵ *IT-Davy*, 74 S.W.3d at 853-54; *General Services Commission v. Little-Tex Insulation Co.*, 39 S.W.3d 591, 594 (Tex. 2001).

In a suit against a governmental entity, the plaintiff must allege a valid waiver of immunity from suit in order to invoke the court’s jurisdiction over a claim against a governmental entity. Governmental immunity from suit defeats a court’s subject matter jurisdiction. *El Eso Water Supply Corp.*, 2011 WL 9155608, at *3; *Dallas Area Rapid Transit v. Whitley*, 104 S.W.3d 540, 542 (Tex. 2003).

1. Defendant’s Affirmative Claim for Relief

Despite the general principle that only the Legislature can waive governmental immunity, the common law doctrine of governmental immunity has been in a limited manner “modified and abrogated” for governmental entities that file affirmative claims for relief. *City of Dallas v. Albert*, 354 S.W.3d 368, 374 (Tex. 2011).⁶ Where it asserts its own affirmative claims for monetary relief,

⁵In terms of contract claims, a governmental entity waives immunity from liability when it voluntarily enters into a contract and thereby binds itself to the terms of the agreement. *Little-Tex*, 39 S.W.3d at 594; *IT-Davy*, 74 S.W.3d at 858; *Tooke*, 197 S.W.3d at 332. It does not, however, waive immunity from suit by merely entering into a contract. *Id.* “Legislative consent to sue is still necessary.” *Little-Tex*, 39 S.W.3d at 594.

⁶The Texas Supreme Court acknowledged in *Reata Const. Corp. v. City of Dallas*, 197 S.W.3d 371 (Tex. 2006) that there is tension between the concept of a governmental entity itself waiving its immunity by an action independent of the Legislature waiving immunity and the principle that only the Legislature can waive sovereign or governmental immunity. 197 S.W.3d at 375. It has recognized that governmental immunity is a common law doctrine, and it has not therefore foreclosed the possibility that the judiciary may modify or abrogate such immunity

a governmental entity may waive governmental immunity. *See Reata Const. Corp. v. City of Dallas*, 197 S.W.3d 371, 375 (Tex. 2006). The Texas Supreme Court stated in *Reata* that when a governmental entity “has joined into the litigation process by asserting its own affirmative claims for relief,” it would not suffer undue harm “by allowing adverse parties to assert, as an offset, claims germane to, connected with, and properly defensive to those asserted by the governmental entity.” *Id.* at 376-77. Immunity from suit therefore does not bar claims against the governmental entity if the claims are connected to, germane to, and defensive to the affirmative claims asserted by the governmental entity, except that it continues to have immunity from affirmative damage claims against it for monetary relief exceeding amounts necessary to offset its claims. *See id.* at 377.

Here, Defendant is a governmental entity that has asserted a counterclaim in a suit against it. (*See* doc. 4 at 3-5.) It does not dispute that its counterclaim is “germane to, connected with, and properly defensive to” Plaintiff’s claims, and it acknowledges that it does not have immunity over Plaintiff’s claims to the extent those claims offset the amount it allegedly owes. (*See* doc. 20 at 7.) Accordingly, when it filed its counterclaim against Plaintiff, it waived its governmental immunity from suit as to Plaintiff’s claims against Defendant that were sufficient to offset Defendant’s recovery, if any. *See Reata*, 197 S.W.3d at 375.

2. Waiver

Plaintiff argues that Defendant waived its immunity to suit (1) by engaging in a proprietary function as opposed to a governmental function; (2) under Section 271.152 of the Local Government Code; and (3) via express agreement. (doc. 24 at 8-9; doc. 25 at 2-4.)

by modifying the common law. *See id.*

a. “Governmental/Proprietary Dichotomy”

Plaintiff argues that Defendant is not entitled to immunity because Defendant was exercising a proprietary function in executing the Agreement as opposed to a governmental function. (doc. 24 at 8-9; doc. 25 at 2-3.)

The common law distinction between proprietary and governmental acts arose almost 130 years ago. *See Gay v. City of Wichita Falls*, 457 S.W.3d 499, 504 (Tex. App.—El Paso Aug. 13, 2014, no pet.). As a general matter, a municipality’s proprietary functions are those conducted “in its private capacity, for the benefit only of those within its corporate limits, and not as an arm of the government.” *Tooke*, 197 S.W.3d at 343. A municipality’s governmental functions, on the other hand, are functions in the performance of purely governmental matters that are solely for the public benefit. *Id.* A municipality is immune from suit for torts committed in the performance of its governmental functions, but it is not immune from suit for torts committed in performance of its proprietary functions. The dichotomy between proprietary and governmental acts is now codified in Chapter 101 of the Civil Practice and Remedies Code, known as the Texas Torts Claims Act (TTCA), which defines those functions of a municipality that are to be consider governmental and those that are proprietary. *See* Tex. Civ. Prac. & Rem Code Ann. § 101.0215.

Texas intermediate appellate courts are split as to whether the “governmental/proprietary dichotomy” applies to contract-based claims under the common law and otherwise.⁷ *Compare Gay*, 457 S.W.3d at 507 (declining to apply the “governmental/proprietary dichotomy” to contract-based claims and noting that neither the Texas Supreme Court nor the Legislature has endorsed or provided

⁷Because the applicable claim in this case is a breach of contract claim and not a tort, the “governmental/proprietary dichotomy” under the TTCA does not apply. *See Webb v. City of Dallas, Texas*, No. Civ. A. 3:00-CV-2558-R, 2001 WL 1338348, at *7 (N.D.Tex. Oct. 17, 2001)(emphasis added)(“The TTCA is not applicable to contract claims.”).

for application of the dichotomy for contract-based claims), and *Wheelabrator*, 381 S.W.3d at 604 (declining to apply the “governmental/proprietary dichotomy” to a quasi-contract claim because “neither the Texas Legislature nor the Texas Supreme Court has stated that the proprietary/governmental distinction used in the tort-claims context is to be used to determine a municipality’s immunity from suit on a contractual or quasi-contractual claim such as quantum meruit”), with *City of Georgetown v. Lower Colorado River Authority*, 413 S.W.3d 803, 812 (Tex. App.–Austin 2013, pet. dismiss’d) (finding that the “governmental/proprietary dichotomy” applied to contract claims under the common law); *Casso v. City of McAllen*, No. 13-08-00618, 2009 WL 781863, at *4-7 (Tex. App.–Corpus Christi Mar. 26, 2009, pet. denied)(applying the “governmental/proprietary dichotomy” to waive governmental immunity in a contract-based suit). Several intermediate appellate Texas state courts have assumed without deciding that the dichotomy applies to contract claims. See *City of El Paso v. High Ridge Constr., Inc.*, 442 S.W.3d 660, 667 (Tex. App.–July 31, 2014, pet. filed)(citing cases).

In *Tooke*, the Texas Supreme Court observed that it has never held that the distinction between governmental and proprietary acts determined whether immunity from suit was waived for breach of contract claims. 197 S.W.3d at 343. It therefore called into question whether the governmental-proprietary dichotomy is applicable to breach of contract claims asserted against municipalities, as opposed to just torts. See *Tooke*, 197 S.W.3d at 343. Section 271.152 of the Local Government Code, which waives immunity for certain contractual claims against qualifying governmental entities, does not incorporate the dichotomy into its framework, as does the TTCA. See Tex. Gov’t Code § 271.152-160; *Gay*, 457 S.W.3d 499 at 505. Given that the Texas Supreme Court and Legislature have not endorsed or provided for application of the dichotomy to contract-based claims, the Court finds that the dichotomy does not apply to breach of contract claims.

Even assuming that the “governmental/proprietary dichotomy” is applicable to Plaintiff’s claim, however, the regulation of traffic is a governmental function. *See City of Austin v. Daniels*, 160 Tex. 628, 335 S.W.2d 753, 756-57 (1960). The digital automated red light enforcement program that is the subject of the contract falls within the scope of regulating traffic, since it provides a deterrent to running red lights. Although there are no cases directly on point, courts have found that the use of traffic control lights, regulating parking on a narrow street, and directing traffic at a street intersection are functions in furtherance of regulating traffic, and are therefore governmental functions. *See, e.g., Voight v. City of Corpus Christi*, 419 S.W.2d 445 (Tex. Civ. App.--Corpus Christi 1967, writ ref n.r.e) (use of traffic control lights); *Glover v. City of South Houston*, 424 S.W.2d 723 (Tex. Civ. App.--Houston [14th] 1968, no writ) (use of traffic control lights); *Palmer v. City of Benbrook*, 607 S.W.2d 295 (Tex. Civ. App.--Fort Worth 1980, writ ref’d n.r.e)(regulation of parking on narrow streets); *Sarmiento v. City of Corpus Christi*, 465 S.W. 2d 813 (Tex. Civ. App.–Corpus Christi 1971, no writ) (directing traffic at street intersection). Similar to those functions, an automated red light enforcement program seeks to control and regulate the use of city streets. Additionally, regulation of traffic on public roads is a public benefit as opposed to a benefit only for those within Defendant’s “corporate limits.” As noted in *Sarmiento*, “[c]ities, in the regulation and control of traffic along, over, and across its streets, are acting for all the people and not primarily for the benefit of those residing within its corporate limits. In matters pertaining to traffic, cities are not left free to make and enforce such regulations as they deem best for the residents of the municipality to the exclusion of non-residents.”⁸ 465 S.W. 2d at 817. Accordingly,

⁸ Plaintiff cites *Peary Perry & Mun. Collections, Inc. v. Greanias*, 95 S.W.3d 683, 693 (Tex. App.–Houston [1st Dist.] 2002, pet. denied), for the proposition that governmental functions are what a municipality must do for its citizens while proprietary functions are what a municipality may, in its discretion, perform for its inhabitants. (doc. 25 at 2.) It argues that the Texas Transportation Code and Defendant’s city ordinance only allow Defendant to install and maintain red light cameras and collect a civil penalty for violations, but do not provide that

Plaintiff has failed to establish a waiver of Defendant's immunity due to it exercising proprietary functions pursuant to the Agreement.

b. Waiver of immunity under Section 271.152 of the Local Gov't Code

Although it acknowledges that Section 271.152 of the Local Government Code does not waive sovereign immunity in federal court, Plaintiff argues that a governmental entity cannot hide a claim of immunity by never raising it, seeking its own affirmative relief, and then seeking immunity under Section 271.152. (doc. 24 at 9; doc. 25 at 3.) It relies on *The Dallas/Ft. Worth Int'l Airport Board v. INET Airport Systems, Inc.*, No. 4:13-cv-753-A, 2015 WL 1922376 (N.D.Tex. June 8, 2015), in support.

In 2005, the Legislature enacted Subchapter I of Chapter 271 of the Texas Local Government Code (§§ 271.151-.160), which waives immunity for certain contractual claims against qualifying governmental entities. *See* Tex. Gov't Code § 271.152-160; *Gay*, 457 S.W.3d at 504. Section 271.151 provides that a local governmental entity that is authorized to enter, and that does enter, into a contract waives sovereign immunity to suit for the purpose of adjudicating a claim for breach of contract, subject to the terms and conditions set forth in Subchapter I. Tex. Gov't Code § 271.152. Section 271.156 provides that Subchapter I does not waive sovereign immunity to suit in federal court, however. *Id.* § 271.156.

Plaintiff argues based on *INET Airport Systems* that Subchapter I's exception to waiver of

it must do so. (*Id.* at 3.) In response to the plaintiff's contention in *Sarmiento* that neither a Texas statute nor a city ordinance required the specific activity by the city in that case (the hiring of a school crossing guard), the court noted that the city was required by law to control and regulate traffic along its streets. 465 S.W.2d at 818. Similarly, pursuant to its city ordinance, Defendant is tasked with controlling and regulating traffic. Rowlett, TX, Code of Ordinances, §§ 66-1-304 (2015). As stated in *Sarmiento*, the fact that a city's specific action is not enjoined upon the city by either state law or local ordinance does not make the activity a proprietary function of the city.

immunity in Section 271.156 is somehow inapplicable if a party does not itself raise immunity as a defense and seeks affirmative relief. After noting that Subchapter I did not waive sovereign immunity to suit in federal court, *INET Airport Systems* found that the governmental agency's actions in vigorously pursuing its own claims by filing a motion to dismiss, filing an answer, filing a motion for summary judgment, and signing a pretrial order before raising its entitlement to immunity operated to waive its claim of immunity. *INET Airport Systems*, 2015 WL 1922376, at *2-3. Here, Plaintiff does not assert that Defendant vigorously pursued its own claims before raising its entitlement to immunity in this case. Because Subchapter I does not waive sovereign immunity to suit in federal court, it does not waive Defendant's governmental immunity in this case. Plaintiff has not established that Section 271.152 waives Defendant's immunity.

c. Waiver by express agreement

Finally, Plaintiff appears to argue that Defendant waived its immunity by agreeing that actions related to the Agreement could be brought in a state or federal court in Dallas County, Texas. (*See* doc. 24 at 9; doc. 25 at 4.) It contends that as long as a waiver of immunity is specific, immunity to suit in federal court can be waived. (*Id.*) It provides no authority for its contention that the venue provision in the Agreement operates to waive Defendant's governmental immunity. Because Plaintiff is not asserting that the Legislature waived immunity here, its argument fails. *See IT-Davy*, 74 S.W.3d at 858 (finding government agency did not waive sovereign immunity from suit by executing contract that stated all claims or disputes related to the contract would be decided in arbitration or in court because only the Legislature can waive sovereign immunity from suit in a breach of contract claim). Plaintiff has failed to establish that Defendant waived its sovereign immunity by an express agreement.

In conclusion, Plaintiff has failed to meet its burden to establish that Defendant waived its

governmental immunity from suit. Defendant's motion for summary judgment as to its governmental immunity defense is **GRANTED**, and it has immunity from Plaintiff's claim for damages to the extent that the amount of damages it seeks exceeds the amount that is sufficient to offset Defendant's recovery, if any. Defendant does not have immunity to the extent Plaintiff's recovery on the claim will offset Defendant's recovery.

B. Void Debt

Defendant also argues that pursuant to Article XI, Section 5 of the Texas Constitution, Defendant's alleged debt is void, and it does not need to pay it because a debt that is not payable from current revenues is void if no interest and sinking fund is created from which the obligation is to be paid. (doc. 20 at 7.) Defendant claims that the "obligation asserted by Plaintiff" stems from the 2007 Amendment No. 2, and Plaintiff seeks to capture revenues over a six-year period (2007-2013). (*Id.*) Because its city council did not create an interest and sinking fund in 2007 to repay the obligation asserted by Plaintiff, Defendant claims that it was not payable from current revenues in 2013 and was void as a result.⁹ (*Id.*)

The Texas Constitution states that "no debt shall ever be created by any city, unless at the same time provision be made to assess and collect annually sufficient sum to pay the interest thereon and creating a sinking fund of at least two per cent. thereon." TEX. CONST. art. XI, § 5. "This prohibition does not extend to 'that class of pecuniary obligations in good faith intended to be, and lawfully, payable out of either the current revenues for the year of the contract or any other fund within the immediate control' of the municipality." *City of Houston v. Williams*, 353 S.W.3d 128, 139-40 (Tex. 2004) (quoting *McNeill v. City of Waco*, 89 Tex. 83, 33 S.W.322, 323-24 (1895)). For

⁹Defendant did not move for summary judgment on this defense and only included it in its response to Plaintiff's motion for summary judgment. (*See* doc. 20.)

purposes of Section 5 of Article XI, a debt means any pecuniary obligation imposed by contract. *Municipal Admin. Servs, Inc. v. City of Beaumont*, 969 S.W.2d 31, 39 (Tex. App.–Texarkana 1998, no pet.)(citing *McNeil*, 33 S.W. at 324 and *City-Country Solid Waste Control Bd. v. Capital City Leasing, Inc.*, 813 S.W.2d 705, 707 (Tex. App.–Austin 1991, writ denied). “A contract does not create a debt if the parties lawfully and reasonably contemplate that the obligation will be satisfied out of current revenues or out of some fund then within the immediate control of the governing body.” *Id.* A contract that creates a future pecuniary obligation that depends on the contingency of future events still qualifies as a debt. *Id.*

Here, the Agreement provided that the Program was intended to be revenue neutral or “self-funding”, so Defendant’s obligation for payment to Plaintiff would not exceed the total amount of civil penalties received from violators. (doc. 18 at 12.) Additionally, the Agreement provided that Defendant’s obligations to pay the monthly base fees for both the Original Approaches and the Extension Approaches would be limited to the revenues generated by the Approaches, collected by Plaintiff and received by Defendant. (*Id.* at 31-32.) Therefore, no debt was created unless and until Defendant actually received the revenues generated by the Approaches. The revenues themselves created the funds out of which Plaintiff would be paid. Also, the 15% contingency fee that is part of the Special Collections was a purely contingent payment obligation. Defendant paid Plaintiff 15% of the amount collected for delinquent photo enforcement fines. Therefore, Defendant’s payment obligations under the Agreement did not violate Section 5 of Article XI. *See Municipal Admin. Servs, Inc.*, 969 S.W.2d at 39 (finding the City’s contingent fee agreement with the plaintiff auditor, under which the auditor was entitled to a percentage of any recovery resulting from a utility franchise compliance audit, did not violate Section 5 of Article XI, where no debt was created unless and until the City actually collected from the utility, which would result in the creation of funds out

of which the auditor would be paid). Accordingly, Defendant's alleged debt to Plaintiff is not void based on a violation of Section 5 of Article XI. Defendant is therefore obligated to pay the alleged debt except to the extent it is immune from Plaintiff's claims based on governmental immunity.

C. Breach of Contract

Plaintiff moves for summary judgment on its claim that Defendant breached the Agreement by failing to pay \$106,031.84 under the Original Approaches and failing to pay \$27,000.00 under the Extension Approaches. (doc. 17 at 8-12.)

The essential elements of a breach of contract claim in Texas are: (1) the existence of a valid contract; (2) breach of the contract by the defendant; (3) performance or tendered performance by the plaintiff; and (4) damages sustained by the plaintiff as a result of the defendant's breach. *Mullins v. TestAmerica, Inc.*, 564 F.3d 386, 418 (5th Cir. 2009) (citing *Aguiar v. Segal*, 167 S.W.3d 443, 450 (Tex. App.—Houston [14th Dist.] 2005, pet. denied)).

Neither party disputes that the Agreement is a valid contract between the parties or that Plaintiff performed its obligations under the Agreement. The parties do disagree as to whether Defendant breached the Agreement. The Tatum Declaration provides that the 15% contingency fee was part of the Special Collections for delinquent photo enforcement fines that amounted to an additional \$83,370.39 to the base fees for the Approaches. (*See* doc. 18 at 2.) The Declaration also provides that credit card processing fees or transfirst credit card passthrough fees were part of the additional fees, or City-added fees, that Defendant was obligated to pay along with the 15% contingency fee for the Special Collections. (*See id.*) The Tatum Declaration avers that Defendant paid a total of \$1,772,054.54 toward the Original Agreement, leaving a balance due and owing of \$106,031.84. (*See id.* at 3.) It also avers that Defendant failed to pay the entire amount it owed for the Expansion Approaches and the Special Collections, \$27,000.00. (*See id.*) Plaintiff's evidence

demonstrates Defendant's failure to pay certain amounts due and owing under the Agreement.

The burden now shifts to Defendant to show that there is a genuine issue of material fact with respect to whether it breached the Agreement. It does not provide any evidence as to how much it owes Plaintiff under the Agreement or establish that there is a genuine issue of material fact as to whether it breached the Agreement by failing to pay the full amount it owed under the Agreement. Defendant instead argues that Plaintiff's final reconciliation is incorrect, that Plaintiff ignores the plain meaning of the words in the Agreement, and that a literal reading of the Agreement shows that Plaintiff artificially inflated the numbers. (doc. 20 at 5.) It claims that Plaintiff's final reconciliation for the Approaches includes the 15% contingency fee payable to Plaintiff for Special Collections that is not part of the "program revenues" to be included in the final reconciliation, as well as a credit card pass-through fee. (*Id.*) Defendant argues that the term "program revenues" is described as the revenues generated by the Program that are actually collected and received. (*Id.* at 6.) Because collection fees and credit card processing fees are not "generated" by income derived from the red light citations, "they bear only a tangential connection to the red light camera enforcement program." (*Id.*) It also argues that the Agreement does not say anything about a credit card processing fee, and such a fee is not allowed by the Agreement. (*Id.*)

Plaintiff does not contend that the 15% contingency fee is part of the Approach Revenues, and none of its competent summary judgment evidence indicates that it included that fee as part of the Revenues. The Tatum Declaration provides a separate total for the Approach Revenues and a separate total for the Special Collections fees.¹⁰ (*See* doc. 18 at 2-3.) Defendant provides no

¹⁰Defendant also argues that Plaintiff included the Special Collections fees as part of the amount owed by Defendant in the final reconciliation (*See* doc. 20 at 5.) To the extent Plaintiff did so, as opposed to simply leaving the Special Collections fee separate from the final reconciliation for the Approaches, that was incorrect. According to the Agreement, Defendant had two separate payment obligations to Plaintiff under the Agreement: one for the base fees and the Approach Revenues as outlined in Subsection 12.4 of Amendment No. 2, and the other for the

evidence that Plaintiff included the 15% contingency fee as part of the Approach Revenues. As to Defendant's argument that the credit card processing fees are not allowed by the Agreement, Plaintiff presented summary judgment evidence that such fees were part of the additional fees, or City-added fees, that Defendant was obligated to pay along with the 15% contingency fee. (*See id.* at 2-3.) Defendant has not shown that Plaintiff inflated the Revenues or added unauthorized fees to the Special Collections fees.¹¹

Defendant has failed to meet its burden to show a genuine issue of material fact as to whether it breached the Agreement. Plaintiff's motion for summary judgment as to its breach of contract claim is granted in part.¹² Because Defendant has immunity from Plaintiff's claim to the extent the claim is in excess of the amount that is sufficient to offset Defendant's recovery, if any, the maximum amount Plaintiff may recover for its breach of contract claim is limited to the total affirmative relief recovered by Defendant for its counterclaim.

contingency fee and City-added fees for the delinquent collections as outlined in Amendment No. 1. (*See doc. 18 at 25, 31-32.*) The final reconciliation was only supposed to be done for the base fees and Approach Revenues. In any event, Defendant is obligated to pay the 15% contingency fee for delinquent photo enforcement fines and the "City-added" fees in addition to the Approach Revenues. Therefore, even assuming Plaintiff included the Special Collections fees in the final reconciliation, such error by Plaintiff would not affect Defendant's payment obligations and does not inflate the amounts it owes under the Agreement.

¹¹Notwithstanding its position regarding the plain meaning of terms in the Agreement, Defendant argues that the Agreement is ambiguous because the parties have a different interpretation of the term "Revenues." (doc. 20 at 5.) It claims that Plaintiff improperly included the Special Collections fees as part of the program Revenues. (*Id.*) As noted below, the evidence reflects that Plaintiff did not include the Special Collections fees as part of the program Revenues. A contract is unambiguous if it is worded so that it can be given a definite or certain legal meaning. *Gonzalez*, 394 F.3d at 392 (citing *Nat'l Union Fire Ins. Co. of Pittsburg v. CBI Industries, Inc.*, 907 S.W.2d 517, 520 (Tex. 1995)). A contract is ambiguous when the language of the contract is subject to one or more reasonable interpretations or meanings. *Id.* Defendant argues that according to the plain meaning of the words and a literal reading of the Agreement, the 15% contingency fee is not part of the Revenues. (doc. 20 at 5-6.) It does not argue that the Agreement is subject to any other reasonable interpretation, so the Agreement is not ambiguous. Regardless, any alleged ambiguity would not affect the determination that Defendant is obligated to pay both the Special Collections fees and the Approach Revenues.

¹²Plaintiff's reply brief seeks leave" pursuant to Fed. R. Civ. P. 56(e) to address any "failings" of the Tatum Declaration. (doc. 24 at 4.) Even if Plaintiff had properly sought leave to amend or supplement its motion for summary judgment, any amendment or supplement would not change the outcome.

IV. CONCLUSION

Plaintiff's motion for summary judgment is **GRANTED in part**, and Defendant's motion for summary judgment is **GRANTED**. Defendant has immunity from Plaintiff's claim for damages to the extent the claim is in excess of the amount that is sufficient to offset Defendant's recovery, if any. Plaintiff's maximum recovery amount for its breach of contract claim is limited to the total affirmative relief recovered by Defendant for its counterclaim.

SO ORDERED on this 29th day of February, 2016.


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE

CAUSE NO. CC-15-01323-D

THE CITY OF ROWLETT, TEXAS,

§
§
§
§
§
§
§
§
§

IN THE COUNTY COURT

Plaintiff,

v.

AT LAW NO. 4

KMS RETAIL ROWLETT, LP, f/k/a
KMS RETAIL HUNTSVILLE, LP,

Defendant.

DALLAS COUNTY, TEXAS

Denying
ORDER GRANTING DEFENDANT'S TRADITIONAL AND NO-EVIDENCE MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND FINAL JUDGMENT

AND 2/15/16
On February 15, 2016, the Court considered Defendant's Traditional and No-Evidence Motion for Summary Judgment ("Defendant's Motion") and Plaintiff's Motion for Summary Judgment ("Plaintiff's Motion"). The Court finds that all proceedings necessary to vest this Court with jurisdiction of the subject matter and the parties of this cause have been instituted, maintained and complied with as required by law, and that, therefore, this Court has jurisdiction of the parties hereto and of the subject matter set forth in this case. The Court, having considered the motions, briefs, Defendant's response, objections, replies and other timely filings related to this matter, as well as the arguments of counsel, the Court Order and decrees as follows:

- (1) Defendant's Motion is ~~GRANTED~~ *DENIED* in its entirety.
- ~~(2) Plaintiff's Motion is DENIED in its entirety.~~
- ~~(3) Plaintiff's Original Petition in Eminent Domain is dismissed.~~
- ~~(4) Defendant is entitled to its reasonable and necessary fees under §21.019(c);~~

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ORDER - DENYING
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~~Tex. Prop. Code. Therefore, Defendant shall have and recover judgment from and~~

~~against Plaintiff for Defendant's reasonable and necessary attorneys' fees in the sum of \$66,957.00, which the Court finds to be just and equitable. Additionally, should Plaintiff appeal this Final Judgment and be unsuccessful, this attorneys' fees award to Defendant will be increased by a further amount of \$30,000.00 for an appeal to the Court of Appeals; a further sum of \$15,000.00 if a Petition for Review is applied to the Texas Supreme Court; a further sum of \$10,000.00 for preparing and filing a Response to a Petition for Review; a further sum of \$15,000.00 for full briefing in support or in opposition to a petition for review; and a further sum of \$10,000.00 if an Application for Petition for Review is granted by the Texas Supreme Court, which sums are reasonable and necessary and equitable and just.~~

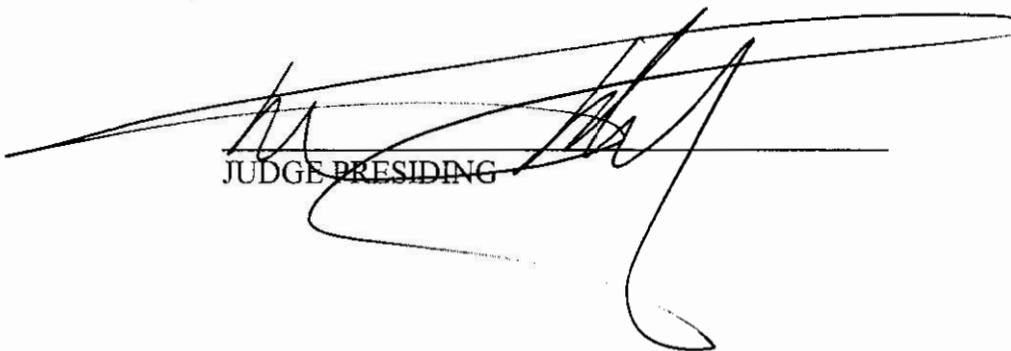
~~(5) All taxable court costs incurred herein be and are hereby taxed against the party incurring the same.~~

~~(6) Defendant have and recover judgment from and against Plaintiff, jointly and severally, for post-judgment interest on the foregoing amounts at the rate of 5% per annum, compounded annually, from the date hereof until paid in full.~~

~~(7) All writs of enforcement may issue to enforce this Judgment.~~

~~(8) All relief requested not specifically granted herein is hereby denied and the judgment granted herein disposes of all claims between the parties and is final and appealable.~~

Signed this 24 day of February, 2016.



A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is highly cursive and spans across the line.

JUDGE PRESIDING

4832-7282-1294v.2 23337-2

Case No. CC-15-01323-D

THE CITY OF ROWLETT, TEXAS	§	IN THE COUNTY COURT
Plaintiff	§	
v.	§	
	§	AT LAW NO. 4
	§	
KMS RETAIL ROWLETT, LP,	§	
f/k/a KMS RETAIL HUNTSVILLE, LP,	§	
Defendant	§	DALLAS COUNTY, TEXAS

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (IN PART) (LUKE)

On this day came on to be heard the Motion for Summary Judgment of Plaintiff, City of Rowlett, Texas, requesting summary judgment on all issues. After consideration of the pleadings and papers on file, the evidence presented herein, and argument of counsel, the Court finds that the Motion should be granted; ^{IN PART} Accordingly, it is

ORDERED, ADJUDGED AND DECREED that the Motion for Summary Judgment of Plaintiff, City of Rowlett, Texas, be and is hereby granted; ^{IN PART} All claims asserted by Defendant in its pleadings relating to the alleged illegality of the taking, and the alleged fraud, bad faith, and arbitrariness be and are hereby denied.

IT IS FURTHER ORDERED that ~~damages arising from the condemnation herein be and are hereby assessed at \$31,662.00 and the Award of the Special Commissioners be and is hereby affirmed.~~ ^{THE} The City of Rowlett, Texas is hereby awarded ~~final~~ judgment against the Defendant for said street right-of-way; that Defendant shall be divested of the said property, described in Exhibit "A" and depicted in Exhibit "B" attached to Plaintiff's Original Petition and made a part hereof for all purposes, the same as if fully copied herein, and said property shall be vested in Plaintiff, City of Rowlett, Texas, in fee simple.

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 ORDER - SUMMARY JUDGMENT
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IT IS FURTHER ORDERED that, since Plaintiff has deposited into the registry of this Court the sum of \$31,662.00 on or about April 30, 2015, the Clerk is directed to immediately release the \$31,662.00 on deposit in the court's registry to Defendant, including any and all interest, less any administrative fee, *UPON APPLICATION BY DEFENDANT FOR THE FUNDS.*

The Clerk is FURTHER ORDERED and directed to issue a Writ of Possession in favor of the City of Rowlett, Texas *UPON APPLICATION BY DEFENSE PLAINTIFF,* *(initials)* to effect delivery of the immediate possession of said property to the City as against the Defendant herein, and all persons claiming by, through, or under him.

~~IT IS FURTHER ORDERED that all costs of court are taxed against the Defendant. All relief not granted herein is hereby denied.~~

SIGNED this *24* day of *Feb*, 2016.

[Handwritten Signature]
Judge Presiding



City of Rowlett
Staff Report

4000 Main Street
P.O. Box 99
Rowlett, TX 75080-0099
www.rowlett.com

AGENDA DATE: 03/15/16

AGENDA ITEM: 3A

TITLE

Discuss approval of bylaws recommended by the Rowlett Long Term Recovery Committee. (30 minutes)

STAFF REPRESENTATIVE

Brian Funderburk, City Manager

SUMMARY

A best practice associated with long term recovery committees formed after a major disaster is to establish bylaws establishing the governance of such committees. The purpose of this item is to discuss the bylaws approved by the Rowlett Long Term Recovery Committee and recommended approval by the City Council.

BACKGROUND INFORMATION

On Saturday, December 26, 2015, around 7:00pm central standard time, the City of Rowlett was hit by an EF4 tornado. The number of homes and businesses that were impacted was 1,145 and 23 individuals were injured. On December 26, 2015, Mayor Todd Gottel declared a state of disaster for the City of Rowlett. On December 27, 2015, Governor Greg Abbott declared a state of disaster in the counties of Collin, Dallas, Ellis and Rockwall.

On January 19, 2016, the City Council created a long term recovery committee to ensure that affected residents continue to receive resources and assistance – a best practice after such disasters. The primary roles of this recovery committee is as follows:

1. Resource development to benefit individuals and the community
2. Case work and assessments to identify family needs and facilitate appropriate provision of resources
3. Volunteer coordination
4. Spiritual and emotional care
5. Advocacy on behalf of disaster survivors
6. Donations management

DISCUSSION

As indicated above, the City of Rowlett sustained a direct hit from an EF4 tornado leaving behind a swath of destruction approximately 3½ miles long with a debris field nearly ½ mile wide. This tornado affected 1,145 homes and businesses.

In the first 48-72 hours of this disaster, first responders and certified trained volunteers, with assistance from other cities through mutual aid agreements, performed search and rescue, emergency aid, and security.

Currently, the City of Rowlett is focused on storm debris management while local churches and agencies continue to provide financial support and resources to affected residents. While a federal disaster declaration has not yet been made, a best practice associated with a major disaster is to establish a mechanism to provide a sustainable effort to ensure affected residents continue to receive resources. As a result, after consulting with local churches, agencies, the Rowlett Chamber, public utilities and local schools, the City created a community-based Long Term Recovery Committee.

The Rowlett Long Term Recovery Committee has met several times since its creation forming and appointing sub-committees, establishing the framework for donations criteria, coordinating long-term case management with national non-profits and agencies, and producing a forum for affected residents.

A best practice listed by the *Long Term Recovery Guide*, published by the National Voluntary Organizations Active in Disaster in 2012, is the approval of bylaws. As a result, on March 7, 2016, the Rowlett Long Term Recovery Committee voted unanimously to approve bylaws for the Committee and further to recommend those bylaws to the City Council for approval (see Exhibit A).

FINANCIAL/BUDGET IMPLICATIONS

N/A

RECOMMENDED ACTION

Staff recommends approval of the Bylaws as recommended by the Rowlett Long Term Recovery Committee.

ATTACHMENTS

Exhibit A – Bylaws of the Rowlett Long Term Recovery Committee

Bylaws of the Rowlett Long Term Recovery Committee



*A unique community
where families enjoy
life and feel at home.*

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ARTICLE 1 Long Term Recovery Group Name

Section 1: The name of the committee shall be the Rowlett Long Term Recovery Committee (RLTRC).

ARTICLE 2 Authority, Purpose and Mission

Section 1: The RLTRC was appointed by resolution on Tuesday, January 19, 2016 by the Rowlett City Council for the purpose of providing coordinated management of the long-term recovery efforts to Rowlett residents as a result of the EF4 tornado that struck the City of Rowlett on the evening of Saturday, December 26, 2015.

Section 2: The RLTRC operates under the authority and pleasure of the City Council for the City of Rowlett.

Section 3: It shall be the mission of the RLTRC to provide recovery services to individuals and families affected by the tornado that hit Rowlett, Texas on December 26, 2015.

Section 4: It shall be the vision of the RLTRC to meet the need for ongoing coordination among agencies providing volunteer, financial, spiritual and emotional/physiological support for people whose lives have been ravaged by the December 26, 2015, tornado in Rowlett, Texas. In addition, we will provide collaborative leadership in the discernment on long-term needs for recovery and rehabilitation that can be most effectively met or assisted by this collaboration and we will provide advocacy for people most vulnerable to having their needs overlooked in public recovery processes.

Section 5: The RLTRC sets forth these operational procedures to establish and maintain a network within and on behalf of the faith-based, non-profit, governmental, business and other organization and agencies which will provide a coordinated recovery effort.

Section 6: RLTRC will provide spiritual, emotional, physical and financial resources to those affected by the disaster regardless of race, creed, color, gender, sexual orientation, disability or religious preference. The RLTRC shall at all times be apolitical and non-sectarian in nature.

ARTICLE 3 Membership and Voting

Section 1: The Rowlett City Council shall appoint regular and ex-officio members to the RLTRC on an Ad Hoc basis and sets committee directives, standards, membership structure, governance, and rules for operation over and above these Bylaws.

Section 2: Voting members of the RLTRC are determined by the Rowlett City Council in origination documents.

Section 3: All members must conform to the latest edition of the Boards and Commissions Handbook (Handbook) approved by the Rowlett City Council.

Section 4: In accordance with the Handbook, voting members must meet attendance requirements.

ARTICLE 4 Meetings

Section 1: All meetings of the RLTRC will be at the call of the Chair or any two of the Executive Committee Members.

Section 2: Regularly scheduled meetings of the RLTRC may be established. Notice of these meetings, giving the time and place and the proposed agenda, shall be electronically transmitted or given by written notice to all Members of the RLTRC.

Section 3: Special Meetings of the RLTRC may be called, providing the call shall clearly state the purpose for the meeting and the time and place shall be given electronically or by written notice at least 72 hours in advance to all Members of the RLTRC.

Section 4: Public notice of meetings shall be given in accordance with state law.

ARTICLE 5 Quorum

Section 1: A quorum for transaction of business shall consist of at least 50% plus one voting member present.

ARTICLE 6 Officers

Section 1: There shall be elected from the members of the RLTRC:

1. A Chair shall preside at all meetings, as well as be the chief executive officer of the RLTRC and perform other functions as deemed necessary by the Executive Committee. The Chair is a member of the Executive Committee.
2. First Vice Chair shall be present at all meetings, and preside in the absence of the Chair or at other times as deemed necessary by the Chair. The First Vice Chair is a member of the Executive Committee.
3. Second Vice Chair shall be present at all meetings, and preside in the absence of the Chair or at other times as deemed necessary by the Chair. The Second vice Chair is a member of the Executive Committee.
4. A Secretary who shall record and preserve all minutes of the meetings and perform other functions as deemed necessary by the Executive Committee. If unable to attend a meeting, the Chair shall appoint a secretary pro tem for that meeting. The Secretary is a member of the Executive Committee.

ARTICLE 7 Executive Committee

Section 1: The Executive Committee of the RLTRC shall provide direction, oversight and guidance to the RLTRC.

Section 2: The Executive Committee shall meet at the call of the Chair to perform such actions related to administrative overview of the affairs of the RLTRC.

Section 3: Except as otherwise required by law or these Operational Procedures, the Executive Committee shall have all the authority of the RLTRC in the management of the RLTRC during such time as the RLTRC is not meeting and may authorize contracts and agreements as required.

Section 4: A simple majority of the Executive Committee must be present to conduct business.

Section 5: The Executive Committee of the RLTRC shall consist of all Officers and one member for a full count of five members.

ARTICLE 8 Subcommittees and Task Forces

Section 1: The RLTRC may create such temporary or permanent subcommittees and task forces made up of its members or other persons as agreed upon. These subcommittees and task forces shall have such authority as the RLTRC directs.

Section 2: Subcommittees may consist from as few as three, to as many as ten members.

Section 3: Membership of subcommittees may consist of both RLTRC members and other subject matter experts.

Section 4: Each subcommittee will be chaired or co-chaired by a member or members of the RLTRC, selected by the sub-committee.

Section 5: All subcommittee members must conform to the latest edition of the Boards and Commissions Handbook approved by the Rowlett City Council.

ARTICLE 9 Vacancies

Section 1: Any Officer vacancy shall be filled by a special meeting in accordance with these procedures concerning meetings of the RLTRC.

Section 2: The Executive Committee shall determine the appropriate process for securing nominations from among the members for vacancies of any of the offices, announcing the nomination process and conducting an election.

ARTICLE 10 Financial

Section 1: Periodic financial reports will be produced in accordance with direction of the Executive Committee and will be subject to approval of the members.

Section 2: A Memorandum of Understanding (MOU) shall govern the relationship, duties and responsibilities between the RLTRC, and the Rowlett Chamber of Commerce Foundation, who is custodian of the Rebuild Rowlett fund.

Section 3: Selection criteria of clients shall be established and approved by the RLTRC in a written set of Unmet Needs Guidelines to lead the work of the RLTRC and the case management process. The guidelines for distribution of funds may be amended in response to changing circumstances by vote at a regular or special meeting of the RLTRC called in accordance with these Bylaws.

ARTICLE 11 Indemnification

Section 1: The City of Rowlett agrees to indemnify the RLTRC and its members and officers for all duly approved actions taken while a member of such committee.

ARTICLE 12 Rules

Section 1: Business of the RLTRC will be conducted in accordance with *Robert's Rules of Order*.

Section 2: Should a conflict arise between these Bylaws and any City of Rowlett handbook, rule, or ordinance, or a Texas law, these Bylaws will take a subordinate position.

ARTICLE 13 Amendments

Section 1: These Bylaws may be amended, subject to the Bylaws of the RLTRC and the laws of the state of Texas, at any annual meeting or special meetings of the RLTRC by a simple majority vote of the members present, providing that a full written account of the proposed changes have been sent to all Members two weeks (14 days) prior to the meeting.

Section 2: The Bylaws of the RLTRC shall become effective as adopted by a simple majority vote of the members, and also adopted by the Rowlett City Council.

ARTICLE 14 Dissolution

Section 1: The RLTRC will develop a dissolution strategy that insures all cases are closed or forwarded to a member agency for completion, and that the dispersion of assets be determined by the Executive Committee and its membership.

Section 2: The RLTRC shall only be dissolved by a simple majority vote of the Rowlett City Council.

###



City of Rowlett

Staff Report

4000 Main Street
P.O. Box 99
Rowlett, TX 75080-0099
www.rowlett.com

AGENDA DATE: 03/15/16

AGENDA ITEM: 5A

TITLE

Hear presentation of the Monthly Financial report for the period ending January 31, 2016.

STAFF REPRESENTATIVE

Kim Galvin, Director of Financial Services

SUMMARY

Attached is the Comprehensive Monthly Financial Report for January 2016, in accordance with the City Council's financial strategy to provide timely and accurate reporting. The fiscal year for the City of Rowlett is October 1 through September 30. Four months of FY2016, or 33.3% of the fiscal year is complete.

BACKGROUND INFORMATION

The City of Rowlett Department of Financial Services is dedicated to excellence in local government, comprehensive fiscal management, compliance and reporting. The Comprehensive Monthly Finance Report (CMFR) is a unique document that is prepared each month and is directed at providing our audience (internal and external users), with important information about the City's financial position and operations.

DISCUSSION

Attached is the Comprehensive Monthly Financial report for January 2015. Four months of FY2016, or 33.3% of the fiscal year is complete.

Revenues: Overall, the City has earned or received \$42.4 million for FY2016. This amount is 47.0% of the approved operating budget of \$90.2 million and is 1.7% more than forecast through the month of January.

- General Fund revenues are \$13 thousand or 0.1% lower than expected
- Utility Fund revenues are \$0.6 million or 6.8% higher than expected.

Expenditures: Expenses totaled \$25.5 million year-to-date for FY2016. This amount is 28.4% of the approved operating budget of \$89.8 million and is 3.2% higher than forecast through the month of January.

- General Fund expenditures are \$0.1 million or 0.7% lower than expected.
- Utility Fund expenditures are \$0.6 million or 8.6% higher than expected.

Surplus: The net surplus from operations through January is \$16.9 million, which is \$0.1 million less than expected at this point in the year. The adopted operating budget for the fiscal year anticipates a total increase of \$0.4 million.

FINANCIAL/BUDGET IMPLICATIONS

N/A

RECOMMENDED ACTION

Information only. The Comprehensive Monthly Financial Report – January 31, 2016 is attached to this agenda item as Attachment 1.

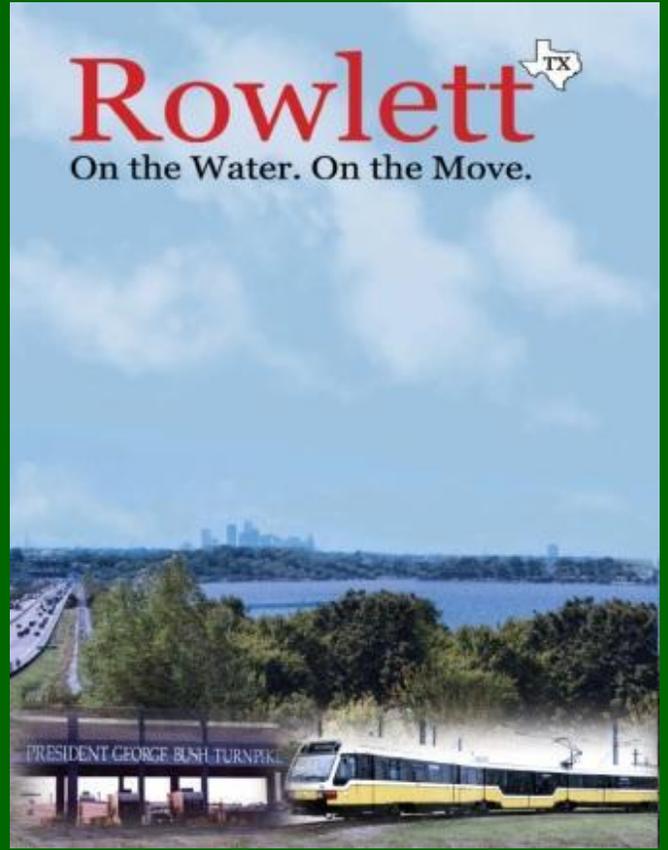
ATTACHMENT

Attachment 1 – Comprehensive Monthly Financial Report – January 31, 2016



**Comprehensive
Monthly
Financial Report**

January 2016





MONTHLY FINANCIAL REPORT

PERFORMANCE AT A GLANCE

January 2016

	YEAR TO DATE	REFERENCE
ALL FUNDS SUMMARY	POSITIVE	Page 4
GENERAL FUND REV VS EXP	POSITIVE	Page 5
PROPERTY TAXES	WARNING	Page 5
SALES TAXES	POSITIVE	Page 6
FRANCHISE FEES	POSITIVE	Page 6
UTILITY FUND REV VS EXP	WARNING	Page 7
SEWER REVENUES	POSITIVE	Page 7
WATER REVENUES	POSITIVE	Page 8
WATER USAGE	POSITIVE	Page 8
REFUSE FUND REV VS EXP	POSITIVE	Page 9
DRAINAGE FUND REV VS EXP	POSITIVE	Page 9
DEBT SERVICE FUND REV VS EXP	WARNING	Page 10
EMPLOYEE BENEFITS REV VS EXP	POSITIVE	Page 10

PERFORMANCE INDICATORS

POSITIVE

= Positive variance or negative variance < 1% compared to seasonal trends.

WARNING

= Negative variance of 1-5% compared to seasonal trends

NEGATIVE

= Negative variance of >5% compared to seasonal trends.



ECONOMIC INDICATORS

January 31, 2016 – NEWS FOR YOU

ECONOMY

National GDP:

GDP - the output of goods and services produced by labor and property located in the US – increased at a rate of 0.7% in the 4th quarter of 2015 after increasing 2.0% in the 3rd quarter of 2015 as reported by the Bureau of Economic Analysis. The fourth quarter increase mainly reflected an increase in consumer spending. Spending on services increased, notably on health care.

Texas Retail Sales:

Texas retail sales totaled \$41.2 billion for the month of Nov., an increase of \$1.0 billion (2.5%) over Nov. 2014.

Texas Leading Index:

The Texas Leading Index is a single summary statistic that sheds light on the future of the state's economy. The index is a composite of eight leading indicators—those that tend to change direction before the overall economy. The index decreased 1.0% between the months of November and December.

UNEMPLOYMENT

National Unemployment:

The national unemployment rate decreased from 5.0% in December to 4.9% in January.

State-Wide:

The Texas unemployment rate increased from 4.6% in November to 4.7% in December.

Rowlett:

The City of Rowlett unemployment rate decreased between November and December from 4.0% to 3.7%. Note – city unemployment rates are not seasonally adjusted.

Attached is the Comprehensive Monthly Financial report for January 2016. Four months of FY2016, or 33.3% of the fiscal year is complete.

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- Utility Fund expenditures are \$0.6 million or 8.6% higher than expected.

Surplus: The net surplus from operations through January is \$16.9 million which is \$0.1 million less than expected at this point in the year. The adopted operating budget for the fiscal year anticipates a total increase of \$0.4 million.

NOTEWORTHY

ON DECEMBER 26, 2015 AROUND 7:00PM CST, ROWLETT, TEXAS WAS HIT BY AN EF4 TORNADO THAT CAUSED WIDESPREAD DEVASTATION IN OUR COMMUNITY. 1,145 homes and businesses were impacted. 23 individuals were injured with no fatalities. Approximately 8,000 homes and businesses lost power, over 6,000 of which were in Rowlett. For additional tornado recovery information, visit

[Rowlett, TX - Official Website - Tornado Information.](#)



CITY OF ROWLETT, TEXAS FINANCIAL STATUS DASHBOARD January 31, 2016

BUDGET SUMMARY OF ALL FUNDS FY2016

	2016 <u>Budget</u>	2016 <u>Forecast</u>	2016 <u>Year-to-Date</u>	<u>Variance</u>
Beginning Reserves	\$ 14,113,838	\$ 13,745,376	\$ 13,745,376	0.0%
Revenues:				
General	40,452,242	23,016,570	23,003,911	-0.1%
Water & sewer	28,901,031	8,606,073	9,194,819	6.8%
Debt service	7,997,408	6,364,187	6,287,061	-1.2%
Drainage	1,360,397	453,333	446,304	-1.6%
Refuse	4,827,003	1,608,929	1,643,385	2.1%
Employee health benefits	5,010,230	1,263,265	1,385,057	9.6%
Police seizure	100,550	33,517	15,174	-54.7%
Economic development	316,694	105,565	160,960	52.5%
Hotel/motel tax	47,752	16,021	17,034	6.3%
P.E.G.	85,893	21,473	21,717	1.1%
Grants	356,634	79,903	122,382	53.2%
Community Development Block Grant	179,247	59,749	23,618	-60.5%
Inspection Fees Fund	225,000	75,000	93,635	24.8%
Juvenile diversion	33,281	11,094	7,779	-29.9%
Court technology	26,936	8,979	6,642	-26.0%
Court security	20,035	6,678	4,992	-25.3%
Golf course	257,005	279	187	-32.9%
Disaster	-	-	-	0.0%
Total Revenues	\$ 90,197,338	\$ 41,730,615	\$ 42,434,655	1.7%
Expenses:				
General	40,781,726	13,022,495	12,925,155	-0.7%
Water & sewer	27,410,712	7,475,637	8,120,589	8.6%
Debt service	8,552,017	150,730	146,372	-2.9%
Drainage	1,401,835	348,623	280,678	-19.5%
Refuse	4,774,880	1,591,627	1,599,222	0.5%
Employee health benefits	4,967,764	1,653,828	1,267,458	-23.4%
Police seizure	187,097	62,366	109,964	76.3%
Economic development	443,023	141,723	191,438	35.1%
Hotel/motel tax	48,749	-	15,415	0.0%
P.E.G.	90,543	30,181	59,905	98.5%
Grants	359,565	79,903	122,382	53.2%
Community Development Block Grant	179,247	59,749	23,618	-60.5%
Inspection Fees Fund	218,760	67,311	40,316	-40.1%
Juvenile diversion	38,738	11,919	7,158	-39.9%
Court technology	43,874	14,625	1,389	-90.5%
Court security	23,672	7,891	8,765	11.1%
Golf course	254,990	-	-	0.0%
Disaster	-	-	591,783	0.0%
Total Expenses	\$ 89,777,192	\$ 24,718,607	\$ 25,511,607	3.2%
Current Year Surplus/(Shortfall)	\$ 420,146	\$ 17,012,008	\$ 16,923,048	-0.5%
Ending Reserves	\$ 14,283,985	\$ 30,757,384	\$ 30,668,424	-0.3%

Positive

Warning

Negative

Positive variance or negative variance <1% compared to forecast

Negative variance between 1%-5% compared to forecast

Negative variance >5% compared to forecast

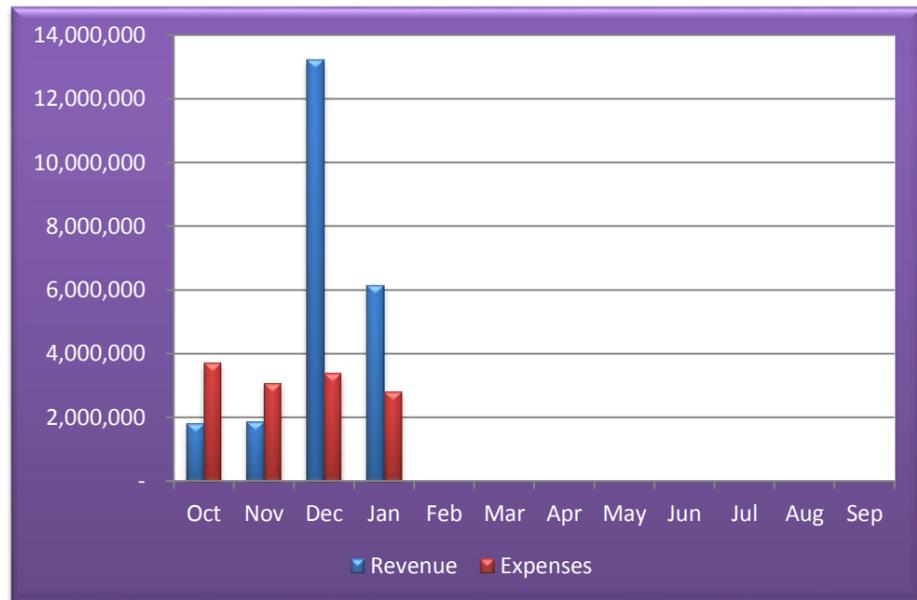


**CITY OF ROWLETT, TEXAS
FINANCIAL STATUS DASHBOARD
January 31, 2016**

OVERALL FUND PERFORMANCE

GENERAL FUND REVENUES VS EXPENSES FY2016

Month	2016 Revenue	2016 Expenses	Monthly Variance
Oct	1,803,893	3,689,831	\$ (1,885,938)
Nov	1,857,665	3,060,768	\$ (1,203,103)
Dec	13,210,437	3,373,494	\$ 9,836,943
Jan	6,131,916	2,801,063	\$ 3,330,853
Feb			
Mar			
Apr			
May			
Jun			
Jul			
Aug			
Sep			
Total	\$ 23,003,912	\$ 12,925,156	\$ 10,078,755
Cumulative Forecast	\$ 23,016,570	\$ 13,022,495	\$ 9,994,076
Actual to Forecast \$	\$ (12,658)	\$ (97,338)	\$ 84,680
Actual to Forecast %	-0.1%	-0.7%	



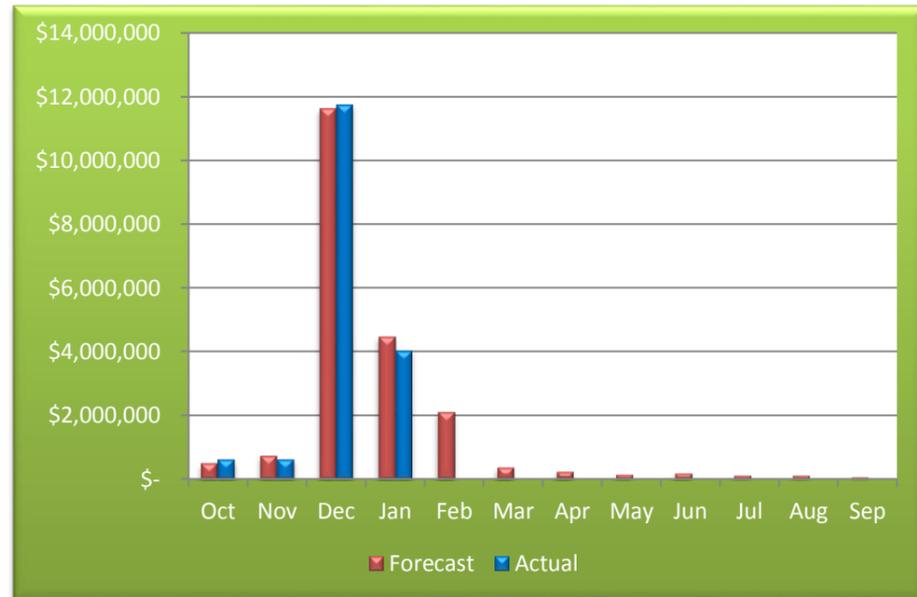
Positive

Cumulatively overall, the General Fund is as forecasted for this time of the year, with revenues at 0.1% lower and expenses 0.7% lower than forecasted.

REVENUE ANALYSIS

PROPERTY TAXES FY2016

Month	2016 Forecast	2016 Actual	Monthly Variance
Oct	\$ 518,315	635,883	\$ 117,568
Nov	746,373	642,668	(103,705)
Dec	11,610,248	11,750,304	140,057
Jan	4,478,238	4,068,982	(409,257)
Feb	2,114,724		
Mar	373,187		
Apr	248,791		
May	145,128		
Jun	186,593		
Jul	124,396		
Aug	124,396		
Sep	62,198		
Total	\$ 20,732,585	\$ 17,097,837	\$ (255,337)
Actual to Forecast			-1.5%



Warning

Property taxes represents nearly 50% of the total General Fund revenue budget and serves as the primary funding source for the general government. They are generally collected in December and January of each year. Cumulatively overall, property tax revenues are 1.5% lower than forecasted for this time of the year.

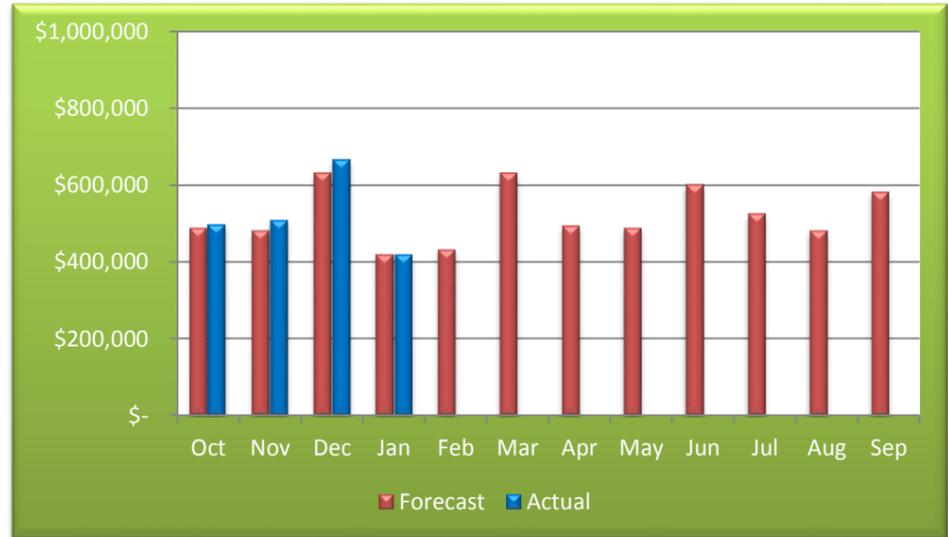


**CITY OF ROWLETT, TEXAS
FINANCIAL STATUS DASHBOARD
January 31, 2016**

REVENUE ANALYSIS

SALES TAXES FY2016

<u>Month</u>	<u>2016 Forecast</u>	<u>2016 Actual</u>	<u>Monthly Variance</u>
Oct	\$ 487,626	\$ 497,364	\$ 9,738
Nov	481,375	507,859	26,484
Dec	631,413	665,451	34,038
Jan	418,858	418,858	-
Feb	431,362		
Mar	631,413		
Apr	493,878		
May	487,626		
Jun	600,155		
Jul	525,136		
Aug	481,375		
Sep	581,400		
Total	\$ 6,251,617	\$ 2,089,532	\$ 70,260
<i>Actual to Forecast</i>			<i>3.5%</i>



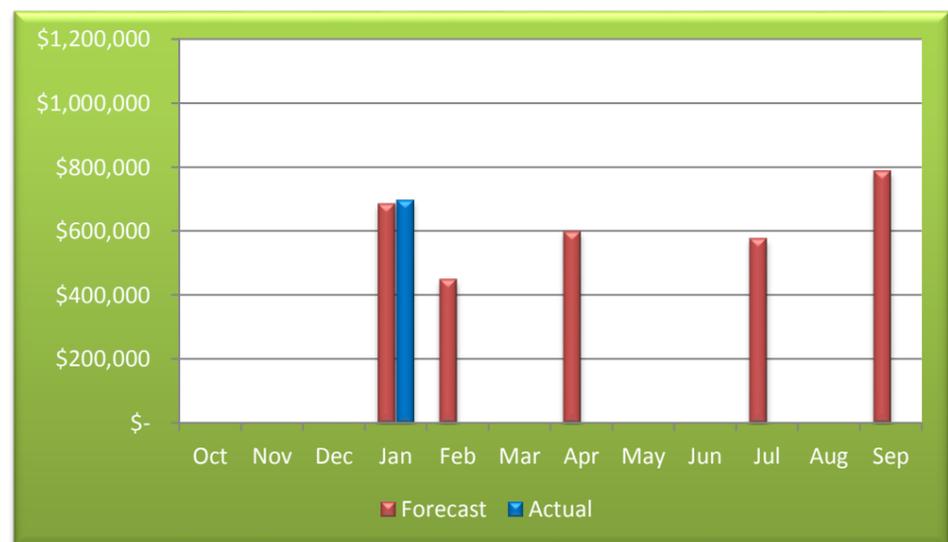
Positive

Sales tax is an important indicator of financial health for the Rowlett community. Sales taxes are collected by the State Comptroller and are recorded two months later. Overall, sales tax revenues are 3.5% higher than budgeted for this fiscal year. The sales taxes reported here for January represent an estimate.

REVENUE ANALYSIS

FRANCHISE FEES FY2016

<u>Month</u>	<u>2016 Forecast</u>	<u>2016 Actual</u>	<u>Monthly Variance</u>
Oct	\$ -	\$ -	\$ -
Nov	-	-	-
Dec	-	9	9
Jan	684,373	697,040	12,667
Feb	449,247		
Mar	-		
Apr	597,132		
May	-		
Jun	-		
Jul	575,539		
Aug	-		
Sep	787,599		
Total	\$ 3,093,891	\$ 697,049	\$ 12,676
<i>Actual to Forecast</i>			<i>1.9%</i>



Positive

Franchise fees represents nearly 10% of the total General Fund budget and include electric, gas, cable and telecommunications. Most fees are paid quarterly with natural gas being paid yearly in February. Cumulatively overall, franchise fees are 1.9% higher than forecasted for this time of the year.



**CITY OF ROWLETT, TEXAS
FINANCIAL STATUS DASHBOARD
January 31, 2016**

OVERALL FUND PERFORMANCE

UTILITY FUND REVENUES VS EXPENSES FY2016

Month	2016 Revenue	2016 Expenses	Monthly Variance
Oct	\$ 2,682,717	\$ 1,889,190	\$ 793,527
Nov	2,473,831	1,850,141	623,690
Dec	2,016,697	2,347,286	(330,589)
Jan	2,021,574	2,033,971	(12,398)
Feb			
Mar			
Apr			
May			
Jun			
Jul			
Aug			
Sep			
Total	\$ 9,194,819	\$ 8,120,589	\$ 1,074,230
Cumulative Forecast	\$ 8,606,073	\$ 7,475,637	\$ 1,130,436
Actual to Forecast \$	\$ 588,745	\$ 644,952	\$ (56,206)
Actual to Forecast	6.8%	8.6%	



Warning

Utility fund revenues are 6.8% higher than forecast as a result of higher than expected water revenues. Expenses are 8.6% higher than forecast due to higher than expected overtime expenses and wastewater treatment expenses. The fund makes semi-annual debt payments in March and September.

REVENUE ANALYSIS

SEWER REVENUES FY2016

Month	2016 Forecast	2016 Actual	Monthly Variance
Oct	\$ 909,883	\$ 959,040	\$ 49,157
Nov	873,354	937,249	63,895
Dec	842,927	794,871	(48,056)
Jan	830,971	766,081	(64,890)
Feb	822,173		
Mar	810,975		
Apr	846,813		
May	899,217		
Jun	967,756		
Jul	1,044,105		
Aug	1,056,180		
Sep	1,017,048		
Total	\$ 10,921,401	\$ 3,457,241	\$ 106
Actual to Forecast			0.0%



Positive

Sewer sales represent over 40% of the Utility Fund budget and cover the cost of sewer treatment paid to City of Garland. Cumulatively overall, sewer revenues are as forecasted for this time of year.

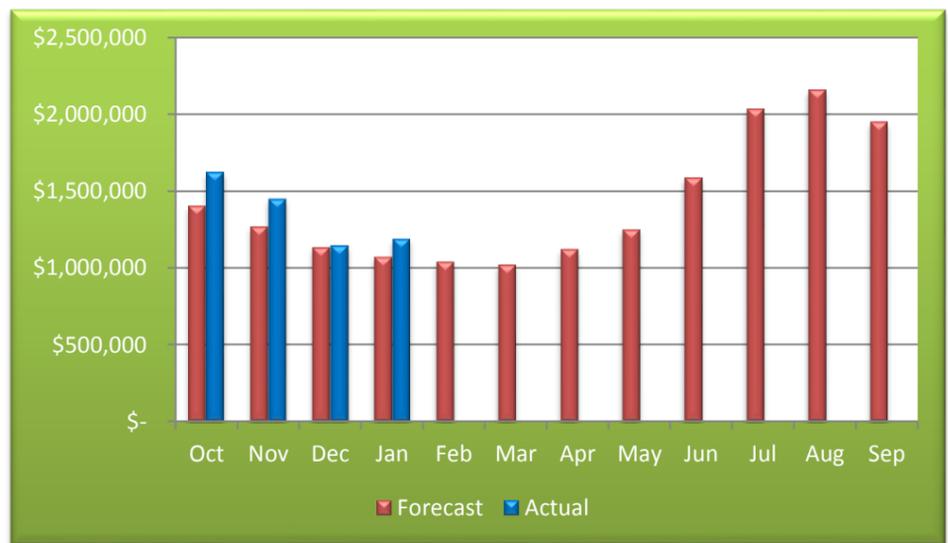


**CITY OF ROWLETT, TEXAS
FINANCIAL STATUS DASHBOARD
January 31, 2016**

REVENUE ANALYSIS

WATER REVENUES FY2016

Month	2016 Forecast	2016 Actual	Monthly Variance
Oct	\$ 1,403,401	\$ 1,621,805	\$ 218,404
Nov	1,266,499	1,446,969	180,470
Dec	1,132,796	1,145,412	12,617
Jan	1,069,153	1,187,109	117,956
Feb	1,039,399		
Mar	1,018,224		
Apr	1,121,145		
May	1,248,648		
Jun	1,585,123		
Jul	2,033,999		
Aug	2,158,983		
Sep	1,950,603		
Total	\$ 17,027,975	\$ 5,401,295	\$ 529,445
<i>Actual to Forecast</i>			10.9%



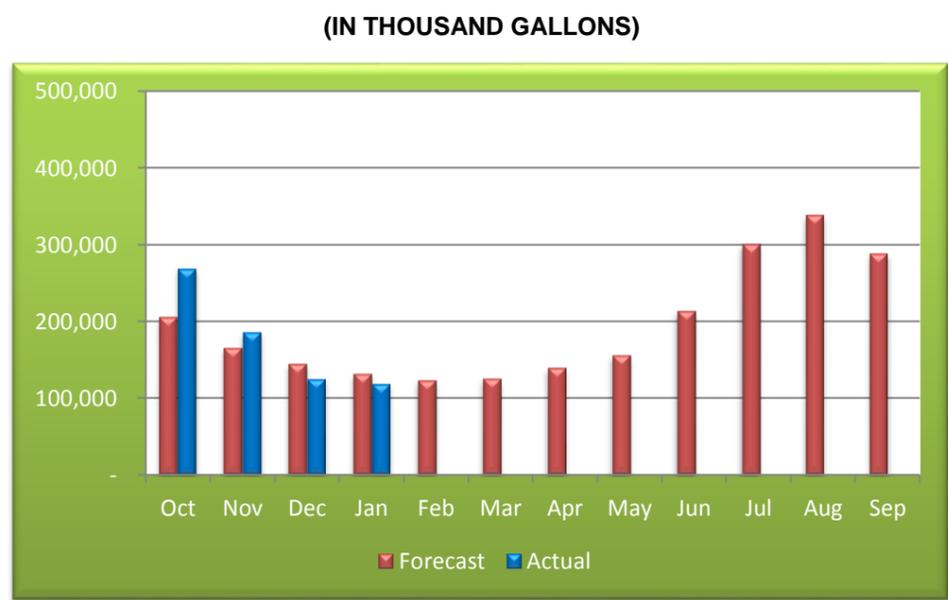
Positive

Water sales represent just over 50% of the total Utility Fund budget and cover the cost of water acquisition from the North Texas Municipal Water District. Cumulatively, water revenues are 10.9% higher than the forecast for this time of year.

REVENUE ANALYSIS

WATER USAGE FY2016

Month	2016 Forecast	2016 Actual	Monthly Variance
Oct	205,688	268,258	62,570
Nov	165,430	185,897	20,467
Dec	144,647	124,951	(19,696)
Jan	131,535	119,045	(12,490)
Feb	123,505		
Mar	125,372		
Apr	139,784		
May	155,805		
Jun	213,519		
Jul	300,529		
Aug	338,135		
Sep	287,959		
Total	2,331,906	698,151	50,852
<i>Actual to Forecast</i>			7.9%



Positive

The City purchases its water from the North Texas Municipal Water District. Customer usage in January is 9.5% lower than forecast, but cumulatively customer usage is 7.9% higher than forecast. The contract with NTMWD requires the City to pay for a minimum of 3.2 billion gallons of water per year.



**CITY OF ROWLETT, TEXAS
FINANCIAL STATUS DASHBOARD
January 31, 2016**

OVERALL FUND PERFORMANCE

REFUSE FUND REVENUES VS EXPENSES FY2016

Month	2016 Revenue	2016 Expenses	Monthly Variance
Oct	\$ 391,264	\$ 388,769	\$ 2,495
Nov	421,039	398,249	22,790
Dec	416,530	412,957	3,574
Jan	414,551	399,248	15,304
Feb			
Mar			
Apr			
May			
Jun			
Jul			
Aug			
Sep			
Total	\$ 1,643,385	\$ 1,599,223	\$ 44,162
Cumulative Forecast	\$ 1,608,929	\$ 1,591,627	\$ 17,302
Actual to Forecast \$	\$ 34,456	\$ 7,596	\$ 26,860
Actual to Forecast	2.1%	0.5%	



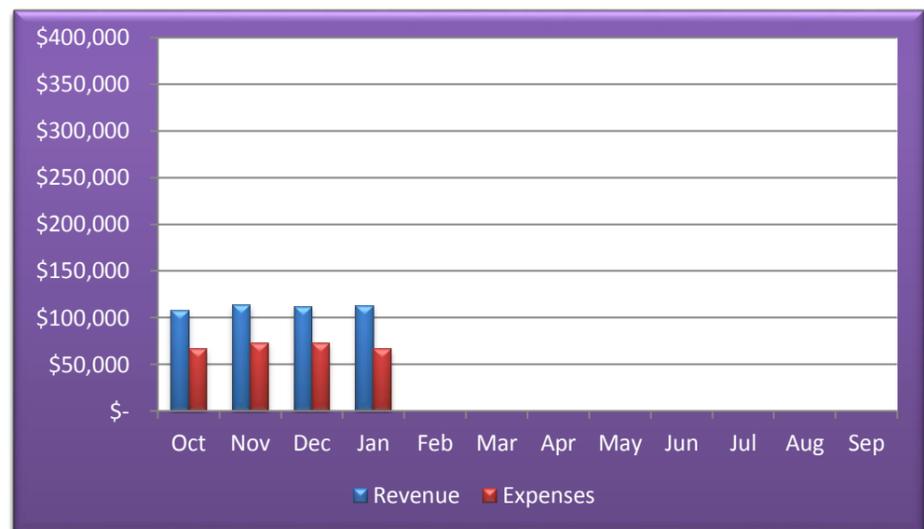
Positive

The Refuse Fund accounts for monies collected from customers on their utility bills and remitted to our solid waste provider. Revenues are currently 2.1% higher than forecasted, and expenses are 0.5% higher than forecasted.

OVERALL FUND PERFORMANCE

DRAINAGE FUND REVENUES VS EXPENSES FY2016

Month	2016 Revenue	2016 Expenses	Monthly Variance
Oct	\$ 107,637	\$ 67,427	\$ 40,210
Nov	113,549	73,163	40,386
Dec	112,214	73,269	38,945
Jan	112,904	66,819	46,085
Feb			
Mar			
Apr			
May			
Jun			
Jul			
Aug			
Sep			
Total	\$ 446,305	\$ 280,678	\$ 165,627
Cumulative Forecast	\$ 453,333	\$ 348,623	\$ 104,711
Actual to Forecast \$	\$ (7,029)	\$ (67,945)	\$ 60,916
Actual to Forecast	-1.6%	-19.5%	



Positive

The Drainage Fund accounts for monies collected from customers on their utility bills for the municipal drainage system. Cumulatively overall, the fund is better than forecasted for this time of the year, with revenues 1.6% lower than forecasted but expenses 19.5% lower than forecasted.



**CITY OF ROWLETT, TEXAS
FINANCIAL STATUS DASHBOARD
January 31, 2016**

OVERALL FUND PERFORMANCE

DEBT SERVICE FUND REVENUES VS EXPENSES FY2016

Month	2016 Revenue	2016 Expenses	Monthly Variance
Oct	\$ 256,615	\$ 3,910	\$ 252,705
Nov	253,679	898	252,781
Dec	4,274,836	127,318	4,147,518
Jan	1,501,932	14,247	1,487,684
Feb			
Mar			
Apr			
May			
Jun			
Jul			
Aug			
Sep			
Total	\$ 6,287,061	\$ 146,373	\$ 6,140,688
Cumulative Forecast	\$ 6,364,187	\$ 150,730	\$ 6,213,457
Actual to Forecast \$	\$ (77,126)	\$ (4,357)	\$ (72,769)
Actual to Forecast	-1.2%	-2.9%	



Warning

General Debt Service Fund is used to pay principal and interest on tax-supported debt. Revenues are 1.2% lower than projected, but expenses 2.9% lower than expected. The fund pays conduit debt in December and makes other semi-annual debt payments in February and August.

OVERALL FUND PERFORMANCE

EMPLOYEE HEALTH BENEFITS FUND REVENUES VS EXPENSES FY2016

Month	2016 Revenue	2016 Expenses	Monthly Variance
Oct	\$ 256,170	\$ 370,713	\$ (114,543)
Nov	336,817	323,391	13,426
Dec	232,162	340,261	(108,099)
Jan	559,908	233,094	
Feb			
Mar			
Apr			
May			
Jun			
Jul			
Aug			
Sep			
Total	\$ 1,385,058	\$ 1,267,459	\$ (209,216)
Cumulative Forecast	\$ 1,263,265	\$ 1,653,828	\$ (390,563)
Actual to Forecast \$	\$ 121,792	\$ (386,369)	\$ 181,347
Actual to Forecast	9.6%	-23.4%	



Positive

Employee Health Benefits Fund accounts for all health related claims paid from the City's partial self-insured fund. Overall, revenues are 9.6% higher than forecasted and expenses are 23.4% lower than forecasted. Revenues reflect lower than expected premium payments due to vacancies and plan choices, and expenses are lower than forecasted due to lower than expected claims.



City of Rowlett
Staff Report

4000 Main Street
P.O. Box 99
Rowlett, TX 75080-0099
www.rowlett.com

AGENDA DATE: 03/15/16

AGENDA ITEM: 5B

TITLE

Update from the City Council and Management: Financial Position, Major Projects, Operational Issues, Upcoming Dates of Interest and Items of Community Interest.

STAFF REPRESENTATIVE

Brian Funderburk, City Manager



City of Rowlett
Staff Report

4000 Main Street
P.O. Box 99
Rowlett, TX 75080-0099
www.rowlett.com

AGENDA DATE: 03/15/16

AGENDA ITEM: 7A

TITLE

Consider action to approve minutes from the March 1, 2016 City Council Regular Meeting.

STAFF REPRESENTATIVE

Laura Hallmark, City Secretary

SUMMARY

Section 551.021 of the Government Code provides as follows:

- (a) A governmental body shall prepare and keep minutes or make a tape recording of each open meeting of the body.
- (b) The minutes must:
 - (1) state the subject of each deliberation; and
 - (2) indicate each vote, order, decisions or other action taken.

RECOMMENDED ACTION

Move to approve, amend or correct the minutes for the March 1, 2016 City Council Regular Meeting.

ATTACHMENT

03-01-16 City Council Regular Meeting Minutes



City of Rowlett

Meeting Minutes

City Council

4000 Main Street
Rowlett, TX 75088
www.rowlett.com

City of Rowlett City Council meetings are available to all persons regardless of disability. If you require special assistance, please contact the City Secretary at 972-412-6115 or write 4000 Main Street, Rowlett, Texas, 75088, at least 48 hours in advance of the meeting.

Tuesday, March 1, 2016

6:30 P.M.

Municipal Building – 4000 Main Street

As authorized by Section 551.071 of the Texas Government Code, this meeting may be convened into closed Executive Session for the purpose of seeking confidential legal advice from the City Attorney on any agenda item herein.

The City of Rowlett reserves the right to reconvene, recess or realign the Regular Session or called Executive Session or order of business at any time prior to adjournment.

Present: Mayor Gottel, Mayor Pro Tem Gallops, Deputy Mayor Pro Tem Dana-Bashian, Councilmember Pankratz, Councilmember van Bloemendaal, Councilmember Bobbitt, and Councilmember Sheffield

1. CALL TO ORDER

Mayor Gottel called the meeting to order at 6:36 p.m.

P&Z Present: Chair Lucas and Commissioners Kilgore, Moseley, Estevez, Berry, and Ritchey

Dr. Lucas called the Planning and Zoning Commission to order at 6:37 and read the item into the record.

2. EXECUTIVE SESSION

3. WORK SESSION (6:30 P.M.) * Times listed are approximate.

- 3A.** Conduct a joint public hearing with the Planning and Zoning Commission and consider and act on the adoption of an Ordinance temporarily suspending certain provisions of the Comprehensive Zoning Ordinance of the City of Rowlett, Texas, as heretofore amended, by suspending the application of Section 77-902, Subsection E, Subparts 1 and 2, to allow for the reconstruction, rebuilding and repair of homes damaged by the recent tornado event. (45 minutes)

Marc Kurbansade, Director of Development Services, presented the background information and provided a review of the previous discussion.

The public hearing opened and closed with the following speakers:

1. Alan Cutter, 7601 Calypso, Rowlett
2. Jerry Carter, 3228 Southern Drive, Garland

3. Jim Shelton, 3201 Glenhill, Rowlett
4. Bob Moore, 9225 Willard, Rowlett
5. Corey Rikin, 9201 Shipman, Rowlett

Further discussion regarding the time frame allotted.

A motion was made by Commissioner Kilgore, seconded by Commissioner Moseley to recommend to Council approval of this item. The motion carried with a unanimous vote of those members present.

A motion was made by Councilmember Sheffield, seconded by Mayor Pro Tem Gallops, to approve the item as presented. The motion carried with a unanimous vote of those members present. This item was approved as ORD-014-16.

Dr. Lucas adjourned the Planning and Zoning Commission at 7:05 p.m.

4. DISCUSS CONSENT AGENDA ITEMS

Councilmember Pankratz requested that item 7C be pulled for Individual Consideration.

City Council took a short break at 7:07 p.m.

CONVENE INTO THE COUNCIL CHAMBERS (7:30 P.M.)*

Council reconvened at 7:30 p.m.

INVOCATION – Cole Hedgecock, First Baptist Church

PLEDGE OF ALLEGIANCE

TEXAS PLEDGE OF ALLEGIANCE – Led by the City Council

5. PRESENTATIONS AND PROCLAMATIONS

5A. Presentation of donation by Troy Cox to the Rowlett Recovery Fund.

Mr. Cox presented Fire Chief Neil Howard with items for each of the four fire stations, Police Chief Mike Brodnax with an item for the Police Department and to Mayor Gottel a “BatMayor” item. He also presented a check in the amount of \$5,650. Funds raised were provided by the sale of items constructed from tornado debris.

5B. Receive the Comprehensive Annual Financial Report for the fiscal year ended September 30, 2015, which includes the independent auditors' report.

Kim Galvin, Director of Financial Services introduced her staff who contributed to the results presented this evening. Sara Dempsey, with Weaver and Tidwell, presented the audit results.

5C. Hear a presentation on the first quarter investment report for December 31, 2015.

Ms. Galvin presented the report.

- 5D.** Update from the City Council and Management: Financial Position, Major Projects, Operational Issues, Upcoming Dates of Interest and Items of Community Interest.

Mayor Gottel announced the following:

COUNCIL MEETINGS

- NEXT REGULAR COUNCIL MEETINGS WILL BE HELD ON TUESDAY, MARCH 15TH AND APRIL 5TH
- SPECIAL COUNCIL WORK SESSION MEETING WILL BE HELD ON TUESDAY, MARCH 22ND

P & Z MEETINGS

- NEXT REGULAR MEETINGS WILL BE HELD TUESDAY, MARCH 8TH AND 22ND IN THE CITY HALL CONFERENCE ROOM AT 6:30PM

NO “MARCH CLEAN-UP” THIS YEAR

- WITH TORNADO DEBRIS CLEAN-UP STILL ON-GOING, WE WILL NOT HOLD MARCH CLEAN-UP THIS YEAR

ROWLETT LIBRARY

- SPRING BREAK WEEK – MARCH 7TH – 12TH; ACTIVITIES AVAILABLE EVERY DAY, MONDAY – SATURDAY AT THE LIBRARY; FOR MORE INFORMATION CONTACT 972-412-6161
- MOVIE & POPCORN – SHOWING “DIVERGENT” SATURDAY, MARCH 5 @ 2PM @ RCC
- LOVE ON A LEASH – WEDNESDAY, MARCH 9TH AT 3:30PM AT CITY HALL, 4000 MAIN STREET

PARKS AND RECREATION

- EASTER EGG HUNT
 - SATURDAY, MARCH 19TH FROM 10AM TO 12PM
 - PECAN GROVE PARK
 - FOR SCHEDULE OF AGE GROUPS, LOGON TO ROWLETT.COM
- EASTER PUP-A-PALOOZA
 - SUNDAY, MARCH 20TH FROM 2 – 4PM
 - HERFURTH PARK, 4601 CENTENNIAL DR
 - \$10 PER DOG
 - FOR ADDITIONAL INFORMATION AND TO REGISTER YOUR DOG, CALL 972-412-6170

SKYWARN STORM SPOTTER TRAINING

- THURSDAY, MARCH 3RD, 6PM – 9:30PM AT ROWLETT HIGH SCHOOL CAFETERIA
- CLASS WILL CONSIST OF A BASIC SKYWARN CLASS, MEET WITH VENDORS, AN ADVANCED CLASS WITH RADAR INTERPRETATION THEN Q&A FOLLOWED BY MEETING WITH VENDORS AGAIN

CROWDER GULF TO BEGIN SECOND AND FINAL PASS TO REMOVE TORNADO DEBRIS

- ON FEBRUARY 15TH, CROWDER GULF – A DISASTER DEBRIS REMOVAL CONTRACTOR – BEGAN THEIR FIRST PASS THROUGH THE TORNADO AREA, WHICH IS NOW COMPLETE
- THE SECOND AND FINAL PASS WILL BEGIN THE WEEK OF MARCH 14TH

- THIS WILL ALLOW RESIDENTS AND VOLUNTEERS ALMOST TWO WEEKS TO CLEAR, SORT AND PILE REMAINING DEBRIS AT THE CURB
- CURRENTLY, CROWDER GULF IS WORKING TO REMOVE THE DEBRIS ACCUMULATED AT THE STAGING LOCATION NEAR THE WATER TOWER
- ITEMS INCLUDED IN THE DEBRIS REMOVAL PROCESS INCLUDES: HAZARDOUS WASTE, “WHITE GOODS” (STOVES, REFRIGERATORS, ELECTRONICS, OTHER APPLIANCES – MAKE SURE DOORS ARE SEALED AND SECURE), STORM DEBRIS AND VEGETATIVE DEBRIS
- PLEASE FOLLOW THESE DEBRIS SEPARATION AND PLACEMENT GUIDELINES:
 - DO NOT PLACE DEBRIS IN DRIVEWAYS OR ALLEYS
 - ALL DEBRIS MUST BE PLACED OFF THE STREET BUT IN THE RIGHT-OF-WAY (AREA BEHIND CURB). IF THE DEBRIS EXTENDS PAST THE SIDEWALK INTO YOUR YARD (PRIVATE PROPERTY). IT WILL NOT BE PICKED UP!
 - DEBRIS SHOULD BE SEPARATED AS STATED IN THE DEBRIS SEPARATION GUIDELINES
 - PLACE DEBRIS AWAY FROM OBSTACLES SUCH AS MAIL BOXES, WATER METERS AND FIRE HYDRANTS
- THESE MATERIALS WILL NOT BE PICKED UP:
 - CONCRETE SLAB DEMO DEBRIS
 - CONTRACTOR DEBRIS
 - SWIMMING POOL DEMO DEBRIS

INFORMATION ABOUT THE TORNADO CAN BE FOUND ON THE MAIN PAGE OF THE CITY’S WEBSITE AT www.rowlett.com CLICK ON “VIEW ALL” AT THE BOTTOM OF THE “ROWLETT NEWS SECTION” TO SEE ALL INFORMATION POSTED ON OUR WEBSITE

REMINDER – GARLAND ISD & ROCKWALL ISD SPRING BREAK

- MONDAY – FRIDAY, MARCH 7TH – 11TH

ANIMAL SHELTER

- LOW COST VACCINE CLINIC AT ANIMAL SHELTER – SATURDAY, MARCH 19TH, 1 – 3PM
- LOCATED AT 4402 INDUSTRIAL ST.
SHELTER IS OPEN MONDAY – SATURDAY, 10AM – 5PM

Animal Shelter staff brought Jess, an Australian Cattle Dog mix, who is one of the animals available for adoption at the shelter.

Deputy Mayor Pro Tem Dana-Bashian announced the Spring Jazz Concert of the Rowlett High School Jazz Bands, which will be held Thursday, March 17th at 7:30 p.m. at the Plaza Theatre in Garland. This event is a fundraiser for the Rebuild Rowlett Fund.

6. CITIZENS’ INPUT

Robert Vernon, 5309 Alazan Bay Drive, Rowlett; spoke regarding barking dogs ordinance.

7. CONSENT AGENDA

- 7A.** Consider action to approve minutes from the February 10, 2016 City Council Special Meeting and the February 16, 2016 City Council Regular Meeting.

This item was approved on the Consent Agenda.

- 7B.** Consider approving a Joint Election Contract with Dallas County Elections Department for the May 7, 2016, General Election and Special Elections to fill a vacancy on the City Council and to amend the City Charter.

This item was approved on the Consent Agenda.

- 7C.** Consider action to approve a resolution extending the local state of disaster declaration resulting from the December 26, 2015 tornado by thirty-five (35) days, from March 7, 2016 through April 11, 2016.

This item was pulled for individual consideration.

A motion was made by Councilmember Pankratz, seconded by Deputy Mayor Pro Tem Dana-Bashian, to approve the item as presented and add "...and pertinent federal agencies.." to #5 in the resolution. The motion carried with a unanimous vote of those members present. This item was approved as RES-048-16.

Passed the Consent Agenda

A motion was made by Mayor Pro Tem Gallops, seconded by Councilmember Bobbitt, including all the preceding items marked as having been approved on the Consent Agenda. The motion carried with a unanimous vote of those members present.

8. ITEMS FOR INDIVIDUAL CONSIDERATION

- 8A.** Conduct a public hearing and consider the adoption of an ordinance accepting and approving a service and assessment plan and assessment roll for the Bayside Public Improvement District (PID), levying special assessments against property within such PID and approving other matters related to such PID.

Jim Grabenhorst, Director of Economic Development, presented the background information along with clarification that this has no financial impact to the City and will be fully supported by the PID.

The public hearing opened and closed with no speakers.

A motion was made by Mayor Pro Tem Gallops, seconded by Deputy Mayor Pro Tem Dana-Bashian, to approve the item as presented. The motion carried with a unanimous vote of those members present. This item was approved as ORD-012-16.

- 8B.** Consider the adoption of an ordinance approving the issuance and sale of "City of Rowlett, Texas, Special Assessment Revenue Bonds, Series 2016 (Bayside Public Improvement District North Improvement Area Project)" and approving various documents related to such bonds.

Jim Grabenhorst, Director of Economic Development, presented the background information on this item.

A motion was made by Councilmember Sheffield, seconded by Deputy Mayor Pro Tem Dana-Bashian, to approve the item as presented in the amount of \$13,515,000. The motion carried with a unanimous vote of those members present. This item was approved as ORD-013-16.

- 8C.** Consider an ordinance approving a rezoning request from Rural Neighborhood and Urban Neighborhood Form-Based Code Districts to the New Neighborhood Form-Based Code Zoning District, including Major Warrants to allow for an increase in the maximum lot width of Type 2 and 3 lots and an increase in the minimum and maximum allowable square footage for Cottage and Estate homes, for the purposes of building a pedestrian-oriented, single family neighborhood on property located in the North Shore South District as identified in the Realize Rowlett 2020 Comprehensive Plan, being 3200 and 3600 Hickox Road, further described as 61.96 +/- acres of land situated in the Reason Crist Survey, Abstract No. 225, City of Rowlett, Dallas County, Texas.

This item was discussed first.

Marc Kurbansade, Director of Development Services, presented the background information and clarification regarding no trail buffer and the proposed tree line. He clarified that this proposal nor any other is considering making Larkin Lane a through street. He also provided clarification of potential drainage issues and current zoning and options for development versus proposed zoning and what's in line with the Comprehensive Plan. He further explained the new fence line and its maintenance responsibility.

The public hearing opened and closed with the following speakers:

1. Jerry Merrill, 3101 Larkin Lane, Rowlett; spoke in opposition.
2. Jim McDougle, 3205 Larkin Lane, Rowlett; spoke in opposition.
3. Janice Mangurten, 3205 Larkin Lane, Rowlett; spoke in opposition.
4. Regina Romaine, 3001 Larkin Lane, Rowlett; spoke in opposition.
5. Cliff Forbis, 3209 Larkin Lane, Rowlett; spoke in opposition.
6. Glenn Spivey, 3109 Larkin Lane, Rowlett; spoke in opposition.
7. Ken Romain, 3001 Larkin Lane, Rowlett; spoke in opposition.

A motion was made by Councilmember Sheffield, seconded by Councilmember van Bloemendaal, to approve the item as presented along with three major warrants and adding the 8 foot fence. The motion required a super majority vote for passage and failed with a vote of 4 in favor, 2 against (Gottel, Bobbitt), and 1 abstention (Pankratz).

TAKE ANY NECESSARY OR APPROPRIATE ACTION ON CLOSED/EXECUTIVE SESSION MATTERS

9. ADJOURNMENT

Mayor Gottel adjourned the meeting at 9:32 p.m.



City of Rowlett
Staff Report

4000 Main Street
P.O. Box 99
Rowlett, TX 75080-0099
www.rowlett.com

AGENDA DATE: 03/15/16

AGENDA ITEM: 7B

TITLE

Consider action to approve an Ordinance amending Chapter 66, Section 53, of the Code of Ordinances to establish speed limits of twenty-five miles per hour for the following streets and portions of streets: Homestead Boulevard, Ophelia Drive, Habershaw Drive, Montgomery Drive, Long Green Street, Trafalgar Drive, Chatham Drive, Kessler Drive, Abercorn Drive, Crockett Drive, and McDonough Drive.

STAFF REPRESENTATIVE

Marc Kurbansade, Director of Development Services

SUMMARY

Homestead at Liberty Grove is a New Neighborhood development designed under the City's form-based code. Design components are purposely implemented to contribute to reduced vehicle traffic speeds. Since the City establishes speed limits for all local residential streets at 30 miles per hour (unless otherwise posted), any change to the speed limit for local residential streets needs to be codified. The proposed speed limit for all streets within Homestead at Liberty Grove is 25 miles per hour.

BACKGROUND INFORMATION

Homestead at Liberty Grove is designed in accordance with the New Neighborhood standards within our form-based codes. The rezoning for this property was approved on November 6, 2012, and the property has since been under administrative review of development plans and sought major warrants from City Council as well.

The project is nearing completion of public improvements and the developer/property owner has indicated that the streets are designed at 25 miles per hour. This will require an amendment to our Code of Ordinances, since all local residential streets are set at a speed limit of 30 miles per hour. This speed limit can have some minor implications on the improvement, primarily the use of smaller street names signs (i.e., 6-inch height versus 9-inch height).

DISCUSSION

Form-Based Code neighborhoods are designed to incorporate multiple modes of transportation, including pedestrians, bicycles and vehicles. In order to safely incorporate all of these transportation modes, it is necessary to reduce vehicle speeds to reduce conflicts. This reduction or traffic calming can be done in a number of ways. These methods include vehicle lane widths, street direction changes, frontage of buildings near to streets, tree canopy over streets, on-street parking, etc.

Because these design methods are an innate characteristic of form-based codes, street design speeds will be decreased. In the case of Homestead at Liberty Grove, the streets were designed to be traveled by vehicles at a maximum of 25 miles per hour (See Attachment 1).

State law and the City of Rowlett sets the speed limit at 30 miles per hour for all residential streets unless otherwise modified and posted. Since the design for all local streets in Homestead at Liberty Grove is 25 miles per hour, it is necessary to amend the Code of Ordinances to identify these streets that differ from the standard 30 miles per hour speed limit. See Attachment 2 for a graphic of local streets within Homestead at Liberty Grove to be designated with a 25 miles per hour speed limit.

FINANCIAL/BUDGET IMPLICATIONS

N/A

RECOMMENDED ACTION

Move to approve an ordinance amending Chapter 66, Section 53, of the Code of Ordinances to establish a speed limit of twenty-five miles per hour for the following streets and portions of streets: Homestead Boulevard, Ophelia Drive, Habershaw Drive, Montgomery Drive, Long Green Street, Trafalgar Drive, Chatham Drive, Kessler Drive, Abercorn Drive, Crockett Drive, and McDonough Drive.

ORDINANCE

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ROWLETT, TEXAS, ALTERING THE MAXIMUM LAWFUL PRIMA FACIE SPEED LIMIT TO 25 MILES PER HOUR ON PORTIONS OF CERTAIN DESIGNATED STREETS; PROVIDING FOR THE ERECTION OF SIGNS; PROVIDING FOR THE PREPARATION AND SUBMISSION OF A REPORT OF VIOLATIONS; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO HUNDRED DOLLARS (\$200.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Rowlett, Texas, has determined that certain portions of specific streets within the City are not an officially designated or marked highway or road of the state highway system, are two-lane undivided highways or parts of two-lane undivided highways, and are situated entirely within residential areas; and

WHEREAS, the City Council has further determined that the prima facie maximum speed limit of thirty (30) miles per hour on the stated roadways is unreasonable or unsafe and, therefore, finds that the prima facie maximum speed limit should be altered as set forth hereinafter.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROWLETT, TEXAS:

SECTION 1. That Section 66-53 of Division 2 (“Speed Limits”) of Article II (“Specific Street Regulations”) of Chapter 66 (“Traffic and Vehicles”) of the Code of Ordinances, City of Rowlett, be and is hereby amended by amending the table incorporated in said section to add new streets whereby the speed limit shall be and is hereby twenty-five (25) miles per hour, without amendment, repeal, or revision to any other street or speed limit, said additions to read as follows:

“Chapter 66

TRAFFIC AND VEHICLES

...

ARTICLE II. SPECIFIC STREET REGULATIONS

...

DIVISION 2. SPEED LIMITS

...

Sec. 66-53. Speed on specific streets.

...

Street	Portion of Street	Speed Miles Per Hour
Abercorn Drive	From 6300 block to 6400 block	25
...
Chatham Drive	6200 block	25
...
Crockett Drive	From 9000 block to 10000 block	25
...
Habershaw Drive	From 8700 block to 9000 block	25
...
Homestead Boulevard	From 8500 block to 9000 block	25
...
Kessler Drive	From 8900 block to 10000 block	25
...
Long Green Street	From 6400 block to 6600 block	25
...
McDonough Drive	From 6600 block to 6700 block	25
...
Montgomery Drive	From 6200 block to 6300 block	25

...
Ophelia Drive	6400 block	25
...
Trafalgar Drive	From 6300 block to 6500 block	25
...

SECTION 2. That the prima facie maximum speed limit on the foregoing streets shall be and is hereby twenty-five miles per hour and any speed in excess of such limit shall constitute prima facie evidence that the speed is not reasonable and prudent and that the speed is unlawful. The speed limit established herein shall be effective at all times when signs are erected giving notice of the new limit.

SECTION 3. That the City Manager or his designee is authorized and directed to erect and maintain such signs as may be necessary to give notice of the speed limits adopted hereby. Such signs shall be erected in the form and manner required by the Code of Ordinances of the City of Rowlett, Texas, and the laws of the State of Texas.

SECTION 4. That the Chief of Police or his designee is authorized and directed to prepare a report each year of and from the effective date of this Ordinance showing for each of the two previous calendar years: 1) the number of traffic citations issued by peace officers of the City and the alleged speed of the vehicles, for speed limit violations on the named streets; 2) the number of warning citations issued by peace officers of the City on the said streets; and 3) the number of vehicular accidents that resulted in injury or death and were attributable to speed limit violations on the said streets. The report shall be published not later than February 1 of each year on the City's website and submitted to the Texas Department of Public Safety as required by law.

SECTION 5. That all ordinances of the City of Rowlett, Texas, in conflict with the provisions of this ordinance be and the same are hereby repealed and all other provisions not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 6. That an offense committed before the effective date of this ordinance is governed by the prior law and the provisions of the Ordinances of the City, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 7. That should any article, paragraph, subdivision, clause or provision of this ordinance, or the ordinances of the City of Rowlett, Texas, as hereby amended, be adjudged or held invalid or unconstitutional for any reason, such judgment or holding shall not affect the validity of this ordinance as a whole or any part or provision hereof other than the part so declared to be invalid or unconstitutional.

SECTION 8. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall, upon conviction, be punished by a fine not to exceed the sum of two hundred dollars (\$200.00) for each offense.

SECTION 9. This Ordinance shall take effect immediately from and after its passage and the publication of the caption as the law and charter in such cases provide.

ATTACHMENTS

Attachment 1 – Memo Swift and Associates

Attachment 2 – Graphic of Homestead at Liberty Grove streets

Swift and Associates, LLC
Town Planners, Civil and Traffic Engineers

MEMORANDUM

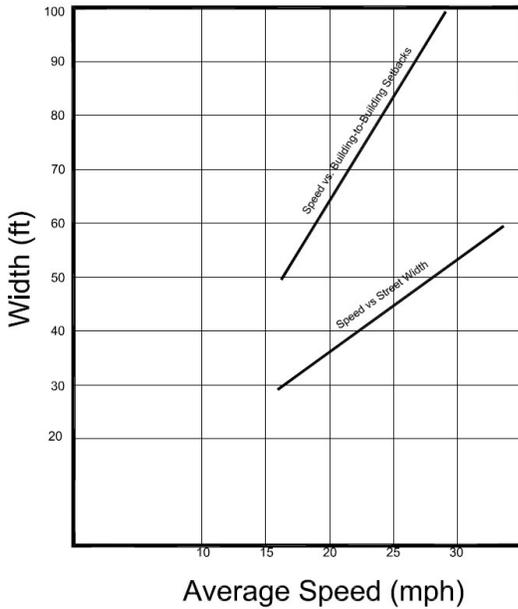
To: William Gietema, Jr., Arcadia Realty
From: Peter Swift
Date: March 7, 2016
RE: The Homestead at Liberty Grove speed limit expert report

This expert report relates to the assignment of posted speed limits for The Homestead at Liberty Grove project and, specifically, the following thoroughfares;

Homestead Blvd.
Ophelia Dr.
Long Green St.
Montgomery Dr.
Trafalgar Dr.
Kessler Dr.
McDonough Dr.
Crockett Dr.
Habersham Dr.
Heineman Ct
Chatham Dr.
Abercorn Dr.
C.L. Stein Mews
Princeton Road north of Liberty Grove Road

Considerations for the conclusions of this report are based on several factors. The first relates to predicted pedestrian activity within the proposed project. There are multiple pedestrian destinations that include parks and the future proposed retail component along Liberty Grove Road. We also expect fairly significant bicycle activity. Secondly, there will be a component of an aging population that will also want to take advantage of site amenities. Third, it is important that the design encourage non-vehicular transport by reducing speed and noise to a comfortable minimum.

During the design process for the project these aspects were considered. It was recognized that controlling vehicular speeds to 25 mph or less was an essential objective. This was done through physical design. Vehicle speed can be controlled with respect to centerline radius, but our primary concern was with the straight sections of residential streets. It is recognized in the literature that two of the more influential design elements are building enclosure and street curb face width.



Speed vs. Pavement Width and Speed vs. Building Setbacks

The figure at the left is from a study done in San Francisco¹ analyzing average vehicle speed with respect to building separation and Street width. It is clear that the further apart the buildings are, the greater the increase in vehicular speed. This aspect of vehicular speed control was taken into account for the design. It is one of the elements appearing in a sample spreadsheet of our proprietary model in Appendix 1. In that example the residential street has a calculated 85th percentile vehicular speed of 25.1 mph.

Another element in the design is the impact of noise created by moving vehicles. Normal conversation can be heard comfortably up to about 60 DbA, but becomes difficult at higher decibel values. Automobiles, pickups, and sport-utility vehicles traveling at 25 mph generate 59.4

DbA which is exactly the value that we wish to maintain for the project.

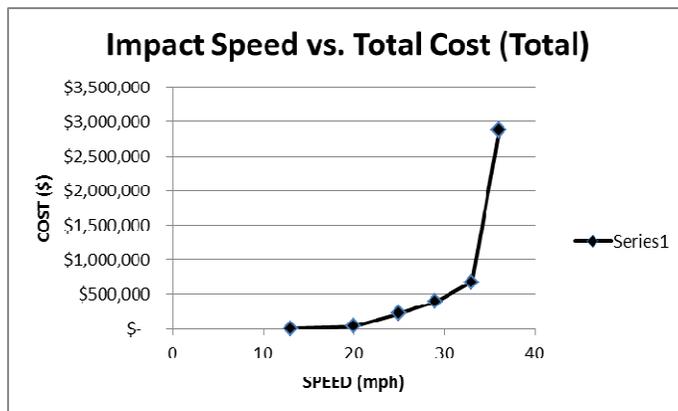
Another consideration is the effect of accident severity on pedestrians at various speeds. Following is the AIS estimation of these consequences at 20, 25 and 29 mph.

2 (20 mph) Moderate Major abrasion or laceration of skin; cerebral concussion (unconscious less than 15 minutes); finger or toe crush/amputation; closed pelvic fracture with or without dislocation.

3 (25 mph) Serious Major nerve laceration; multiple rib fracture (but without flail chest); abdominal organ contusion; hand, foot, or arm crush/amputation.

4 (29 mph) Severe Spleen rupture; leg crush; chest-wall perforation; cerebral concussion with other neurological signs (unconscious less than 24 hours).

As can be seen, there are significant differences in the change of a few miles per hour in injury severity.

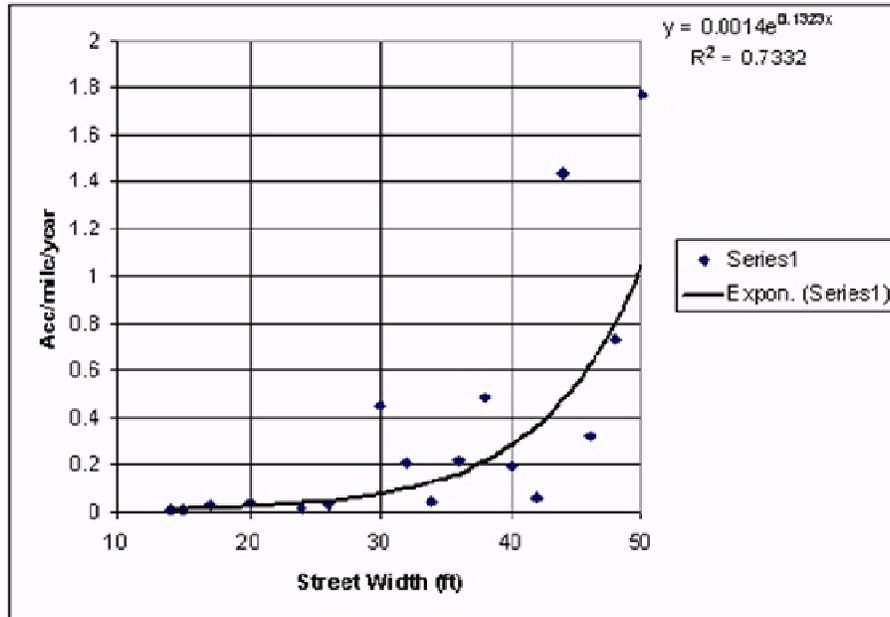


It is a general consensus that within walkable, mixed-use communities that a 25 mph speed limit is the upper threshold for residential components.

The cost implications are also an important factor. The following figure represents fairly recent analyses of impact speed and total cost of accidents. This is also an important factor affecting the economic health of the community.

¹ Smith, D. T. and Donald Appleyard, *Improving the Residential Street Environment-Final Report*, FHWA, Washington DC, 1981 p. 127

ATTACHMENT 1



The last element in terms of public safety relates to the consequences of Street width an injury accident frequency. The adjacent figure² represents the outcome of the study analyzing eight years of accident data that focused on 13 physical variables at each accident site. A statistical analysis of these data indicated that Street width had the greatest impact. The figure represents Street width versus accidents per mile

per year.

It is clear that there is an exponential increase in injury accidents with an increase in street width.

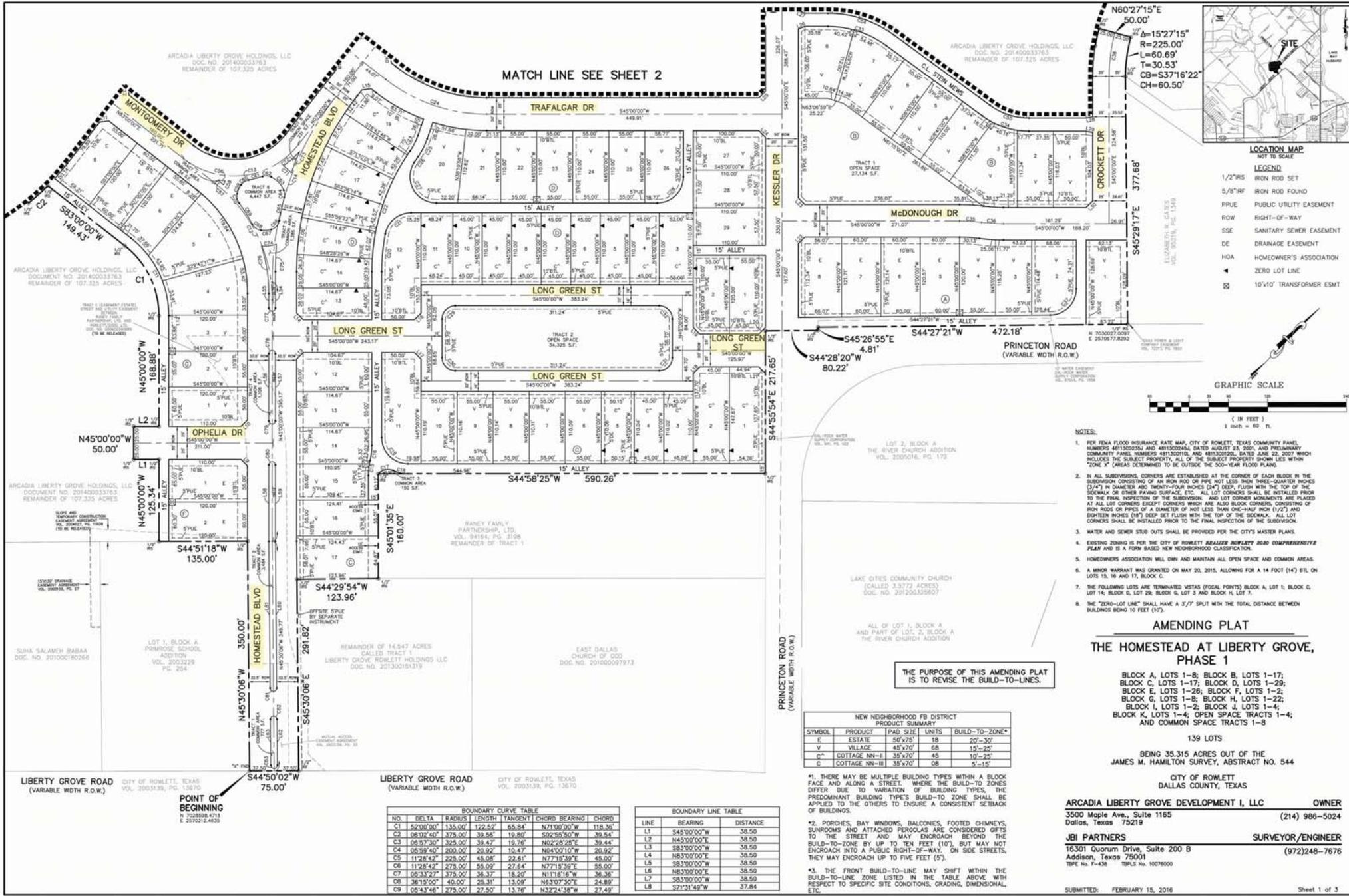
Returning to the physical design of the project; the design intent was to establish 25 mph is the 85th percentile operating speed for the above stated reasons. This is clearly exemplified in the exhibit appearing in appendix 1. It is therefore strongly recommended that this project be posted at 25 mph. It should be noted that we are aware that, in a national context, speed limit postings often represent a speed 5 miles an hour less than that which the thoroughfare is actually designed for. We feel very strongly that these streets must be posted at the actual design operating speed and enforced accordingly.

Any questions please let me know.

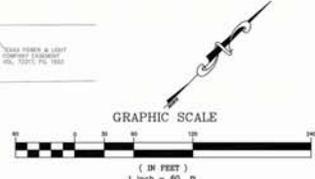
Peter Swift

END

² Swift, Peter, Dan Paynter, Matthew Goldstein, *Residential Street Typology And Injury Accident Frequency*, 1997, 2001



- LEGEND**
- 1/2"IRS IRON ROD SET
 - 5/8"IRF IRON ROD FOUND
 - PRUE PUBLIC UTILITY EASEMENT
 - ROW RIGHT-OF-WAY
 - SSE SANITARY SEWER EASEMENT
 - DE DRAINAGE EASEMENT
 - HOA HOMEOWNER'S ASSOCIATION
 - ◀ ZERO LOT LINE
 - ◀ 10x10' TRANSFORMER ESMT



- NOTES:**
- PER FEMA FLOOD INSURANCE RATE MAP, CITY OF ROWLETT, TEXAS COMMUNITY PANEL NUMBERS 481330235 AND 481330236, DATED AUGUST 23, 2001, AND PRELIMINARY COMMUNITY PANEL NUMBERS 481330235A AND 481330236A, DATED JUNE 22, 2007 WHICH INCLUDES THE SUBJECT PROPERTY, ALL OF THE SUBJECT PROPERTY SHOWN LESSE THAN "ZONE X" (AREAS DETERMINED TO BE OUTSIDE THE 500-YEAR FLOOD PLAIN).
 - IN ALL SUBDIVISIONS, CORNERS ARE ESTABLISHED AT THE CORNER OF EACH BLOCK IN THE SUBDIVISION CONSISTING OF AN IRON ROD OR PIPE NOT LESS THAN THREE-QUARTER INCHES (3/4") IN DIAMETER AND TWENTY-FOUR INCHES (24") DEEP, FLUSH WITH THE TOP OF THE SIDEWALK OR OTHER PAVING SURFACE, ETC. ALL LOT CORNERS SHALL BE INSTALLED PRIOR TO THE FINAL INSPECTION OF THE SUBDIVISION, AND LOT CORNER MONUMENTS ARE PLACED AT ALL LOT CORNERS EXCEPT CORNERS WHICH ARE ALSO BLOCK CORNERS, CONSISTING OF IRON RODS OR PIPES OF A DIAMETER OF NOT LESS THAN ONE-HALF INCH (1/2") AND EIGHTEEN INCHES (18") DEEP SET FLUSH WITH THE TOP OF THE SIDEWALK. ALL LOT CORNERS SHALL BE INSTALLED PRIOR TO THE FINAL INSPECTION OF THE SUBDIVISION.
 - WATER AND SEWER STUB OUTS SHALL BE PROVIDED PER THE CITY'S MASTER PLANS.
 - EXISTING ZONING IS PER THE CITY OF ROWLETT REALIZES ROWLETT IRROD COMPREHENSIVE PLAN AND IS A FORM BASED NEW NEIGHBORHOOD CLASSIFICATION.
 - HOMEOWNERS ASSOCIATION WILL OWN AND MAINTAIN ALL OPEN SPACE AND COMMON AREAS.
 - A MINOR WARRANT WAS GRANTED ON MAY 20, 2015, ALLOWING FOR A 14 FOOT (14') BTL ON LOTS 15, 16 AND 17, BLOCK C.
 - THE FOLLOWING LOTS ARE TERMINATED VESTAS (FOCAL POINTS) BLOCK A, LOT 1; BLOCK C, LOT 14; BLOCK D, LOT 28; BLOCK G, LOT 3 AND BLOCK H, LOT 7.
 - THE "ZERO-LOT LINE" SHALL HAVE A 3/7' SPLIT WITH THE TOTAL DISTANCE BETWEEN BUILDINGS BEING 10 FEET (10').

AMENDING PLAT
THE HOMESTEAD AT LIBERTY GROVE, PHASE 1

THE PURPOSE OF THIS AMENDING PLAT IS TO REVISE THE BUILD-TO-LINES.

NEW NEIGHBORHOOD FB DISTRICT PRODUCT SUMMARY

SYMBOL	PRODUCT	PAD SIZE	UNITS	BUILD-TO-ZONE*
E	ESTATE	50'x75'	18	20'-30'
V	VILLAGE	45'x70'	68	15'-25'
C	COTTAGE NN-II	35'x70'	45	10'-25'
D	COTTAGE NN-III	35'x70'	08	7'-15'

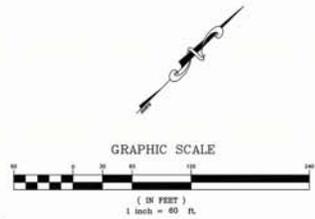
- THERE MAY BE MULTIPLE BUILDING TYPES WITHIN A BLOCK FACE AND ALONG A STREET. WHERE THE BUILD-TO-ZONES DIFFER DUE TO VARIATION OF BUILDING TYPES, THE PREDOMINANT BUILDING TYPE'S BUILD-TO-ZONE SHALL BE APPLIED TO THE OTHERS TO ENSURE A CONSISTENT SETBACK OF BUILDINGS.
- PORCHES, BAY WINDOWS, BALCONIES, FOOTED CHIMNEYS, SUNROOMS AND ATTACHED PERGOLAS ARE CONSIDERED GIFTS TO THE STREET AND MAY ENDOACH BEYOND THE BUILD-TO-ZONE BY UP TO TEN FEET (10'), BUT MAY NOT ENDOACH INTO A PUBLIC RIGHT-OF-WAY. ON SIDE STREETS, THEY MAY ENDOACH UP TO FIVE FEET (5').
- THE FRONT BUILD-TO-LINE MAY SHIFT WITHIN THE BUILD-TO-LINE ZONE LISTED IN THE TABLE ABOVE WITH RESPECT TO SPECIFIC SITE CONDITIONS, GRADING, DIMENSIONAL, ETC.

139 LOTS
BEING 35.315 ACRES OUT OF THE
JAMES M. HAMILTON SURVEY, ABSTRACT NO. 544
CITY OF ROWLETT
DALLAS COUNTY, TEXAS

ARCADIA LIBERTY GROVE DEVELOPMENT I, LLC OWNER
3500 Maple Ave., Suite 1165 (214) 986-5024
Dallas, Texas 75219

JBI PARTNERS SURVEYOR/ENGINEER
16301 Quorum Drive, Suite 200 B (972)248-7676
Addison, Texas 75001
TBP: No. F-438 TBP:LS No. 100700000

BOUNDARY CURVE TABLE					BOUNDARY LINE TABLE				
NO.	DELTA	RADIUS	LENGTH	TANGENT	CHORD BEARING	CHORD	LINE BEARING	DISTANCE	
C1	52'00'00"	135.00'	122.52'	85.84'	N71'00'00"W	118.36'	L1	S45'00'00"W	38.50'
C2	08'02'40"	375.00'	39.56'	19.80'	S02'55'50"W	39.54'	L2	N45'00'00"E	38.50'
C3	08'57'30"	325.00'	39.47'	19.76'	N02'28'25"E	39.44'	L3	S83'00'00"W	38.50'
C4	03'39'40"	200.00'	20.82'	10.47'	N04'00'10"W	20.82'	L4	N83'00'00"E	38.50'
C5	11'28'42"	225.00'	45.05'	22.61'	N77'15'39"E	45.00'	L5	S83'00'00"W	38.50'
C6	11'28'42"	275.00'	55.09'	27.64'	N77'15'39"E	55.00'	L6	N83'00'00"E	38.50'
C7	05'53'27"	375.00'	36.37'	18.20'	N11'18'16"W	36.36'	L7	S83'00'00"W	38.50'
C8	36'15'00"	40.00'	29.31'	13.09'	N83'07'50"E	24.89'	L8	S71'31'49"W	37.84'
C9	05'43'46"	275.00'	27.50'	13.76'	N32'24'38"W	27.49'			



- LEGEND**
- 1/2"RS IRON ROD SET
 - 5/8"RF IRON ROD FOUND
 - PPUE PUBLIC UTILITY EASEMENT
 - ROW RIGHT-OF-WAY
 - SE SANITARY SEWER EASEMENT
 - DE DRAINAGE EASEMENT
 - HOA HOMEOWNER'S ASSOCIATION
 - ◄ ZERO LOT LINE
 - ⊠ 10'x10' TRANSFORMER ESMT

ARCADIA LIBERTY GROVE HOLDINGS, LLC
DOCUMENT NO. 20140003163
REMAINDER OF 107.325 ACRES

ARCADIA LIBERTY GROVE HOLDINGS, LLC
DOCUMENT NO. 20140003163
REMAINDER OF 107.325 ACRES

ARCADIA LIBERTY GROVE HOLDINGS, LLC
DOCUMENT NO. 20140003163
REMAINDER OF 107.325 ACRES

ARCADIA LIBERTY GROVE HOLDINGS, LLC
DOCUMENT NO. 20140003163
REMAINDER OF 107.325 ACRES

LIBERTY GROVE ROWLETT HOLDINGS, LLC
DOCUMENT NO. 20120003145
REMAINDER OF 172.287 ACRES

LINE TABLE

LINE	BEARING	DISTANCE
L9	N80°00'00"E	14.14'
L10	N00°00'00"E	14.14'
L11	N38°00'00"E	14.14'
L12	N52°00'00"W	14.14'
L13	S00°00'00"E	14.14'
L14	N90°00'00"E	14.14'
L15	N38°00'00"E	14.14'
L16	N00°00'00"E	14.14'
L17	N90°00'00"E	14.14'
L18	S00°00'00"W	14.14'
L19	N00°00'00"E	14.14'
L20	S00°00'00"W	14.14'
L21	S89°57'57"E	14.13'
L22	N00°00'00"E	14.14'
L23	N00°00'00"E	14.14'
L24	N00°00'00"E	14.14'
L25	N00°00'00"E	14.14'
L26	S2°31'15"W	10.77'
L27	S84°48'00"W	10.77'
L28	N33°41'24"E	10.20'
L29	S56°18'36"W	10.20'
L30	N00°00'00"E	14.14'
L31	S2°00'00"E	14.14'
L32	N38°00'00"E	5.00'
L33	S52°00'00"E	5.00'
L34	S38°00'00"W	14.14'
L35	N38°00'00"E	14.14'
L36	N52°00'00"W	14.14'

LINE TABLE

LINE	BEARING	DISTANCE
L37	N52°38'12"W	13.98'
L38	S52°00'00"E	14.14'
L39	N38°00'00"E	14.14'
L40	S52°00'00"E	14.14'
L41	N38°00'00"E	14.14'
L42	N59°49'03"W	15.93'
L43	N23°52'27"E	10.29'
L44	N38°49'26"E	5.34'
L45	N07°00'00"W	22.29'
L46	N42°03'32"W	7.03'
L47	N28°32'22"E	7.08'
L48	N14°52'42"W	7.02'
L49	N45°00'00"E	23.87'
L50	S79°11'50"E	10.77'
L51	N61°11'50"E	10.77'
L52	S61°11'50"W	10.77'
L53	N75°11'50"W	10.77'
L54	N45°00'42"W	55.26'
L55	N45°00'00"W	22.31'
L56	S45°00'00"E	102.71'
L57	S45°00'00"E	102.71'
L58	S45°00'00"E	116.64'
L59	N45°00'00"E	116.60'
L60	N45°00'06"W	223.89'
L61	N45°00'06"W	223.93'
L62	N45°00'06"W	69.83'
L63	N45°00'06"W	69.83'

CURVE TABLE

NO.	DELTA	RADIUS	LENGTH	TANGENT	CHORD BEARING	CHORD
C10	123°17'00"	350.00'	79.12'	39.73'	N07°11'25"W	78.96'
C11	52°00'00"	150.00'	136.14'	73.16'	N71°00'00"W	131.51'
C12	52°00'00"	225.00'	204.20'	109.74'	N71°00'00"W	197.27'
C13	90°00'00"	125.00'	196.35'	125.00'	N38°00'00"E	176.78'
C14	38°00'00"	460.00'	305.08'	158.39'	S28°00'00"E	299.52'
C15	131°31'21"	100.00'	23.98'	11.59'	S38°24'55"E	23.03'
C16	131°14'46"	100.00'	23.03'	11.57'	N38°24'07"W	22.98'
C17	71°35'41"	20.00'	24.99'	14.42'	S33°12'44"W	23.40'
C18	21°02'24"	55.00'	23.07'	9.71'	S50°02'29"E	22.90'
C19	90°01'35"	40.00'	62.85'	40.00'	N89°59'12"E	56.58'
C20	103°11'41"	305.33'	57.88'	29.03'	S39°34'11"E	57.79'
C21	79°08'20"	46.00'	55.25'	33.05'	S05°25'51"W	50.96'
C22	30°00'00"	330.33'	196.33'	101.36'	S27°26'31"E	193.27'
C23	16°07'08"	92.50'	26.02'	13.10'	N17°56'37"W	25.94'
C24	38°00'00"	250.00'	165.81'	86.08'	N64°00'00"E	162.78'
C25	16°07'08"	107.50'	30.24'	15.42'	N17°56'37"W	30.14'
C26	01°09'24"	305.33'	10.81'	3.20'	S10°02'45"E	74.60'
C27	123°07'33"	40.00'	85.86'	73.86'	S73°28'14"E	70.35'
C28	90°00'00"	40.00'	62.83'	40.00'	N00°00'00"W	56.57'
C29	90°00'00"	20.00'	31.42'	20.00'	S00°00'00"W	28.28'
C30	90°00'00"	20.00'	31.42'	20.00'	S00°00'00"W	28.28'
C31	90°00'00"	20.00'	31.42'	20.00'	N00°00'00"W	28.28'
C32	90°00'00"	20.00'	31.42'	20.00'	N90°00'00"W	28.28'
C33	36°15'00"	150.00'	94.90'	49.10'	S63°30'30"W	93.33'
C34	36°15'00"	150.00'	76.92'	39.28'	N63°02'45"E	74.60'
C35	07°40'22"	250.00'	33.48'	16.77'	S48°00'13"W	33.46'
C36	07°40'22"	250.00'	33.48'	16.77'	N48°00'13"E	33.46'
C37	82°27'41"	40.00'	62.83'	39.62'	N00°15'18"W	36.30'
C38	112°17'41"	250.00'	67.43'	33.92'	S37°14'22"E	67.23'
C39	05°59'40"	215.00'	22.49'	11.26'	N04°00'10"W	22.48'
C40	112°42'22"	250.00'	50.08'	25.13'	N77°15'39"E	50.00'
C41	112°42'22"	250.00'	50.08'	25.13'	S77°15'39"W	50.00'
C42	90°00'00"	40.00'	62.83'	40.00'	S52°00'00"W	56.57'
C43	90°00'00"	40.00'	62.83'	40.00'	S38°00'00"W	56.57'
C44	90°00'00"	40.00'	62.83'	40.00'	N00°00'00"W	56.57'
C45	90°00'00"	40.00'	62.83'	40.00'	S52°00'00"W	56.57'
C46	38°00'00"	115.00'	76.27'	39.60'	N64°00'00"E	74.86'

CURVE TABLE

NO.	DELTA	RADIUS	LENGTH	TANGENT	CHORD BEARING	CHORD
C47	38°00'00"	100.00'	66.32'	34.43'	N84°00'00"E	65.11'
C48	114°28'20"	18.00'	35.96'	27.97'	N16°07'50"W	30.27'
C49	90°00'00"	40.00'	62.83'	40.00'	N00°00'00"E	56.57'
C50	90°00'00"	40.00'	62.83'	40.00'	S90°00'00"E	56.57'
C51	52°00'00"	75.00'	68.07'	36.56'	N71°00'00"W	65.78'
C52	52°00'00"	90.00'	81.68'	43.90'	N71°00'00"W	78.91'
C53	36°28'27"	350.00'	222.81'	115.33'	S26°45'47"E	219.06'
C54	36°15'00"	170.00'	107.56'	55.85'	S63°07'30"W	105.77'
C55	36°15'00"	100.00'	63.27'	32.73'	N63°07'30"E	52.22'
C56	04°45'03"	133.00'	11.03'	5.92'	N 53°09'56"E	11.02'
C57	02°46'51"	232.50'	11.28'	5.84'	S 88°12'32"W	11.28'
C58	08°09'51"	62.50'	6.72'	3.37'	S 21°24'47"E	6.72'
C59	22°11'47"	38.50'	14.91'	7.85'	S 11°02'11"E	14.82'
C60	45°31'01"	17.50'	13.90'	7.34'	S 12°38'11"W	13.54'
C61	09°25'10"	133.00'	21.86'	10.96'	N 30°38'06"E	21.84'
C62	44°41'16"	17.50'	13.51'	7.11'	S 48°03'39"W	13.18'
C63	42°02'04"	38.50'	28.56'	14.97'	N 85°43'13"W	27.91'
C64	36°21'12"	17.50'	11.10'	5.75'	N 49°08'38"W	10.92'
C65	04°25'10"	468.00'	36.10'	18.06'	S 33°10'37"E	36.09'
C66	84°53'25"	17.50'	19.72'	11.05'	N 63°26'24"W	18.69'
C67	03°39'04"	38.50'	15.86'	8.04'	N 40°59'25"E	15.75'
C68	55°13'50"	17.50'	16.87'	9.15'	N 80°23'12"E	16.22'
C69	09°22'00"	232.50'	38.01'	19.05'	N 78°41'16"W	37.97'
C70	49°01'00"	17.50'	14.97'	7.98'	S 56°03'41"E	14.52'
C71	14°58'13"	62.50'	16.84'	8.21'	S 84°45'44"E	16.29'
C72	14°16'52"	133.00'	33.15'	16.66'	N 03°20'03"E	33.06'
C73	04°18'10"	468.00'	35.16'	17.59'	S 24°04'46"E	35.15'
C74	21°28'24"	62.50'	23.38'	11.83'	N 38°25'14"E	23.29'
C75	03°09'24"	464.46'	41.71'	20.91'	S 44°24'09"E	41.70'
C76	18°01'53"	232.51'	73.17'	36.89'	N 54°00'27"W	72.87'
C77	18°00'00"	5.00'	15.73'	—	N 45°00'19"E	10.01'
C78	18°00'00"	5.00'	15.73'	—	S 45°00'19"E	10.00'
C79	18°00'00"	5.00'	15.73'	—	N 45°00'19"E	10.00'
C80	18°00'00"	5.00'	15.73'	—	S 45°00'19"E	10.00'
C81	18°00'00"	5.00'	15.73'	—	N 44°29'54"E	10.00'
C82	18°00'00"	5.00'	15.73'	—	S 44°29'54"E	10.00'
C83	18°00'00"	5.00'	15.73'	—	N 44°29'54"E	10.00'

THE PURPOSE OF THIS AMENDING PLAT IS TO REVISE THE BUILD-TO-LINES.

AMENDING PLAT

THE HOMESTEAD AT LIBERTY GROVE, PHASE 1

- BLOCK A, LOTS 1-8; BLOCK B, LOTS 1-17;
- BLOCK C, LOTS 1-17; BLOCK D, LOTS 1-29;
- BLOCK E, LOTS 1-26; BLOCK F, LOTS 1-2;
- BLOCK G, LOTS 1-8; BLOCK H, LOTS 1-22;
- BLOCK I, LOTS 1-2; BLOCK J, LOTS 1-4;
- BLOCK K, LOTS 1-4; OPEN SPACE TRACTS 1-4;
- AND COMMON SPACE TRACTS 1-8

139 LOTS

BEING 35.315 ACRES OUT OF THE JAMES M. HAMILTON SURVEY, ABSTRACT NO. 544

CITY OF ROWLETT
DALLAS COUNTY, TEXAS

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Addison, Texas 75001
TBP No. F-438 TPLS No. 10070000

SUBMITTED: FEBRUARY 15, 2016

Sheet 2 of 3

Drawing: H:\Projects\ARC020\p1-Phase 1-AMENDING.dwg Saved By: pmlar. Sowe Time: 2/17/2016 3:32 PM Printed by: pmlar. Plot Date: 2/17/2016 6:34 AM



City of Rowlett
Staff Report

4000 Main Street
P.O. Box 99
Rowlett, TX 75080-0099
www.rowlett.com

AGENDA DATE: 03/15/16

AGENDA ITEM: 7C

TITLE

Consider action to approve a resolution adopting bylaws recommended by the Rowlett Long Term Recovery Committee.

STAFF REPRESENTATIVE

Brian Funderburk, City Manager

SUMMARY

A best practice associated with long term recovery committees formed after a major disaster is to establish bylaws establishing the governance of such committees. The purpose of this item is to approve a resolution adopting the bylaws approved by the Rowlett Long Term Recovery Committee and recommended approval by the City Council.

BACKGROUND INFORMATION

On Saturday, December 26, 2015, around 7:00pm central standard time, the City of Rowlett was hit by an EF4 tornado. The number of homes and businesses that were impacted was 1,145 and 23 individuals were injured. On December 26, 2015, Mayor Todd Gottel declared a state of disaster for the City of Rowlett. On December 27, 2015, Governor Greg Abbott declared a state of disaster in the counties of Collin, Dallas, Ellis and Rockwall.

On January 19, 2016, the City Council created a long term recovery committee to ensure affected residents continue to receive resources and assistance – a best practice after such disasters. The primary roles of this recovery committee is as follows:

1. Resource development to benefit individuals and the community
2. Case work and assessments to identify family needs and facilitate appropriate provision of resources
3. Volunteer coordination
4. Spiritual and emotional care
5. Advocacy on behalf of disaster survivors
6. Donations management

DISCUSSION

As indicated above, the City of Rowlett sustained a direct hit from an EF4 tornado leaving behind a swath of destruction approximately 3½ miles long with a debris field nearly ½ mile wide. This tornado affected 1,145 homes and businesses.

In the first 48-72 hours of this disaster, first responders and certified trained volunteers, with assistance from other cities through mutual aid agreements, performed search and rescue, emergency aid, and security.

Currently, the City of Rowlett is focused on storm debris management while local churches and agencies continue to provide financial support and resources to affected residents. While a federal disaster declaration has not yet been made, a best practice associated with a major disaster is to establish a mechanism to provide a sustainable effort to ensure affected residents continue to receive resources. As a result, after consulting with local churches, agencies, the Rowlett Chamber, public utilities and local schools, the City created a community-based Long Term Recovery Committee.

The Rowlett Long Term Recovery Committee has met several times since its creation forming and appointing sub-committees, establishing the framework for donations criteria, coordinating long-term case management with national non-profits and agencies, and producing a forum for affected residents.

A best practice listed by the *Long Term Recovery Guide*, published by the National Voluntary Organizations Active in Disaster in 2012, is the approval of bylaws. As a result, on March 7, 2016, the Rowlett Long Term Recovery Committee voted unanimously to approve bylaws for the Committee and further to recommend those bylaws to the City Council for approval (see Exhibit A).

FINANCIAL/BUDGET IMPLICATIONS

N/A

RECOMMENDED ACTION

Staff recommends approval of the Bylaws as recommended by the Rowlett Long Term Recovery Committee.

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROWLETT, TEXAS, APPROVING BYLAWS FOR THE ROWLETT LONG TERM RECOVERY COMMITTEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on December 26, 2015, the City of Rowlett was hit by a devastating EF4 tornado that destroyed or damaged 1,145 homes and businesses; and

WHEREAS, the City of Rowlett created the Rowlett Long Term Recovery Committee, an ad hoc Council committee, to help disaster victims with sustainable assistance; and

WHEREAS, the Rowlett Long Term Recovery Committee has recommended bylaws for the governance of the Committee.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ROWLETT, TEXAS:

Section 1: That the City Council does hereby approve the bylaws of the Rowlett Long Term Recovery Committee, a true and correct of which are attached hereto and incorporated herein.

Section 2: This resolution shall become effective immediately upon its passage.

ATTACHMENTS

Exhibit A – Bylaws of the Rowlett Long Term Recovery Committee

Bylaws of the Rowlett Long Term Recovery Committee



*A unique community
where families enjoy
life and feel at home.*

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ARTICLE 1 Long Term Recovery Group Name

Section 1: The name of the committee shall be the Rowlett Long Term Recovery Committee (RLTRC).

ARTICLE 2 Authority, Purpose and Mission

Section 1: The RLTRC was appointed by resolution on Tuesday, January 19, 2016 by the Rowlett City Council for the purpose of providing coordinated management of the long-term recovery efforts to Rowlett residents as a result of the EF4 tornado that struck the City of Rowlett on the evening of Saturday, December 26, 2015.

Section 2: The RLTRC operates under the authority and pleasure of the City Council for the City of Rowlett.

Section 3: It shall be the mission of the RLTRC to provide recovery services to individuals and families affected by the tornado that hit Rowlett, Texas on December 26, 2015.

Section 4: It shall be the vision of the RLTRC to meet the need for ongoing coordination among agencies providing volunteer, financial, spiritual and emotional/physiological support for people whose lives have been ravaged by the December 26, 2015, tornado in Rowlett, Texas. In addition, we will provide collaborative leadership in the discernment on long-term needs for recovery and rehabilitation that can be most effectively met or assisted by this collaboration and we will provide advocacy for people most vulnerable to having their needs overlooked in public recovery processes.

Section 5: The RLTRC sets forth these operational procedures to establish and maintain a network within and on behalf of the faith-based, non-profit, governmental, business and other organization and agencies which will provide a coordinated recovery effort.

Section 6: RLTRC will provide spiritual, emotional, physical and financial resources to those affected by the disaster regardless of race, creed, color, gender, sexual orientation, disability or religious preference. The RLTRC shall at all times be apolitical and non-sectarian in nature.

ARTICLE 3 Membership and Voting

Section 1: The Rowlett City Council shall appoint regular and ex-officio members to the RLTRC on an Ad Hoc basis and sets committee directives, standards, membership structure, governance, and rules for operation over and above these Bylaws.

Section 2: Voting members of the RLTRC are determined by the Rowlett City Council in origination documents.

Section 3: All members must conform to the latest edition of the Boards and Commissions Handbook (Handbook) approved by the Rowlett City Council.

Section 4: In accordance with the Handbook, voting members must meet attendance requirements.

ARTICLE 4 Meetings

Section 1: All meetings of the RLTRC will be at the call of the Chair or any two of the Executive Committee Members.

Section 2: Regularly scheduled meetings of the RLTRC may be established. Notice of these meetings, giving the time and place and the proposed agenda, shall be electronically transmitted or given by written notice to all Members of the RLTRC.

Section 3: Special Meetings of the RLTRC may be called, providing the call shall clearly state the purpose for the meeting and the time and place shall be given electronically or by written notice at least 72 hours in advance to all Members of the RLTRC.

Section 4: Public notice of meetings shall be given in accordance with state law.

ARTICLE 5 Quorum

Section 1: A quorum for transaction of business shall consist of at least 50% plus one voting member present.

ARTICLE 6 Officers

Section 1: There shall be elected from the members of the RLTRC:

1. A Chair shall preside at all meetings, as well as be the chief executive officer of the RLTRC and perform other functions as deemed necessary by the Executive Committee. The Chair is a member of the Executive Committee.
2. First Vice Chair shall be present at all meetings, and preside in the absence of the Chair or at other times as deemed necessary by the Chair. The First Vice Chair is a member of the Executive Committee.
3. Second Vice Chair shall be present at all meetings, and preside in the absence of the Chair or at other times as deemed necessary by the Chair. The Second vice Chair is a member of the Executive Committee.
4. A Secretary who shall record and preserve all minutes of the meetings and perform other functions as deemed necessary by the Executive Committee. If unable to attend a meeting, the Chair shall appoint a secretary pro tem for that meeting. The Secretary is a member of the Executive Committee.

ARTICLE 7 Executive Committee

Section 1: The Executive Committee of the RLTRC shall provide direction, oversight and guidance to the RLTRC.

Section 2: The Executive Committee shall meet at the call of the Chair to perform such actions related to administrative overview of the affairs of the RLTRC.

Section 3: Except as otherwise required by law or these Operational Procedures, the Executive Committee shall have all the authority of the RLTRC in the management of the RLTRC during such time as the RLTRC is not meeting and may authorize contracts and agreements as required.

Section 4: A simple majority of the Executive Committee must be present to conduct business.

Section 5: The Executive Committee of the RLTRC shall consist of all Officers and one member for a full count of five members.

ARTICLE 8 Subcommittees and Task Forces

Section 1: The RLTRC may create such temporary or permanent subcommittees and task forces made up of its members or other persons as agreed upon. These subcommittees and task forces shall have such authority as the RLTRC directs.

Section 2: Subcommittees may consist from as few as three, to as many as ten members.

Section 3: Membership of subcommittees may consist of both RLTRC members and other subject matter experts.

Section 4: Each subcommittee will be chaired or co-chaired by a member or members of the RLTRC, selected by the sub-committee.

Section 5: All subcommittee members must conform to the latest edition of the Boards and Commissions Handbook approved by the Rowlett City Council.

ARTICLE 9 Vacancies

Section 1: Any Officer vacancy shall be filled by a special meeting in accordance with these procedures concerning meetings of the RLTRC.

Section 2: The Executive Committee shall determine the appropriate process for securing nominations from among the members for vacancies of any of the offices, announcing the nomination process and conducting an election.

ARTICLE 10 Financial

Section 1: Periodic financial reports will be produced in accordance with direction of the Executive Committee and will be subject to approval of the members.

Section 2: A Memorandum of Understanding (MOU) shall govern the relationship, duties and responsibilities between the RLTRC, and the Rowlett Chamber of Commerce Foundation, who is custodian of the Rebuild Rowlett fund.

Section 3: Selection criteria of clients shall be established and approved by the RLTRC in a written set of Unmet Needs Guidelines to lead the work of the RLTRC and the case management process. The guidelines for distribution of funds may be amended in response to changing circumstances by vote at a regular or special meeting of the RLTRC called in accordance with these Bylaws.

ARTICLE 11 Indemnification

Section 1: The City of Rowlett agrees to indemnify the RLTRC and its members and officers for all duly approved actions taken while a member of such committee.

ARTICLE 12 Rules

Section 1: Business of the RLTRC will be conducted in accordance with *Robert's Rules of Order*.

Section 2: Should a conflict arise between these Bylaws and any City of Rowlett handbook, rule, or ordinance, or a Texas law, these Bylaws will take a subordinate position.

ARTICLE 13 Amendments

Section 1: These Bylaws may be amended, subject to the Bylaws of the RLTRC and the laws of the state of Texas, at any annual meeting or special meetings of the RLTRC by a simple majority vote of the members present, providing that a full written account of the proposed changes have been sent to all Members two weeks (14 days) prior to the meeting.

Section 2: The Bylaws of the RLTRC shall become effective as adopted by a simple majority vote of the members, and also adopted by the Rowlett City Council.

ARTICLE 14 Dissolution

Section 1: The RLTRC will develop a dissolution strategy that insures all cases are closed or forwarded to a member agency for completion, and that the dispersion of assets be determined by the Executive Committee and its membership.

Section 2: The RLTRC shall only be dissolved by a simple majority vote of the Rowlett City Council.

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City of Rowlett Staff Report

4000 Main Street
P.O. Box 99
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www.rowlett.com

AGENDA DATE: 3/15/2016

AGENDA ITEM: 8A

TITLE

Conduct a public hearing and consider an ordinance approving text amendments to the City of Rowlett Form-Based Code as it pertains to lighting standards, as specified in FBC sections 2.3, 2.4, 2.6, 2.7, and 4: Lighting, Mechanical, and Utilities.

STAFF REPRESENTATIVE

Daniel Acevedo, CNU-A, Urban Design Manager

SUMMARY

Staff is bringing forward an amendment to the Form-Based Code (FBC) for formal consideration, as it pertains to lighting standards, as specified in sections 2.3, 2.4, 2.6, 2.7, and 4: Lighting, Mechanical, and Utilities of the Form-Based Code (Attachment 1). The impetus for this amendment is the practical application of implementing the lighting standards over the course of the last three years for developments including the Village of Rowlett, Homestead at Liberty Grove, Harmony Hill, Terra Lago, and others. During this period of implementation, standards were further tested and vetted, and Major Warrants were granted to address and support the results of those studies. As a follow-up to those items, it is staff's desire to amend the Code to reflect those findings.

The Planning and Zoning Commission voted unanimously to recommend approval on the proposed text amendment at their February 23, 2015, Meeting. The public hearing can be viewed at the following link as item C1: <http://rowlettx.swagit.com/play/02232016-1558>

BACKGROUND INFORMATION

The City of Rowlett Form-Based Code, adopted in 2012, emphasizes the public realm by providing a high quality, walkable, pedestrian network throughout the district. Specific to this amendment, lighting requirements in the FBC are in place to provide adequate levels for safe pedestrian activity and are intended to create an "ideal urban condition."

As was conveyed at the time of adoption, the FBC has always been intended to be a living document that will be amended as needed based on changing trends or updated information. As the Council is aware, there is a difference in theoretical application and practical application. As projects have progressed since the time of adoption, we have been able to see the practical application of the standards and re-evaluate as necessary. In addition, based on additional research and case studies, staff found that the current standard is above necessary lighting levels to achieve the desired result of a safe environment. Amending these standards will ensure that adequate lighting will be achieved in order to meet the full intent of creating a pedestrian-oriented, safe neighborhood.

DISCUSSION

In working through the development review, Staff has found that it is difficult to reasonably achieve the lighting standards based on the lighting equipment available through the City's franchised utility company (Oncor). In addition, based on additional research conducted and case studies examined, staff found that the current standard is above necessary lighting levels to achieve the desired result of a safe environment. Staff's goal with this amendment is to ensure that adequate lighting will be achieved in order to meet the full intent of creating a pedestrian-oriented, safe neighborhood, without requiring an excessive amount of foot candles.

Low to Moderate Density Residential Districts (New Neighborhood and Rural Neighborhood)

Currently, in the residential districts throughout the FBC, there is a two foot candle minimum average. After research was done at specific locations that originally informed the FBC, staff found that this average was a bit off. More specifically, the two foot candle requirement was originally based off of misinformation provided for Capella Park in Dallas, which actually has a half candle average. After reevaluating Capella Park, Hometown North Richland Hills, Mueller in Austin and other well-lit residential districts in the Metroplex, staff is confident that the proposed standard (0.5 foot candle for residential areas, and 1 foot candle for public, commercial and retail) is appropriate and in keeping with the goals of the City of Rowlett FBC and Comprehensive Plan.

Moderate to High Density Districts (Urban Neighborhood, Urban Village, and Commercial Center)

Staff has recently studied local examples of similar density (Firewheel Town Center at Garland, Addison Circle, Downtown Rowlett, Downtown Plano) that have comparable development standards as in the FBC. Those case studies revealed that the retail areas have an average of two foot candles throughout and slightly less than one foot candle in the residential areas. It is also reasonable and most appropriate to determine minimum average light levels directly from the street and sidewalk lighting. The quality and intensity of the light from the businesses themselves add to those levels, but (due to incremental growth and change) are not necessary in establishing an adequate base for pedestrian level lighting.

The subject studies were conducted with a light meter that reads foot candles with averaging taken at the sidewalks, streets, and parking lots at each site. It is staff's professional opinion from these findings, that the proposed standard (1 foot candle for residential and 2 foot candles for public, commercial and retail) is adequate and consistent with the intent of lighting requirements throughout the denser districts.

A series of images from that study, shown in Attachment 2, display typical spacing and lighting levels that are consistent with the proposed standard further detailed in Attachment 1.

Per Article 1.1.3 of the FBC, "This chapter may be amended after notice and public hearing in accordance with the RDC". Per Section 77-804.C of the Rowlett Development Code, text amendments should be considered based on the following criteria. Staff has added additional comments in bold italics.

1. Whether the proposed amendment corrects an error or meets the challenge of some changing condition, trend, or fact;

This amendment addresses the need to correct an oversight within the Lighting Requirements of the FBC that exceed the intent of creating a safe night time pedestrian environment and are not in keeping with the precedent used to inform those metrics. As previously stated, after implementation of the first round of projects within the FBC Districts as well as conducting detailed research, it is staff's desire to correct the lighting section of the code to reflect a more appropriate requirement for lighting.

2. Whether the proposed amendment is consistent with the comprehensive plan and the stated purposes of this Code;

Staff believes that the proposed amendment is consistent with the comprehensive plan and its guiding principles. This standard also meets the intent of Article 4 in the FBC, which is to provide a level and consistency of lighting that supports pedestrian activity and promotes safety, as well as FBC intent statements 1.2.4.b and 1.2.4.d, as noted below:

1.2.4.b: "That buildings, streetscaping and landscaping contribute to the physical definition of thoroughfares as civic places."

1.2.4.d: "That the design of streets and buildings reinforce safe environments and preserve accessibility."

3. Whether the proposed amendment will protect the health, safety, morals, and general welfare of the public;

The proposed amendment directly affects the health, safety, and general welfare of the public by providing a lighting level requirement consistent with the best practices of lighting in urban environments. More specifically, it encourages health through walkability, enabling a well-lit environment at night, and is a factor in promoting alternative, less auto-dominated modes of transportation. The proposed lighting also contributes to the safety and general welfare of the neighborhoods they are in, by illuminating public places to a minimum standard that has proven to lower crime and increase property values due to the light provided. The proposed standards remain well above the average requirements found in conventional developments.

4. Whether the proposed amendment will result in significant mitigation of adverse impacts on the natural environment, including air, water, noise, stormwater management, wildlife, and vegetation; and

The proposed amendment will have no effect or adverse impact on the natural environment.

5. Whether the proposed amendment will advance the goals of the city council.

Based on the Realize Rowlett 2020 Comprehensive Plan and previous discussions had with the City Council during Major Warrant hearings regarding lighting

standards for specific projects, staff believes the proposed changes will advance City Council's goals.

FISCAL IMPACT/BUDGET IMPLICATIONS

N/A

RECOMMENDED ACTION

Staff recommends approval of the proposed text amendment.

ORDINANCE

AN ORDINANCE OF THE CITY OF ROWLETT, TEXAS, AMENDING THE FORM-BASED CODE OF THE CITY OF ROWLETT, TEXAS, TO AMEND SECTIONS 2.3.3(a)(3); 2.4.2(h)(2); 2.6.4(a)(3)(i) AND (ii); AND 2.7.2(h)(2), AND TABLE 3 OF SECTION 4.2.1(a) OF THE FORM-BASED CODE, TO REVISE LIGHTING STANDARDS IN FORM-BASED CODE DEVELOPMENTS; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND, PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission of the City of Rowlett and the governing body of the City of Rowlett, in compliance with the laws of the State of Texas and the ordinances of the City of Rowlett, have given the requisite notices by publication and otherwise, and have held public hearings and afforded a full and fair hearing and where the governing body in the exercise of its legislative discretion has concluded that the Form Based Code of the Zoning Ordinance of the City of Rowlett should be amended.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROWLETT, TEXAS:

SECTION 1. That subpart (a)(3) of section 2.3.3 of part 2.3 (“New Neighborhood (NN) Standards”) of Article 2 (“Form Based District Standards”); subpart (h)(2) of section 2.4.2 of part 2.4 (“Urban Village (UV) Standards”) of Article 2 (“Form Based District Standards”); subparts (a)(3)(i) and (ii) of section 2.6.4 of part 2.6 (“Urban Neighborhood (UN) Standards”) of Article 2 (“Form Based District Standards”); subpart (h)(2) of section 2.7.2 of part 2.7 (“Commercial Center (CC) Standards”) of Article 2 (“Form Based District Standards”); and Table 3 of subsection (a) of section 4.2.1 of part 4.2 (“Standards”) of Article 4 (“Lighting, Mechanical, and Utilities”), of the Form-Based Code of the City of Rowlett, Texas, be and are hereby amended in accordance with the changes and amendments shown on Exhibit “A,” attached hereto and incorporated herein.

SECTION 2. That the Code of Ordinances of the City of Rowlett, Texas be and is hereby amended by amending the Form-Based Code regulations, said amendments are incorporated in the Form-Based Code attached hereto and incorporated herein as Exhibit “A.”

SECTION 3. That the City of Rowlett's Form-Based Code, containing comprehensive regulations applicable to all areas zoned as FB district, as amended hereby, shall serve as comprehensive regulations for land use and development in all areas and territories designated and zoned as FB district. True and correct copies of the Form-Based Code, as amended hereby, will be maintained in the office of the City Secretary and in the office of the City's planning department and will be made available for review and copying.

SECTION 4. That all ordinances of the City of Rowlett, Texas, in conflict with the provisions of this ordinance be and the same are hereby repealed and all other ordinances of the City of Rowlett not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 5. That an offense committed before the effective date of this ordinance is governed by the prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 6. That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision hereof, other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

SECTION 7. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Rowlett, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of two-thousand dollars (\$2,000.00) for each offense, and each and every day such violation shall continue shall be deemed to constitute a separate offense.

SECTION 8. That this ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and Charter in such cases provide.

ATTACHMENTS

Exhibit A – Articles 2.3, 2.4, 2.6, 2.7, and 4 (Strikethrough and Underline)

Attachment 1 – Precedent Images

2.3 NEW NEIGHBORHOOD (NN) STANDARDS

...

2.3.3 Street Trees and Plant Material

a. Right-of-way Landscaping Requirements

...

3. **Street Lighting.** Pedestrian level street lighting will be provided in the streetscape parkway to attain, in combination with residential porch lighting, an average of ~~0.52~~ foot candles along the sidewalk. (See *Article 4 Lighting, Mechanical and Utilities.*)

2.4 URBAN VILLAGE (UV) STANDARDS

...

2.4.2 General

...

h. Lighting

...

2. Average light levels will be a minimum average of 1 foot-candles for residential at grade, or ~~23~~ foot-candles for commercial, along the sidewalk. This may be achieved through a combination of both pedestrian-level street lights and building-mounted lighting that is controlled by a timer or solar switch.

2.6 URBAN NEIGHBORHOOD (UN) STANDARDS

...

2.6.4 Street Trees and Plant Material

...

a. Right-of-way Landscaping Requirements

...

3. **Street Lighting.**

- i. Adjacent to residential Building Types pedestrian level street lighting will be provided in the streetscape parkway to attain, in combination with residential entry lighting, an average of ~~12~~-foot candles along the sidewalk. (See *Article 4 Lighting, Mechanical and Utilities.*)
- ii. Adjacent to commercial and mixed-use Building Types pedestrian level lighting will be provided in the streetscape parkway to attain, in combination with building lighting, an average of ~~23~~-foot candles along the sidewalk. (See *Article 4 Lighting, Mechanical and Utilities.*)

2.7 COMMERCIAL CENTER (CC) STANDARDS

...

2.7.2 General

...

h. Lighting

...

- 2. Average light levels will be a minimum average of ~~12~~ foot-candles for residential at grade, or ~~23~~ foot-candles for commercial, along the sidewalk. This may be achieved through a combination of both pedestrian-level streetlights and building-mounted lighting that is controlled by a timer or solar switch.

...

ARTICLE 4 LIGHTING, MECHANICAL AND UTILITIES

4.1 INTENT

4.1.1 Intent

It is the intent of this Article to provide a level and consistency of lighting that supports pedestrian activity and promotes safety, and to reduce the visual impact of mechanical equipment on the public realm.

4.2 STANDARDS

4.2.1 Lighting

- a. Average Lighting levels within public rights-of-way and pedestrian areas will meet the following averages —

Table 3 Lighting Levels

<u>RN and NN Land Use</u>	<u>Average Lighting Level</u>
a. Residential	.52 foot-candles (fc)
<u>a. Commercial/Retail</u>	<u>1 fc</u>
<u>b. Institutional and Public Uses</u>	<u>1 fc</u>
<u>c. Parking Areas</u>	<u>1 fc</u>
<u>d. Public Open Space</u>	<u>1.5</u>
<u>UN, UV, and CC Land Use</u>	<u>Average Lighting Level</u>
<u>e. Residential</u>	<u>1 fc</u>
<u>f. b. Commercial/Retail</u>	<u>23 fc</u>
<u>g. Institutional and Public Uses</u>	<u>2 fc</u>
<u>h.e. Public Open Space</u>	1.5 fc

...

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j. Parking Areas	1 fc
je. Street Intersection	2 fc
k. Street Centerline	1 fc

1. Average light levels along the sidewalk may be achieved through a combination of both pedestrian-level lights and building-mounted lighting.
2. Alley lighting will be located on garage walls facing the alley and will be limited to a maximum of two carriage light fixtures mounted at about 7 feet in elevation, and not exceeding the equivalent of 100 watts each. These lights will be controlled by automatic timers.

b. Lighting Elements

1. The following lighting elements will be permitted: incandescent, color-corrected LED (3000 – 4000 Kelvin), metal halide or halogen. The following lighting elements will not be permitted: flood, cobra head, HID – mercury vapor and sodium vapor, HPS and fluorescent lights (except fluorescent bulbs that screw into standard socket fixtures).
2. Street lights will be approved by the City and may contain an exposed color-corrected lighting source and a horizontal or downward focus. Acorn, lantern, clear LED fixtures, etc. will be used to prevent glare.
3. Neon, as a lighting source, may be permitted with a Minor Warrant in Urban Village FB Districts.

c. Screened Lighting Source. All lighting will be focused downward or narrowly focused on its intended target such as signs, parking and pedestrian walkways. Glare from any lighting source will not be directly visible from public view or from a residential unit.

4.2.2 Screening of Equipment.

- a. Mechanical, communications and service equipment including satellite dishes and vent pipes will be screened from public view by parapets, walls, fences, dense evergreen foliage or other approved means.
- b. No air conditioning units or meters will be visible from a public street or Open Space.



Form Based Code - Lighting Amendment Precedent Research



Capella Park – 0.5 Foot Candle Average



Capella Park – 0.5 Foot Candle Average



Capella Park Street Light Spacing– 0.5 Foot Candle Average

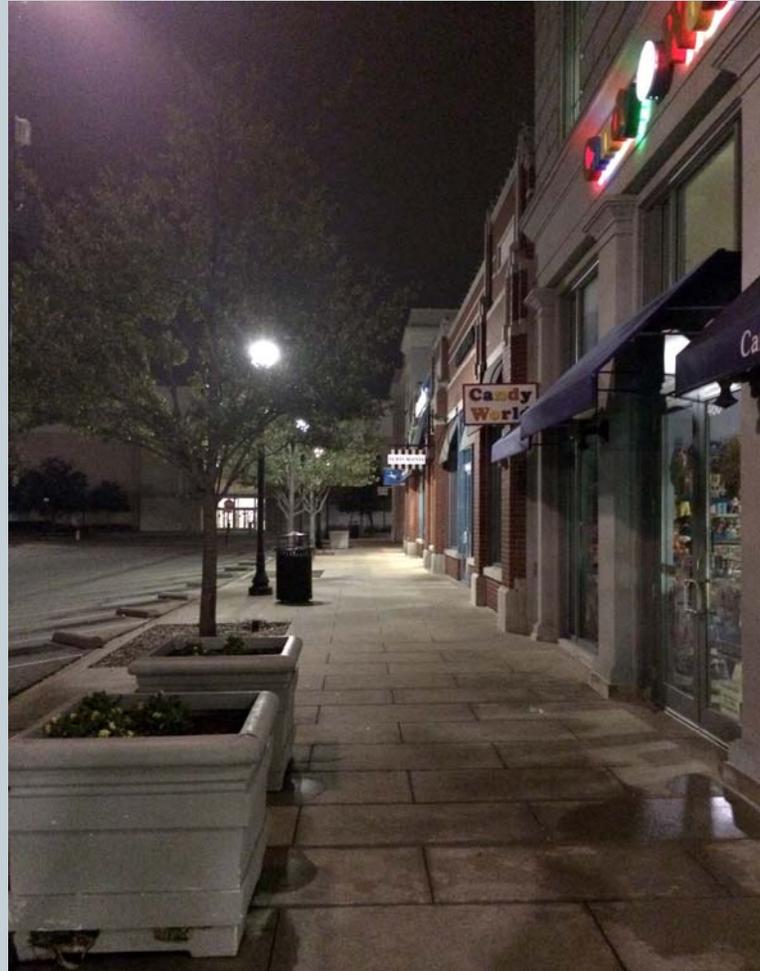


Hometown at North Richland Hills



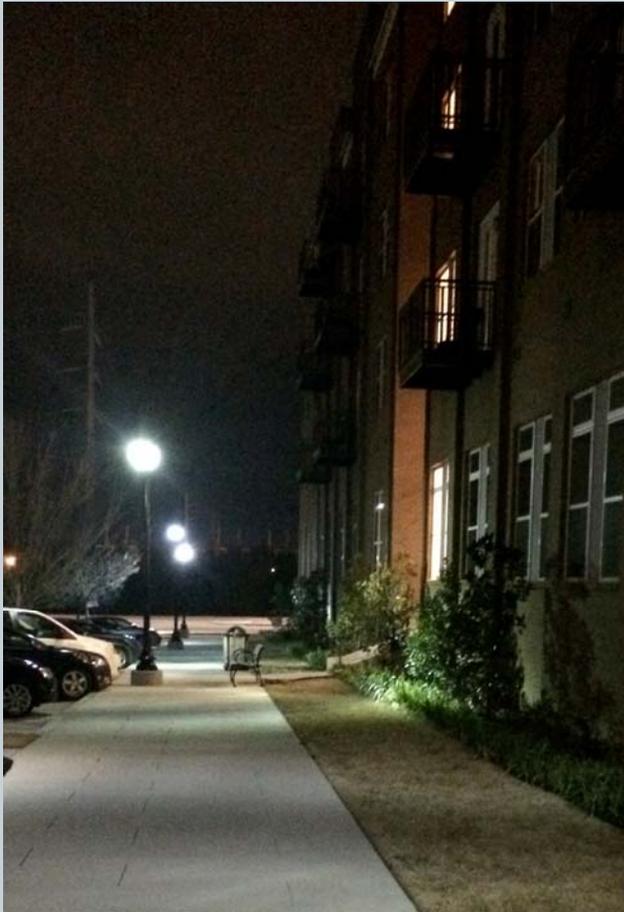
Homestead at Carrollton

Form Based Code - Lighting Amendment Precedent Research



2ft Candle Average – Firewheel in Garland, Retail Streets

Form Based Code - Lighting Amendment Precedent Research



1ft Candle Average – Firewheel in Garland, Residential Streets