



City of Lago Vista, Texas

**NOTICE OF A SPECIAL CALLED MEETING
LAGO VISTA CITY COUNCIL
MONDAY, JUNE 22, 2015, 4:30 P.M.
CITY HALL - 5803 THUNDERBIRD**

NOTICE IS HEREBY GIVEN that the City Council of the City of Lago Vista, Texas will hold a Special Called Meeting at the City Municipal Building, 5803 Thunderbird, Lago Vista, Texas, on the above date and time for consideration of the following:

CALL TO ORDER, CALL OF ROLL

ACTION ITEMS (action and/or a vote may be taken on the following agenda items):

1. Consider and take possible action on an Ordinance No. 15-06-18-02; Finding acquisition of a public utility easement serves the public convenience and necessity and that said Property will be acquired for a public use, namely the Raw Water Line, Barge, and Raw Water Facilities Project; finding that all appropriate and necessary pre-acquisition requirements set forth in Chapter 21 of the Texas Property Code have been met; and, authorizing the use of eminent domain proceedings as set forth in Chapter 21 of the Texas Property Code regarding a 2.286 acre tract, more or less, out of a 6.91 acre tract located in Travis County, Texas owned by James Otwell, as further described in the attached proposed Ordinance for this item. (Roll Call Vote Required)

WORK SESSION (no action may be taken on the following agenda items):

2. Report by Councilman Shoumaker concerning possible Sidewalk Grant project.

EXECUTIVE SESSION

3. Convene into Executive Session pursuant to Sections 551.071 and/or 551.072, Texas Government Code and Section 1.05 Texas Disciplinary Rules of Professional Conduct regarding:
 - a. Consultation with attorney to deliberate the acquisition of real property and possible use of eminent domain proceedings as set forth in Chapter 21 of the Texas Property Code regarding a 2.286 acre tract, more or less, out of a 6.91 acre tract located in Travis County, Texas owned by James Otwell.
 - b. Possible property acquisition for parks.

ACTION ITEMS (action and/or a vote may be taken on the following agenda items):

4. Reconvene from Executive Session into open session to take action as deemed appropriate in City Council's discretion regarding:
 - a. The acquisition of real property and possible use of eminent domain proceedings as set forth in Chapter 21 of the Texas Property Code regarding a 2.286 acre tract, more or less, out of a 6.91 acre tract located in Travis County, Texas owned by James Otwell. (Roll Call Vote Required)
 - b. The property acquisition for parks.

IT IS HEREBY CERTIFIED that the above Notice was posted on the Bulletin Board located at all times in City Hall in said City at _____ on the _____ day of _____, 2015.

Sandra Barton, City Secretary

THIS MEETING SHALL BE CONDUCTED PURSUANT TO THE TEXAS GOVERNMENT CODE SECTION 551.001 ET SEQ. AT ANY TIME DURING THE MEETING THE COUNCIL RESERVES THE RIGHT TO ADJOURN INTO EXECUTIVE SESSION ON ANY OF THE ABOVE POSTED AGENDA ITEMS IN ACCORDANCE WITH THE SECTIONS 551.071, 551.072, 551.073, 551.074, 551.075 OR 551.076.

THE CITY OF LAGO VISTA IS COMMITTED TO COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT. REASONABLE MODIFICATIONS AND EQUAL ACCESS TO COMMUNICATIONS WILL BE PROVIDED UPON REQUEST.

MEETING DATE: June 22, 2015

AGENDA ITEM: CALL TO ORDER, CALL OF ROLL, INVOCATION AND PLEDGE OF ALLEGIANCE

Comments:

Motion by: _____

Seconded by: _____

Content of Motion: _____

Vote: Shoumaker _____ ; **Hunt** _____ ; **Kruger** _____ ; **Mitchell** _____ ;

Gloris _____ ; **Smith** _____ ; **Cox** _____

Motion Carried: Yes _____ ; **No** _____

MEETING DATE: June 22, 2015

AGENDA ITEM: 1. Discussion, consideration, action if any re: Ordinance No. 15-06-18-02; Finding acquisition of a public utility easement serves the public convenience and necessity and that said Property will be acquired for a public use, namely the Raw Water Line, Barge, and Raw Water Facilities Project; finding that all appropriate and necessary pre-acquisition requirements set forth in Chapter 21 of the Texas Property Code have been met; and, authorizing the use of eminent domain proceedings as set forth in Chapter 21 of the Texas Property Code regarding a 2.286 acre tract, more or less, out of a 6.91 acre tract located in Travis County, Texas owned by James Otwell, as further described in the attached proposed Ordinance for this item. (Roll Call Vote Required)

Motion by: _____

Seconded by: _____

Content of Motion: _____

Vote: Shoumaker _____ ; **Hunt** _____ ; **Kruger** _____ ; **Mitchell** _____ ;

Gloris _____ ; **Smith** _____ ; **Cox** _____

Motion Carried: Yes _____ ; **No** _____



AGENDA ITEM

City of Lago Vista

To: **Mayor & City Council** **Council Meeting:** **June 22, 2015**

From: **Melissa Byrne Vossmer, City Manager**

Subject: **Consider and take possible action on an Ordinance No. 15-06-18-02: finding acquisition of a public utility easement serves the public convenience and necessity and that said Property will be acquired for a public use, namely the Raw Water Line, Barge, and Raw Water Facilities Project; finding that all appropriate and necessary pre-acquisition requirements set forth in Chapter 21 of the Texas Property Code have been met; and, authorizing the use of eminent domain proceedings as set forth in Chapter 21 of the Texas Property Code regarding a 2.286 acre tract, more or less, out of a 6.91 acre tract located in Travis County, Texas owned by James Otwell, as further described in the attached proposed Ordinance for this item. (Roll Call Vote Required)**

Request: **Business Item** **Legal Document:** **Ordinance** **Legal Review:**

EXECUTIVE SUMMARY:

Please find the required language to be used if the City Council desires to approve the use of the eminent domain proceedings on the property in question.

Approval motion language –
“I move that the City of Lago Vista, Texas approve Ordinance No. _____, which authorizes the use of the power of eminent domain, as set forth in Chapter 21 of the Texas Property Code, to acquire the 2.286 acre tract, more or less, as and for a public utility easement, out of the 6.91 acre tract, more or less, in Travis County, Texas owned by James Otwell, more specifically described by a metes and bounds description attached as “Exhibit A” to the Ordinance.”

Impact if Approved:

Eminent domain powers will be authorized as a means to gain needed easements for the City's intake facilities as part of Water Treatment Plant #3, an \$11.5 million facility.

Impact if Denied:

Eminent domain powers will not be utilized and the City's Water Treatment Plant #3 continues to languish due to a lack of access.

Is Funding Required? **Yes** **No** **If Yes, Is it Budgeted?** **Yes** **No** **N/A**

Indicate Funding Source:

Funds necessary will come from the City's reserves and/or in new debt sold for it's purpose.

Suggested Motion/Recommendation/Action

Motion to:

Motion to:

Motion to:

Known As:

Ordinance authorizing acquisition of easements - Ottwell.

Agenda Item Approved by City Manager

ORDINANCE NO. 15-06-18-02

AN ORDINANCE MAKING FINDINGS OF FACT; AUTHORIZING AND DIRECTING THE ACQUISITION OF 2.286 ACRES, MORE OR LESS, FOR A PERMANENT PUBLIC UTILITY EASEMENT AND TWO TEMPORARY CONSTRUCTION EASEMENTS OUT OF A 6.91 ACRE TRACT OF LAND, MORE OR LESS, LOCATED IN TRAVIS COUNTY, TEXAS, AND OWNED BY JAMES OTWELL, MORE FULLY DESCRIBED BY METES AND BOUNDS IN EXHIBIT “A” TO THIS ORDINANCE AND REQUIRED FOR THE COMPLETION OF THE CONSTRUCTION, OPERATION, AND MAINTENANCE OF THE MUNICIPAL RAW WATER INTAKE LINE, BARGE, AND RAW WATER INTAKE FACILITIES; FINDING THE ACQUISITION OF THE PROPERTY IS REQUIRED AND NECESSARY FOR A BONA FIDE PUBLIC USE AND THE PUBLIC’S SAFETY, HEALTH AND WELFARE IS ADVANCED BY SUCH ACQUISITION; FINDING THAT THE CITY HAS COMPLIED WITH ALL PRE-ACQUISITION REQUIREMENTS SET FORTH IN CHAPTER 21, TEXAS PROPERTY CODE; CONFIRMING AND RATIFYING PRIOR AUTHORIZATIONS, ACTIONS, AND GOOD FAITH NEGOTIATIONS WITH THE OWNER OF THE PROPERTY PURSUANT TO THE TEXAS PROPERTY CODE; AUTHORIZING AND DIRECTING CITY PERSONNEL TO TAKE SUCH ACTIONS AS ARE NECESSARY TO EXERCISE THE CITY’S POWER OF EMINENT DOMAIN AND ACQUIRE THE EASEMENTS ON, OVER, THROUGH, AND ACROSS THE TRACT OF LAND IN A CONDEMNATION ACTION AND TO TAKE ALL OTHER NECESSARY STEPS TO OBTAIN SUCH LANDS.

Whereas, the City of Lago Vista, Texas, a home rule municipal corporation (the “City”) that provides water and other utility services to the City and the area within the extraterritorial jurisdiction of the City; and

Whereas, the City is authorized pursuant to Section 2.03, Lago Vista Home Rule Charter, by and through the procedures outlined in Chapter 21, Texas Property Code, to exercise the power of eminent domain for any public purpose or as necessary or desirable to carry out any power conferred by the Charter or state or federal law; and

Whereas, the City is explicitly authorized pursuant to Section 251.001, Texas Local Government Code, to take private property through the use of eminent domain for various enumerated public uses; and

Whereas, the City is explicitly authorized pursuant to Section 2206.001(c), Texas Government Code, to take private property through the use of eminent domain for water supply, wastewater, flood control, and drainage projects, as well as the provision of utility services, among other enumerated items; and

Whereas, the City Council has determined that 2.286 acres, more or less, of land is

appropriate, reasonable and necessary to acquire a public utility and two temporary construction easements on, over, through and across the tract of land more specifically described by metes and bounds, which is attached hereto (the “Property”), for the purposes of construction, operation, and maintenance of the municipal raw water intake line, barge, and raw water intake facilities (the “Project”); and

Whereas, the City Council recognizes the need to acquire the Property for the Project and acknowledges that acquisition of the Property is for a bona fide public use as defined by Section 251.001(a)(4), Texas Local Government Code, and is reasonable and necessary for the public health, safety and welfare to serve and benefit the public, citizens of the City and its water customers with water services; and

Whereas, the City Council finds that no reasonable, feasible or prudent alternatives exist but to acquire and take the Property for the Project; and

Whereas, the City Council finds that the City has attempted and will continue, in good faith, to negotiate with James Otwell (the “Landowner”), directly and by and through his attorney, by complying with all pre-acquisition requirements set forth in Chapter 21, Texas Property Code, including, but not limited to, making an initial offer, providing the Landowner’s Bill of Rights, a copy of the appraisal performed on behalf of the City regarding the Property, and a bona fide final offer; and

Whereas, the City Council finds that the Landowner has rejected the City’s bona fide final offer and/or the requisite time set forth in Chapter 21, Texas Property Code has elapsed, permitting the City to authorize the institution of eminent domain proceedings against the Landowner; and

Whereas, it is essential to the public health and safety that the City acquire the required Property as soon as possible and begin construction of the Project;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS, THAT:

Section 1. Findings of Fact. The above and foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact. The City Council further finds and determines that the immediate acquisition of the Property, as more specifically described in the following Section 2, is a bona fide public use and essential to the public health, safety and welfare of the citizens of the City; and that all actions required and necessary to acquire such Property for the Project and the related improvements, should be pursued, accomplished and completed immediately.

Section 2. Property To Be Acquired. The following described Property is necessary and essential to the health and public safety of the citizens of the City and the function, performance and operation of a portion of the City’s water system:

- (1) A 2.286 acre tract, more or less, for a public utility easement for the purposes of construction, reconstruction, operation, and maintenance of the

municipal raw water intake line, barge, and raw water intake facilities on, over, through and across that 6.91 acre, more or less, tract of land which is Lot 4, Block "A", of Amended Plat of Lots 4, 5, 6, 13, 14 & 17, Block A, Marshall's Point, a subdivision in Travis County, Texas as more particularly described by metes and bounds and shown in Exhibit "A" attached hereto and incorporated herein as if fully transcribed herein.

Section 3. Acquisition and Negotiation Authorized. The City Manager, the City Attorney and other designated staff are hereby authorized to acquire the Property through the institution of eminent domain proceedings, as set forth in Chapter 21, Texas Property Code, and are directed to initiate and complete all other actions deemed necessary and appropriate to obtain the Property. The City Manager and City Attorney are hereby further authorized to continue good faith negotiations with the Landowner of such Property for the acquisition of the same.

Section 4. Ratification of Actions. All actions heretofore taken by the City Council, the Mayor, city staff, the City Manager, and the City Attorney with respect to the acquisition of the Property described in Section 2 above and the establishment of the Project, including the negotiation for and/or acquisition of any necessary property rights, are hereby confirmed, ratified, approved and adopted by the Council.

Section 6. Further Procedures. The City Manager and the City Attorney are hereby expressly authorized, empowered and directed, from time to time, to do and perform all such acts and things as may be reasonable, necessary and desirable in order to acquire the Property on terms and conditions that are in the best interest of the public, and that provide the Landowner of the Property lawful, just and reasonable compensation.

PASSED AND ADOPTED this _____ day of _____, 2015.

ATTEST:

THE CITY OF LAGO VISTA, TEXAS

Sandra Barton, City Secretary

Randy Kruger, Mayor

EXHIBIT "A"

LEGAL DESCRIPTION

EXHIBIT A

County: Travis
 Parcel: Otwell Easement
 Project: Lago Vista Water Treatment Plant #3

PROPERTY DESCRIPTION

DESCRIPTION OF A 2.286 ACRE (99,578 SQUARE FOOT), TRACT OF LAND SITUATED IN THE UNNAMED SURVEY, PATENT NO. 57651, IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF LOT 4, BLOCK "A" OF THE AMENDED PLAT OF LOTS 4, 5, 6, 13, 14, & 17, BLOCK A, MARSHALL'S POINT ACCORDING TO THE PLAT THEREOF RECORDED IN DOCUMENT NO. 200000131 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, CONVEYED TO JAMES OTWELL BY INSTRUMENT RECORDED IN DOCUMENT NO. 2006030518 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, SAID 2.286 ACRE (99,578 SQUARE FOOT) TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

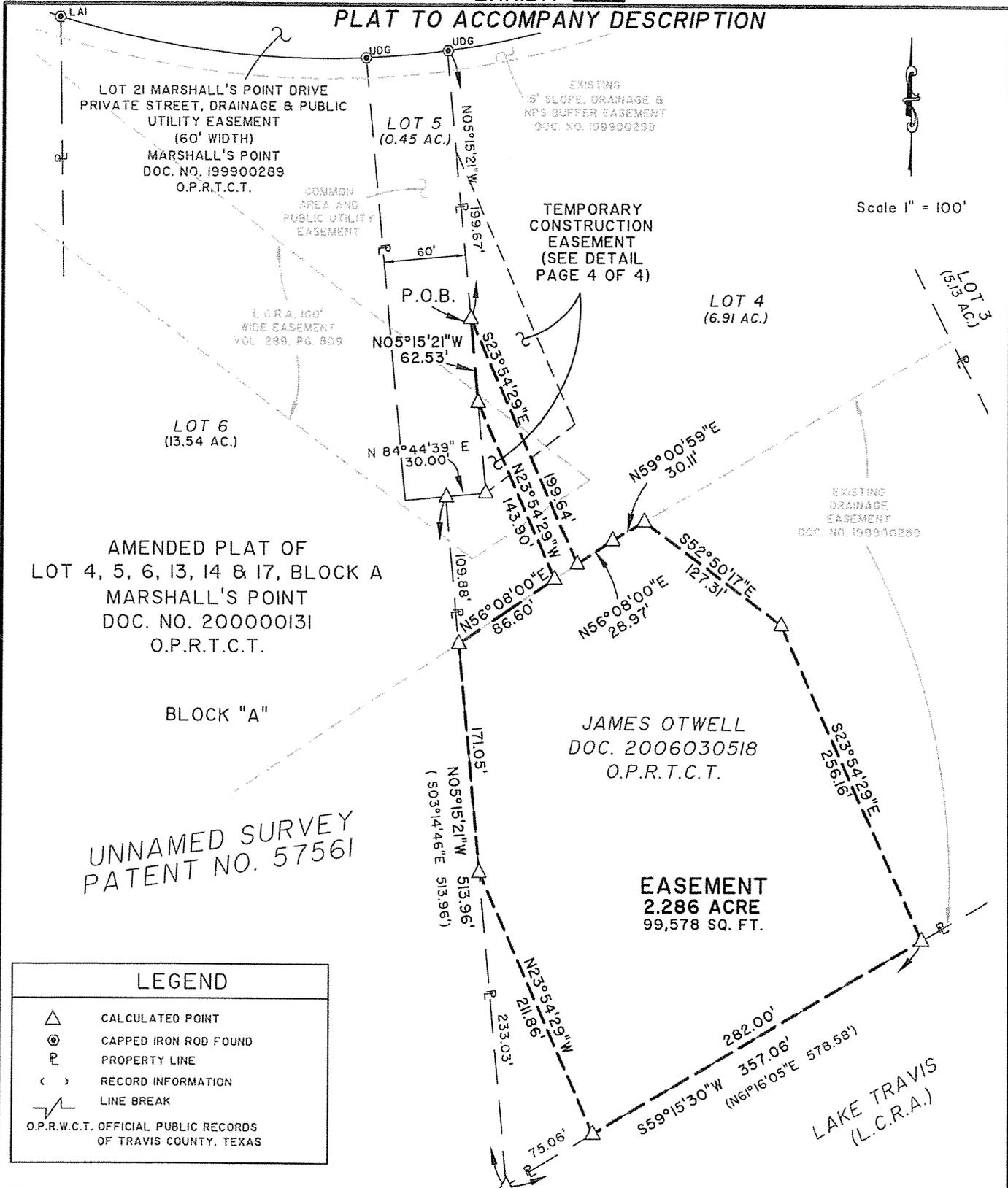
BEGINNING at a calculated point in the easterly boundary line of Lot 5 of said subdivision, same being the westerly boundary line of said Lot 4, and from which a capped iron rod found stamped UDG, being in the southerly boundary line of Lot 21 (Marshall's Point Drive Private Street, Drainage & Public Utility Easement) of the Marshall's Point Subdivision Plat recorded in Document No. 199900289 of the Official Public Records of Travis County, Texas, same being the northeast corner of said Lot 5 and the northwest corner of said Lot 4, bears N 05°15'21" W at a distance of 199.67 feet;

THENCE, departing the easterly boundary line of said Lot 5, through the interior of said Lot 4, the following (5) five courses:

- 1) **S 23°54'29" E** for a distance of 199.64 feet to a calculated point, in the northerly boundary line of an existing Drainage Easement recorded in said Document No. 199900289, for an angle point of the herein described tract;
- 2) with said existing easement boundary line, **N 56°08'00" E** for a distance of 28.97 feet to a calculated point, for an angle point of the herein described tract;
- 3) continuing with said existing easement boundary line, **N 59°00'59" E** for a distance of 30.11 feet to a calculated point, for an angle point of the herein described tract;
- 4) departing said existing easement boundary line, **S 52°50'17" E** for a distance of 127.31 feet to a calculated point, for an angle point of the herein described tract;
- 5) **S 23°54'29" E** for a distance of 256.16 feet to a calculated point, being the southerly boundary line of said Lot 4 for the most southeasterly corner of the herein described tract;
- 6) **THENCE**, with the southerly boundary line of said Lot 4, **S 59°15'30" W** for a distance of 282.00 feet to a calculated point, being the most southwesterly corner of the herein described tract, and from which the most southeasterly corner of Lot 6 of said Amended Subdivision, same being the most southwesterly corner of said Lot 4, bears S 59°15'30" W at a distance of 75.06 feet;
- 7) **THENCE**, through the interior of said Lot 4, **N 23°54'29" W** for a distance of 211.86 feet to a calculated point being in the common boundary line of said Lot 6 and said Lot 4, for an angle point of the herein described tract;
- 8) **THENCE**, with said common boundary line, **N 05°15'21" W** for a distance of 171.05 feet to a calculated point being in the northerly boundary line of said existing Drainage Easement, for an angle point of the herein described tract;
- 9) **THENCE**, departing said common boundary line, through the interior of said Lot 4 with northerly boundary line of said existing Drainage Easement, **N 56°08'00" E** for a distance of 86.60 feet to a calculated point, for an angle point of the herein described tract;

EXHIBIT A

PLAT TO ACCOMPANY DESCRIPTION



Scale 1" = 100'

AMENDED PLAT OF
LOT 4, 5, 6, 13, 14 & 17, BLOCK A
MARSHALL'S POINT
DOC. NO. 200000131
O.P.R.T.C.T.

BLOCK "A"

UNNAMED SURVEY
PATENT NO. 57561

JAMES OTWELL
DOC. 2006030518
O.P.R.T.C.T.

EASEMENT
2.286 ACRE
99,578 SQ. FT.

LAKE TRAVIS
(L.C.R.A.)

LEGEND	
△	CALCULATED POINT
⊙	CAPPED IRON ROD FOUND
⊥	PROPERTY LINE
< >	RECORD INFORMATION
— —	LINE BREAK
O.P.R.W.C.T. OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS	

INLAND GEODETICS
PROFESSIONAL LAND SURVEYORS
1504 CHISHOLM TRAIL RD. STE. 103
ROUND ROCK, TX. 78681
PH. (512) 238-1200, FAX (512) 238-1251

JAMES OTWELL
EASEMENT
2.286 ACRE
99,578 SQUARE FEET

MEETING DATE: June 22, 2015

AGENDA ITEM: WORK SESSION (no action may be taken on the following agenda items):

Report by Councilman Shoumaker concerning possible Sidewalk Grant project.

Motion by: _____

Seconded by: _____

Content of Motion: _____

Vote: Shoumaker _____; **Hunt** _____; **Kruger** _____; **Mitchell** _____;

Gloris _____; **Smith** _____; **Cox** _____

Motion Carried: Yes _____; **No** _____

MEETING DATE: June 22, 2015

AGENDA ITEM: *EXECUTIVE SESSION*

Comments:

Convene into Executive Session pursuant to Sections 551.071 and 551.072 and/or 551.074, Texas Government Code and Section 1.05 Texas Disciplinary Rules of Professional Conduct regarding:

- a. Consultation with attorney to deliberate the acquisition of real property and possible use of eminent domain proceedings as set forth in Chapter 21 of the Texas Property Code regarding a 2.286 acre tract, more or less, out of a 6.91 acre tract located in Travis County, Texas owned by James Otwell. (Roll Call Vote Required)
- b. Possible property acquisition for parks.

Motion by: _____

Seconded by: _____

Content of Motion: _____

Vote: Shoumaker _____ ; **Hunt** _____ ; **Kruger** _____ ; **Mitchell** _____ ;

Gloris _____ ; **Smith** _____ ; **Cox** _____

Motion Carried: Yes _____ ; **No** _____

MEETING DATE: June 22, 2015

AGENDA ITEM: Reconvene from executive session into open session to take action as deemed appropriate in the City Council's discretion regarding;

Comments:

Reconvene from Executive Session into open session to take action as deemed appropriate in City Council's discretion regarding:

- a. The acquisition of real property and possible use of eminent domain proceedings as set forth in Chapter 21 of the Texas Property Code regarding a 2.286 acre tract, more or less, out of a 6.91 acre tract located in Travis County, Texas owned by James Otwell.
- b. Possible property acquisition for parks.

Motion by: _____

Seconded by: _____

Content of Motion: _____

Vote: Shoumaker _____ ; **Hunt** _____ ; **Kruger** _____ ; **Mitchell** _____ ;

Gloris _____ ; **Smith** _____ ; **Cox** _____

Motion Carried: Yes _____ ; **No** _____