

The State of Texas

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County of Edwards

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BE IT REMEMBERED that on this 9th day of July, 2024, at 9:00 a.m. there came on and was held in the City of Rocksprings, Edwards County, Texas, at the Edwards County Courthouse therein, a Regular Open Meeting of the Commissioners' Court of Edwards County, Texas. The Agenda for this Regular Open Meeting of the Commissioners Court of Edwards County, Texas was posted on July 5, 2024 at 9:15 a.m.

Present were:

Honorable Marty Graham, Commissioner of Precinct One

Honorable Steve Smith, Commissioner of Precinct Two

Honorable Matt Fry, Commissioner of Precinct Three

Honorable Mike Grooms, Commissioner of Precinct Four, was absent

Honorable Souli Asa Shanklin, County Judge

Honorable Olga Lydia Reyes, County and District Clerk

1. Determination of quorum; Call to Order. The Open Meeting was called to order at 9:00 o'clock a.m. by Judge Shanklin. The Pledge of Allegiance to the United States Flag and to the Texas State Flag were recited. The Court was led in prayer by Commissioner Fry. The roll was then called by Clerk Reyes. All Commissioners, with the exception of Commissioner Grooms, were present.

2. Open Forum. There were no participants in the Open Forum.

3. Staff Reports. There were no questions on the staff reports.

4. DELIBERATE, CONSIDER and/or TAKE ACTION ON ANY OF THE FOLLOWING:

a. Prior Minutes. Commissioner Smith made the motion to approve the minutes from the June 2024 meeting. Commissioner Graham seconded the motion. No Commissioner noting any opposition, the motion carried 5/0.

b. Burn Ban. The burn ban is currently in effect. Commissioner Smith made the motion to allow Judge Shanklin the authority to change the status of the burn ban as needed. Commissioner Graham seconded the motion. No Commissioner noting any objection, the motion carried 5/0.

c. **Presentation of Audit ending September 30, 2023 – Eric Ede.** Mr. Ede and his son appeared before the Court to review the “Annual Financial Report for the Year Ended September 30, 2023” prepared by his firm. This report provided an overview of Edwards County’s financial statements. Commissioner Grooms made the motion to approve the Audit ending September 30, 2023. Commissioner Graham seconded the motion. No Commissioner noting any opposition, the motion carried 5/0.

d. **Discussion and Act upon Revision of Edwards County Employee Manual. – Lupe Enriquez.** Commissioner Smith made the motion to accept the revision of the Edwards County Employee Manual as presented by Lupe Enriquez; Commissioner Fry seconded the motion. No Commissioner noting any opposition, the motion carried 5/0.

e. **Discussion and Act upon Contract with Claud H. Gilmer Memorial Library – Judge Shanklin.** Commissioner Graham made the motion to approve the Contract with the Claud H. Gilmer Memorial Library; Commissioner Grooms seconded the motion. No Commissioner noting any opposition, the motion carried 5/0.

f. **Discussion of 2024-2025 Budget.** Under our preliminaries, so far everything budgeted is good. Judge Shanklin invited the Commissioners to review these preliminaries and ask questions of department heads if needed.

g. **Discussion and Act upon Budget Amendment to Park Building Renovation/1000.0409.4275 in the amount of \$250,000.00 – Judge Shanklin. Judge Shanklin stated that only \$100,000 was budgeted.** The demolition of the area being renovated has been done. Commissioner Smith made the motion to approve the Budget Amendment to Park Building Renovation/1000.0409.4275 in the amount of \$250,000.00. Commissioner Graham seconded the motion. No Commissioner noting any opposition, the motion carried 5/0.

h. **Discussion and Act upon Budget Amendment to Repair and Maintenance/1000.0409.4399- in the amount of \$40,000.00 – Judge Shanklin.** When AEP came to evaluate the repairs needed at the baseball field and rodeo arena, no one from the Rocksprings Youth Organization (hereinafter “RYO”) was available to speak with them. They noticed that the dugouts on the field had tin on them. AEP said we had to take the tin off and then the field would not have to be rearranged. In settlement with AEP, they have redone the lights at the rodeo arena, they have done some work on the sprinkler system at the baseball field,

and they have replaced lights at the baseball field. We have now gotten this work done and these funds that have been sitting in our account should now be moved from general funds to the Repair and Maintenance/1000.0409.4399 line item to cover the cost of these repairs. Commissioner Grooms made the motion to approve the Budget Amendment to Park Building Renovation/1000.0409.4399 in the amount of \$40,000. Commissioner Fry seconded the motion. No Commissioner noting any opposition, the motion carried 5/0.

i. **Discussion of Subdivision Rules and Regulations – Judge Shanklin.** Judge Shanklin announced that State Rep. Andrew Murr will try to be here at 10:00 am.

Shanklin started off the discussion by stating that the Texas House passed HB 3697; they sent it over to the Senate the next day after the impeachment of Attorney General Ken Paxton. This bill came back from the Senate with these markups on it and the House did not look at it since they were in a little bit of disarray and they passed it. Volney Hough sent a Facebook message to Commissioners Graham and Fry and they sent it to the Judge. The Judge, in turn, sent it to Andrew Murr and asked if he would comment on this. According to Shanklin, Murr said he would read the message and send Shanklin the context of it. Murr read it and called Shanklin back, according to Shanklin, and said he felt like he failed us and all rural counties had been sat upon by Bettencourt out of Harris County.

Meanwhile, Fry called Shanklin and stated that a place had sold out on White Mountain Road and it was being subdivided. Shanklin was unaware of it. One day, two gentlemen came into Shanklin's office and told him they were blasting and needed to know what to do. When asked where they were blasting, the men responded that it was the piece of property that Fry had previously mentioned. Shanklin instructed his assistant to give a copy of the Subdivision Regulations to these men. According to Shanklin, they stated that they had never seen these before. They were told to show it to their boss and they left; Shanklin never heard another word about it. Then, Renn Riley, the Chief Appraiser for the Edwards Central Appraisal District, called Shanklin and told him that deeds were being filed on that property that was being sold. She reported calling Todd Wilson at the Southwest Communications and found out that he had a plat to this property since the phone company was getting ready to lay fiber. Shanklin stated that the County is trying to figure out what it needs to do. He thinks there is litigation that is going to take place. It is going to come down to what the County is going to do.

Shanklin stated that the Commissioners were sent a copy of HB 3697 with the markups. There are criminal penalties to this. Shanklin stated that was why the new County Attorney-elect was at this meeting. Shanklin called out Charles McDonald to start the discussion here today. He asked McDonald to tell the Court what they had discussed this morning.

McDonald stated that all of the violations start out as Class C criminal misdemeanors and, depending on the severity, they go up from there. He is referring to a chart in the Designated Representative Enforcement Guideline book. While this book deals mainly with failing septic systems, there is one rule that deals with a violation of a rule, order or resolution adopted by the Commissioner Court or authorized agent under House Code 366. This takes in every rule and regulation on on-site wastewater. According to McDonald, the developers are required by the Texas Commission on Environmental Quality, hereinafter "TCEQ") and the Texas Administrative Code (hereinafter "TAC") Ch. 3285 to file a report with him regarding materials used in wastewater systems, and they failed to do that, unlike in the past. McDonald stated that there are 7 codes that make up this information: Water Code Chs. 7, 26, 37, Health & Safety Code Chs. 341, 343, 366, and TAC Ch. 3285. McDonald stated that he has a call in to Austin to see if he can get the Enforcement Division of TCEQ to join in on this and see if they can help us.

From the audience, Sterling Martin commented regarding every subdivision being able to maintain private roads. Martin stated that they are using Local Government Code, Ch. 232 to go around the plat requirement. Shanklin stated that the tracts in this subdivision were around 20 acres in size and that a County Road goes right to the property gate. Martin asked if they were subdividing beyond that. Shanklin answered in the affirmative. Fry stated that access to this property comes off a county road. Martin stated that Sec. 232.001 had been changed. Fry clarified for the Court what Martin was stating: Yes, the ranch itself is off of a county road but the contradiction is, is that each individual tract has to join the county road. So, once they enter the ranch, they are off of the county road. Martin stated that other counties in the area were involved in litigation regarding their subdivision regulations. Martin continued his address to the Court by commenting on these matters, continuing his discussion of Ch. 232.001 and its' changes, and the topics of private roads through the subdivisions and multiple entrances to subdivisions. McDonald and Sheriff Guthrie also joined in this discussion.

Shanklin stated that when the State passed the model subdivision regulations, they said this is the model; you can go more stringent, but you cannot go below. Martin continued this discussion with Shanklin and Fry interjecting. Shanklin asked how these regulations could be enforced, or if they could be enforced. Guthrie stated that they could be enforced in two ways. He stated that if the County Attorney files the case with a court of competent jurisdiction, asking if the subdivision has a septic system, McDonald would have the inspection authority (as opposed to probable cause) that allows him to go into a single family dwelling in order to seek compliance for the septic system. The State requires all septic systems to be licensed and inspected. Or, if we go through TCEQ, they go through administrative penalties. Guthrie stated that this will take the County, the criminal part, and the court cost part out of it. The burden is taken by TCEQ and it is administrative. So, you have criminal or administrative ways to go in his opinion. If you get TCEQ involved, they carry the lion's share of the load. Sometimes it is successful, sometimes it is not.

Texas State Representative Andrew Murr arrived.

Fry asked if PEC could do some sort of study or documentation as to their supply to the county or the distribution throughout the county, to prove that we don't have the electrical infrastructure for each one of these subdivision for the amount of tracts, parcels, etc. if they are trying to protect the infrastructure. Shanklin responded that with Rio Grande Electric, anyone who buys in a subdivision that wants electricity has to come to his office and get a certificate of compliance before Rio Grande will hook them up. The County can put a stop to any electricity being hooked up with Rio Grande if we don't give them a certificate of compliance. PEC doesn't do this. If we could get PEC to do this, we could put a stop to everything. They would have to adhere to our subdivision regulations. Shanklin responded that since the majority of the County is serviced by PEC, they send us a notice that says that they have hooked up electricity to a particular tract.

Guthrie interjected and said that an electric company should have a plat before they run any lines. Shanklin stated that the developers in this case sent the plat to Southwest Communications. Guthrie said that if the plat was not approved, they should not provide it to any utilities by statute. Shanklin asked that if that plat had not been approved by this Court, then was PEC not supposed to have given them electricity? Guthrie stated that he deferred to the attorneys on this question. Fry stated that they technically had all the easements.

McDonald read the Court a rule that the electric company was required to notify the County Judge of all new electric service being provided on a weekly basis. Shanklin stated that they do but that he does not get these notices. McDonald then stated that PEC would have to be asked where these notices were being sent to. Shanklin corrected himself stating that the notices are sent to his office but that he does not know where the address is at. They send information with longitude and latitude on it, not an address.

There was a discussion about utilities and water wells. Fry asked if any permit for water wells had been filed recently. An Underground Water District representative in the audience responded that there had been two over the last month.

Shanklin asked that since the County is requiring a plat in its subdivision regulations and the County is part of the Underground Water District, is there nothing binding in our Subdivision Regulations from the Water District issuing drilling, or water well, permits? The UWD rep stated that he would have to ask this question to their attorneys. Fry stated that our Underground Water permitting might have to be updated a little bit too.

Murr stood to address the Court. He stated this was about HB 3697. This bill was carried by a representative who now lives near Georgetown. It passed the House and seemed innocuous. The only person who testified against it was a Commissioner from Travis County. It went to the Senate and came back on the second to the last day and the Senate had a different version of the bill. The process is that when the House and the Senate differ on a bill, it goes to a Conference Committee. The Conference Committee is usually comprised of the bill author and 4 other people selected by the author. When it comes back to the House, you generally trust that the person that is receiving it, if there is a red flag, they would tell you. Either that person in this case did not understand it or he didn't convey that to the House members on the second to the last day. The House accepted the bill with the Senate's changes, an addition that stated that the Commissioners Court shall not regulate plats. Murr stated that it read: A rule relating to plats, developer permits, and subdivisions of land may not require an analysis, study, document, agreement, or similar requirement unless otherwise specifically required by statute.

So, Murr posited the question, what happens next? There are different avenues. The land has to be developed if people are going to live on it. This involves

electricity, sewer, and water. We don't know what a developer is doing until they start selling tracts. The Court/County wants to say you need to bring us a plat that needs to be approved by the County. Who is going to sue a landowner for not bringing a plat forward for approval? Someone would have to file a test case. Two things: One, it takes a long time. Two, you have forces working against you who got what they wanted and they will not go gently into the night. This is a decision that the County will have to make. You need someone well versed in all these laws to assist the County.

Shanklin stated that almost all landowners in Edwards County sell to the developers. People will put their property on the market and it does not sell; then, the developers come in and buy all the property. So, you are suing the developer. Murr stated that no, you are suing the landowner. An issue that can arise is that sometimes the landowner or developer will own it for 2-3 years.

Shanklin asked if there are any other counties in the surrounding areas, that, like we are, were ready to take this on? Murr answered that with 254 counties, the County we would be looking for to take something like this on would be a more affluent county with a bigger budget that is in a high growth area. Martin interjected with the names of several attorneys who he thinks have knowledge in this area.

Shanklin stated that in our County, we furnish water for two major watersheds: Llano, Nueces, Corpus Christi, Austin. Underground furnishes a major metropolitan area: Bexar County, San Antonio. It sounds like, to him, somebody would be interested in helping us. A discussion on the possibility of a lawsuit, how a lawsuit proceeds through Court, an appeal, and issues in surrounding areas was undertaken. Shanklin also brought up the health and safety aspect of not having a plat with named roads for these subdivisions. He stated that 60% of our calls for assistance come from these subdivisions. If it is unplatted, the Sheriff, the County, and the EMS does not have road information. Shanklin stated that when calls come in for emergencies like a heart attack or being shot, we can't just say "sorry, we can't find you." Murr stated that in this fact pattern, the County would be making a public policy argument when in fact it is going to be two parties dueling over an interpretation of state law.

Murr stated that if a County, not talking specifically about our County, but just in general, wanted to do a test case of a lawsuit against a landowner, to lay the predicate for being adversaries, that county is going to say "Developer, bring us a

plat. You need to provide a plat for a variety of different reasons and you need to provide us with reports of availability of water, wastewater, etc. It needs to be made available to us, a governmental entity, along with proof that you have provided that study to whoever you are supposed to." Landowner says "go jump in the lake." County will say "fine, we will have a Judge tell you to do it." Then, they would file suit and not simply say, we need a plat; it would be a suit that says you have to follow all of these other rules and you have not. The County would be more likely to succeed because they are giving a judge more than one opportunity to hang a hook on a good argument. Also, the County could file a Lis Pendens on the land involved, in effect telling anyone interest in this property that it is subject to litigation or pending controversy.

The Court continued this discussion and ended with an expression of thanks to Rep. Murr.

5. **New Business.** No new business was discussed.

6. **Set time and date for next meeting.** The next meeting of the Edwards County Commissioners Court is scheduled for the second Tuesday of August, 2024 (August 13, 2024) at 9:00 a.m.

7. **Pay bills.** Commissioner Smith made the motion to approve the bills; Commissioner Graham seconded the motion. No Commissioner noting any opposition, the motion carried 5/0.

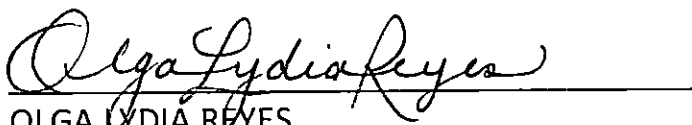
8. **Adjourn.** Commissioner Smith made the motion to adjourn. Commissioner Graham seconded the motion. No Commissioner noting any opposition, the motion carried 5/0. This meeting of the Edwards County Commissioners Court was adjourned at 11:11 a.m.

APPROVED:



SOULI ASA SHANKLIN
Edwards County Judge

Attest:



OLGA LYDIA REYES
Edwards County and District Clerk

