

LAKEWOOD VILLAGE TOWN COUNCIL

COUNCIL MEETING

AUGUST 15, 2019

Council Members:

Dr. Mark Vargus, Mayor
Darrell West – Mayor Pro-Tem
Clint Bushong
Serena Lepley
Matt Bissonnette
Eric Farage – Arrived at 8:32 p.m.

Town Staff:

Linda Asbell, TRMC, CMC – Town Secretary
Timothy “Tad” Dunn, Deputy Town Attorney

REGULAR SESSION - 7:00 P.M.

With a quorum of the Council Members present, Mayor Vargus called the Regular Meeting of the Town Council to order at 7:00 p.m. on Thursday, August 15, 2019, in the Council Chambers of the Lakewood Village Town Hall, 100 Highridge Drive, Lakewood Village, Texas.

PLEDGE TO THE FLAG:

(Agenda Item A)

Mayor Vargus led the Pledge of Allegiance

VISITOR/CITIZENS FORUM:

(Agenda Item B)

No one requested to speak

PUBLIC HEARING:

(Agenda Item C)

A public hearing was held to provide an opportunity for citizens to comment on the amendments to the Zoning, Subdivisions Regulation Ordinance and Building Codes to cause said ordinance to be in compliance with House Bill 2439, House Bill 3167 and House Bill 2497 which take effect on September 1, 2019. Mayor Vargus opened the public hearing at 7:08 p.m.

Mayor Vargus reported on the legislature changes which take effective September 1st. Mayor Vargus reported on the process for updating the ordinances to meet the legislative requirements.

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MOTION: Upon a motion made by Councilman Bushong and seconded by Councilman Farage, council voted five (5) “ayes”, no (0) “nays” to close the public hearing at 7:01 pm. *The motion carried.*

CONSENT AGENDA:

(Agenda Item D)

1. Minutes of July 11, 2019 Council Meeting (Asbell)
2. Minutes of the August 8, 2019 Council Meeting (Asbell)
3. Interlocal Agreement with Denton County for Tax Collection (Asbell)

MOTION: Upon a motion made by Councilman Bushong and seconded by Councilman Farage, council voted five (5) “ayes”, no (0) “nays” to approve the consent agenda items as presented. *The motion carried.*

EXECUTIVE SESSION:

(Agenda Item E)

At 7:02 p.m. Mayor Vargus recessed into executive session in accordance with (1) § 551.071(2), Texas Government Code to wit: consultation with Town Attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter to receive legal advice regarding the appeal of the building official ruling regarding 474 Peninsula Drive. (2) § 551.072 (1)

RECONVENE:

(Agenda Item F)

Mayor Vargus reconvened the regular session at 7:19 p.m. No action was taken.

REGULAR AGENDA:

(Agenda Item G)

**Resolution for the Appointment of One
Member to the Board of Managers of the
DENCO Area 9-1-1 District (Asbell)**

(Agenda Item G.1)

Ms. Sue Tejml introduced herself and described the DENCO 911 board structure and election process. Ms. Tejml provided information about the 9-1-1 service capabilities in Denton and surrounding areas.

MOTION: Upon a motion made by Mayor Pro-Tem West and seconded by Councilman Farage, council voted five (5) “ayes”, no (0) “nays” to approve the proposed

resolution appointing Sue Tejml to the Board of Managers of DENCO Area 9-1-1 District. *The motion carried.*

**Consideration of Appeal of Building Official
Ruling Regarding 474 Peninsula (Vargus)**

(Agenda Item G.2)

Mayor Vargus reviewed the procedure for the appeal. Deputy Town Attorney Dunn questioned Town Building Official Steve Freeman. Mr. Freeman provided information about his qualifications, education, and job duties. Mr. Freeman provided information about the town's building regulations. Mr. Freeman provided information about the retaining walls constructed at 474 Peninsula. Mr. Freeman provided information about a stop work order placed on the property and work being done in violation of the stop work order. Mr. Freeman provided information about a meeting with the builder and property owner that took place as a result of the stop work order. Mr. Freeman reviewed the grading permit which was issued for the property. Mr. Dunn asked Mr. Freeman to review photos – Exhibit 3 of the north wall and Exhibit 4 of the south wall. Mr. Ackles stated that he objected to the use of the exhibits referenced by Mr. Dunn because he made an open records request for this information and the Attorney General ruling has not yet been received.

Mr. Freeman reported the north wall was in excess of four feet in height. Mr. Freeman was unable to get under grade to measure the base of the footing, the visible wall measured just under 48". Mr. Freeman reviewed the building permit requirements for retaining walls and reported that both walls on the property at 474 Peninsula have a surcharge. Mr. Freeman reported that a permit is required for retaining walls that are greater than 48 inches in height and retaining walls that are greater than 24 inches and are supporting a surcharge. Mr. Ackles stated that he objects to the use of any photos or evidence that has not been previously provided to him. Mr. Freeman reported that pictures marked as Exhibit 4 show a surcharge. Mr. Ackles stated that he objected to the use of any evidence being utilized by Deputy Town Attorney Dunn.

Mr. Freeman reported that he reviewed the regulations and inspected the property. He determined the retaining walls constructed on the property required permits and no permits were pulled.

Mr. Ackles asked Mr. Freeman to correct his previous statement on the height of the north wall. Mr. Ackles asked Mr. Freeman if the wall was completed and if the top of the wall was shaved down to make the wall 48 inches if it would be in compliance with regulations. Mr. Freeman stated it would still not be in compliance because it carries a surcharge. Mr. Freeman reported that he observed that the dirt on the opposite side of the wall was over 24".

Mr. Freeman reported that he did not observe work in process because the walls were already complete. Mr. Freeman stated that he received a call from the Town Secretary informing him

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that the work was done on the property and he went to the property and placed a stop work order. Mr. Ackels questioned Mr. Freeman about the timeline of photos taken on the property. There was some discussion about the relevance of Mr. Ackels questions. Mr. Ackels reported that his line of questioning is relevant because the owner has reported to him that the Mayor has a conflict of interest on this property and the town has selectively enforced the building regulations on this property.

Mr. Ackels asked Mr. Freeman to review international building code section 102 for applicability to this property. Mr. Freeman stated that retaining walls that are not over 4 feet in height, measured from the bottom of the footing, are exempt from the permit requirement unless it has a surcharge. Mr. Freeman reported that he measured the wall to establish the height of the wall. Mr. Ackels reviewed the dates of the stop work order placement and the meeting with the owner following the stop work order. Mr. Freeman stated that he remembered discussing the location of a port-a-potty during that meeting. Mr. Freeman reported that piles of rocks and dirt were placed in front and on the property after the stop work order. Mr. Freeman stated that he sent an email to the Town Secretary and asked her to forward the email to the property owner regarding removal of the rocks and dirt from the property. Mr. Freeman reported on the permit requirements for retaining walls and permitting requirements for pouring concrete. Mr. Ackels reviewed the letter Mr. Freeman sent to Mr. Cook and reviewed the code sections relevant to the permit process.

Mr. Ackels stated that he was finished questioning Mr. Freeman. He introduced himself and reported that he represents Mr. Cook, owner of 474 Peninsula. Brad Cook introduced himself and reported that his interaction with the town began in 2017 when he purchased the house at 474 Peninsula and met Town Secretary Asbell. Mr. Cook reported that he understands the permitting process and generally he trusts that a city official will direct him to the proper person when he is asking questions about property and permitting. Mr. Cook reported that the Town Secretary issued his grading permit and told him that a retaining wall does not need a permit if it is under four feet. Mr. Cook reported on a meeting the day after a stop work order was issued. Mr. Cook stated that his character is being questioned and he will stand very firm on this issue.

Mr. Ackels asked members of the audience to confirm what Mr. Cook stated. Mr. Ackels reviewed the letter Mr. Cook received from Mr. Freeman. Mr. Ackels stated that his appeal is based on the letter Mr. Cook received and the reference in the code is incorrect. Mr. Ackels stated that if a different code is applicable then a different violation letter should be issued. Mr. Ackels stated that the Mayor should recuse himself from this discussion. Mr. Ackels then stated his presentation is concluded.

Mayor Vargus stated that often problems are the result of miscommunication. Mayor Vargus reviewed grading permit issued on the property. The permit identifies the location of the retaining walls as being where a silt fence will be placed and does not identify that a retaining

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wall will be constructed. Mayor Vargus stated that if the retaining walls had been identified the permit would have been handled differently and would have been subject to a plan review.

Mayor Vargus stated that the wall on the right of the property carries a large surcharge because of the house, HVAC equipment, and pool equipment that is located next to the retaining wall. Mayor Vargus stated that the height of the wall does not change if dirt is brought in to bury part of the wall. Mayor Vargus reported on the process of performing a risk assessment and how that applies to the building process. The inspection process mitigates the risk. Mayor Vargus stated the retaining wall was never inspected and engineering was not provided. Mayor Vargus reported that the risk on the right side of the property is very high due to the potential for damage to the house and equipment on the adjacent property. Mayor Vargus stated the risk on the left wall is much lower because the property on that side is vacant. Mayor Vargus reported on moral hazard, and risk of allowing work to be done without permits setting a precedent for future work to be completed without a permit with no penalty. Mayor Vargus stated that his opinion is the wall on the right carries too large a risk because of the house. Mayor Vargus asked Mr. Cook if he believed he could work with Mr. Freeman to resolve concerns on the left wall. Mr. Cook stated that he would welcome that opportunity.

Mayor Pro-Tem West stated that the primary problem seems to be the surcharge. Mayor Pro-Tem West stated that the wall on the right is a concern because of the surcharge. Councilman Bushong asked Mr. Freeman to report on the inspection process for retaining walls. Mr. Freeman stated that he requires an engineer letter and then he will perform a prepour inspection to compare to engineer drawing. Town Secretary Asbell reported that the owner of the adjacent to the wall on the right expressed concern about the wall and the damage to his property and fence during the construction of the retaining wall. There was some discussion about the final plans for the wall. Councilman Bushong stated that he believes the adjacent property is at risk if the south wall remains. Councilman Farage stated that he agrees that the property to the south is at risk.

Councilman Bissonnette stated that he has read the building code and it is clear to him that a permit is required. Councilman Bissonnette stated that a neighbor's concern could possibly have been addressed if a permit had been obtained and inspections were completed. Councilwoman Lepley expressed concern about the potential damage to the neighbor's property with the existing wall on the south side. Councilwoman Lepley asked if the builder could correct the wall. Mr. Freeman reviewed the process for potentially correcting a retaining wall. Mayor Pro-Tem West asked about constructing a wall with no surcharge.

There was some discussion about how to negate the surcharge on the wall. Mayor Vargus stated that he believes the council should hold this appeal in abeyance pending the property owner complying with the building official. There was discussion about the appeal being tabled until the next council meeting.

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MOTION: Upon a motion made by Mayor Pro-Tem West and seconded by Councilman Bissonnette, council voted five (5) “ayes”, no (0) “nays” to table the appeal. *The motion carried.*

Consideration of Zoning Ordinance (Vargus)

(Agenda Item G.3)

Deputy Town Attorney Dunn reported that this ordinance responds to requirements of House Bill 2439. Attorney Dunn reviewed the limitations on zoning requirements established by the house bill. Attorney Dunn stated that deed restrictions are not affected. The Attorney General or an aggrieved party can seek injunctive relief if the town did not adopt this ordinance. A developer agreement can still require specific building standards above the international residential code.

MOTION: Upon a motion made by Councilman Farage and seconded by Councilwoman Bissonnette, council voted five (5) “ayes”, no (0) “nays” to approve the ordinance as presented. *The motion carried.*

**Consideration of Subdivision Ordinance
(Vargus)**

(Agenda Item G.4)

Attorney Dunn reviewed the new requirements for plat submission and approval or denial

MOTION: Upon a motion made by Councilman Farage and seconded by Councilman Bissonnette, council voted five (5) “ayes”, no (0) “nays” to approve the subdivision ordinance. *The motion carried.*

EXECUTIVE SESSION:

(Agenda Item G)

At 9:07 p.m. Mayor Vargus recessed into executive session in accordance with (1) § 551.071(2), Texas Government Code to wit: consultation with Town Attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter to receive legal advice. (2) § 551.072 Texas Government Code to wit: deliberations about real property; (3) § 551.087 Texas Government Code to wit: Economic Development Negotiations; and (4) § 551.076 Texas Government Code to wit: deliberations about Security Devices

RECONVENE:

(Agenda Item H)

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Mayor Vargus reconvened the regular session at 9:38 p.m. No action was taken.

REPORTS

(Agenda Item I)

No reports were given

ADJOURNMENT

(Agenda Item J)

MOTION: Upon a motion made by Councilwoman Lepley and seconded by Mayor Pro-Tem West council voted five (5) “ayes” and no (0) “nays” to adjourn the Regular Meeting of the Lakewood Village Town Council at 9:39 p.m. on Thursday, August 15, 2019. The motion carried.

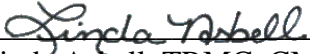
These minutes approved by the Lakewood Village Town Council on the 14th day of November 2019.

APPROVED



Darrell West
MAYOR PRO-TEM

ATTEST:



Linda Asbell, TRMC, CMC
TOWN SECRETARY









