

## MINUTES OF SPECIAL MEETING

July 21, 2017

### SHENANDOAH CITY COUNCIL

1. CALL TO ORDER (0:05)

**Mayor Pro-tem Bradt:** We'll called the meeting, the Special Meeting of the City Council of City of Shenandoah, July 21st 2017.

2. CALL OF ROLL (0:14)

**Mayor Pro-tem Bradt:** Call the roll, looks like everyone's here with the exception of the mayor, and he has an excused absence. I will take over. I will reserve my right to vote, but we're not going to vote on anything.

3. PLEDGE OF ALLEGIANCE (0:26)

**Mayor Pro-tem Bradt:** Everyone stand for the pledge of allegiance.

**Participants:** I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all. Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.

4. INVOCATION (1:01)

**Mayor Pro-tem Bradt:** If everyone would remain standing, I've got a little invocation I'll say. Heavenly Father, we thank you for bringing us together today to serve our great city of Shenandoah, Texas. Father, protect us and guide us in our decision-making today. Please, bless our residents, our businesses, our visitors and our city staff, and keep them all safe. Amen.

**Crowd:** Amen.

5. Citizens Forum (1:26)

**Mayor Pro-tem Bradt:** Citizen's forum, we have no citizens who wish to speak, please?

6. Receive and discuss information related to the MetroPark Public Improvement District (PID).  
(1:37)

**Mayor Pro-tem Bradt:** We'll move on to item number six, receive and discuss information related to the Metro Park Public Improvement District, PID.

**Mr. Smith:** Council, this is information session for the new council members to receive information that previous council has received from the two attorneys, both our attorney, as well as the attorney for representing Metro Park for the PID. They will turn us over to those two. Let them answer any questions and discuss the process, as well we have Metro Park's engineer, if you have any specific questions on any of the infrastructure that will be included in the PID. I'll turn it over to Misty and Clark.

**Misty Ventura:** Clark, would you like me to start?

**Clark Lord:** Sure. Yes. Unless the council -- I think it probably would be appropriate for the developer to lay out the project, perhaps, and state their case, and then just to take your questions. I may give a little introduction about the city's standpoint with respect to the PID.

**Mayor Pro-tem Bradt:** Keep in mind the three of us, this is our first--

**Clark Lord:** Yes, exactly. Yes. Thank you for that reason. I think it probably good just go back just to present the project and give the basic information of what the developer is proposing, and then I'll step in and talk about it from the city's sub point of view and city's role on the process.

**Mayor Pro-tem Bradt:** If you need to walk around, we've got mobile mics available.

**Misty Ventura:** I'm happy to walk around and I'm happy to stand in the podium if it's more convenient.

**Mayor Pro-tem Bradt:** Your choice.

**Misty Ventura:** Okay, then. I'll stay here until you ask me to do something different. My name is Misty Ventura 9406 Biscayne Boulevard, Dallas Texas 75218 for the record. I am a lawyer. I represent Sam Moon, the developer. I believe this community is very aware of the Moon development. They got an existing retail facility. They own land around that facility. They're in the progress of expanding that project that is known in the community as Metro Park.

The ultimate development of that project is something we'd all like to see, not only for the developer because they've held the land undeveloped for a long time but for the community, because it's an opportunity to create tax base and retail and service uses that are desired in the community. We've been working for several years. We have started construction of the next phase, an AMC theater, I believe, and other infrastructure; that initial infrastructure spin that started at the beginning of this year when you approved the construction plans for that infrastructure is about a five million dollar spend.

But ultimately, there is a lot more infrastructure needed to fully develop that project. Infrastructure is expensive, and so collaboratively, we worked with your city professional team and we said, "What tools do we have in the toolkit to finance the infrastructure?" The tool that we focused on is a PID, a public improvement district. It's a tool authorized by Chapter 372 of the local government code. When we think about a PID, we can think about it in a three-step process.

The first step with respect to a PID, is to create the PID that can only be done on a petition of a property owner. When we're using that tool, a property owner is coming to you with the petition and saying, "Please, burden my property with a geographic boundary in which you will levy assessments to finance public improvements." The first step in the process is the property owner coming to with a PID petition, requesting the district be created. I want to distinguish a PID from other types of districts that you might be familiar with, like MUDs, or Fresh Water Supply Districts, or other types of districts that you see in north Texas.

Those types of Districts that are created under authority of the water code, are separate government entities with the power to tax and the power to condemn. That is not a PID. A PID is more like a TIF, a Tax Increment Reinvestment Zone, because it's merely a geographic boundary and it's completely controlled by the sponsoring jurisdiction, in this case the city, but it could be a county. A city, you receive a petition from a property owner asking that a PID be created. Then after a public hearing, you take action.

This community took action to create a PID for this project in March. In this instance, the first step of the three-step process, is done; the PID is created. The next step in the process, is to determine what costs are going to be funded with the PID, and PID stands for public. We're only talking about funding public improvements, bread and butter infrastructure; water, sewer, roads, drainage. With respect to those infrastructure costs, we have smart engineers like Dan Elkins and others, who figure out what infrastructure is needed and then complete cost estimate, and then we come to you in and ask for the second step in the process, which is where we are now, which is to say, we have all of this infrastructure that's needed for the project and we would like to levy an assessment; we would like you to levy an assessment on this property so that that assessment can help pay for this infrastructure.

Fundamentally, the PID is a financing tool to help fund public infrastructure, not from the community's tax base, but instead based on a special assessment levied against the property benefited by the infrastructure. When we think about the PID, not only do we think about the P being for public improvements, but we also think about the folks burdened with the obligation to pay for the public improvements, benefiting from the improvements they're paying for. Because, the PID assessment is burdening the property; it is, in fact, a lien against the property that stands behind ad valorem taxes but in front of all private money.

Even if that private money lien like the construction loans building those private improvements came first, the PID assessment once levied, attaches to the property and creates a lien that stands in front of all of that private money. It's a very secure source to monetize, to help fund public infrastructure. It is an addition to taxes; the taxes that everyone in the community pays are uniform and will still apply. This is a supplement to that. It's a special assessment that burdens the property.

The second step in the PID process after creation, is to levy assessments on the property. The condition precedent to levying the assessment on the property, is a cost determination resolution. You have to say, "This is what we're financing and this is how much we think it's going to cost" and then you have to call a public hearing. After that public hearing and a finding of special benefit to the property, you could then levy an assessment on the property.

That assessment lien is levied in a lump sum, let's say the infrastructure's going to cost a big number, 10 million dollars. The lien is levied for 10 million dollars, but then you provide for the collection of that assessment over time in annual installments sized to fund debt service on the bonds that actually fund the infrastructure. The third or last step in the PID process, is to issue debt. I know nobody likes to issue debt, and I know in this community in particular, there hasn't been much debt issued.

With respect to this debt, it's a special type of debt. The PID bonds are not secured by the city's full faith and credit, are not secured by the city's ad valorem taxes, are not secured by the city's sales tax. The only security for the bonds would be the PID assessments levied against the property. Those assessments create revenue, and that special revenue is what's pledged to the repayment of the bonds.

When we think about the PID and we think about that third step, what we're asking you to do is issue bonds, special revenue bonds, secured solely the assessments on the property to fund public infrastructure. Part of that infrastructure is the infrastructure that's being built right now. When those bonds were sold, part of the money from that bond sale would go to repay that infrastructure that's currently being constructed.

The other part of that money would fund the balance of the infrastructure needed for full development of this project, so that the funding of that infrastructure becomes the tool that

accelerates the development and makes it come faster and nicer than it otherwise would come. We're here before you today saying, "Please, help us. Please, in the spirit of public private partnership and collaborative efforts, work with us to move forward and complete the next two steps in the PID process; levying the assessments and issuing the bonds, so that we can move forward with financing the balance of the infrastructure needed to support full development of this project."

I know that's a big summary with a lot of pieces, so it's probably time for me to stop talking and you to start asking questions.

**Mayor Pro-tem Bradt:** I have one. Is there any definition of public infrastructure? What is included? Is it streets, is it sewer, is it water lines, what exactly?

**Misty Ventura:** It is all of the above and then some. Chapter 372 gives a list of authorized improvements, and that list of authorized improvements includes water, sewer, roads, and drainage, but it also includes other more expansive things like parks, or artwork, so there's a statutory list. Most communities that I work in and I was sharing with Dan that right now I've got 17 PID projects. There's a lot of them and they're happening all over the State of Texas. Most communities I work in, focus PID financing on bread and butter infrastructure; water, sewer, roads and drainage.

**Mayor Pro-tem Bradt:** Then, it is up to negotiation, this list? Do we include in the resolution to create this assessment?

**Misty Ventura:** Let me make sure I'm answering your question, and if I don't do a good job, hold me accountable and ask me again. There is a negotiation, right? Because, whether you decide to use this tool is a legislative act subject to your discretion. You can just say, "No, we're not going to do this." Now, the consequence of that choice may mean that this project doesn't come as fast, and the infrastructure doesn't get built, and the development doesn't get accelerated, but it's within your legislative prerogative to say, "No, you can't do that."

**Mayor Pro-tem Bradt:** Understood.

**Misty Ventura:** With respect to negotiating what gets constructed, that's a little bit more difficult in this way. You're constrained in two fashions. One, by the statute that has the list of authorized improvements; you can only do what's on the list. Now, the list includes water, sewer, roads, and drainage. Then in addition to that, it's constrained by benefit analysis. The statute says, "You can only burden the land with an assessment after finding that there is a direct benefit, a special benefit to the property being assessed."

By way of example, one of the improvements that's often been discussed in the context of Metro Park are road improvements. I know the city would like certain roads constructed, but one of the difficulties with this tool is that it can only construct roads that provide a special benefit to this project. If by way of example, there are roads that are on the Thoroughfare Plan, or roads that have a larger regional benefit, or roads that are serving emergency access, you can't impose on this development the cost of those roads, and therefore the PID cannot be used for that. Does that make sense?

**Mayor Pro-tem Bradt:** Yes.

**Misty Ventura:** Did I answer your question?

**Mayor Pro-tem Bradt:** Yes, you did.

**Misty Ventura:** Okay.

**Councilmember Fletcher:** Ultimately, there'll be a supplemental tax, so that's an increase in sales tax, is that correct?

**Misty Ventura:** It is a supplement, but it's not a tax. By definition, an assessment is burdening the property in lump sum and then collect it in annual installments. In contrast to an ad valorem tax, or a sales tax, which is rate-based. The state sales tax or the city sales tax might be eight-and-a-quarter; six-and-a-quarter for the state and two pennies for the local. Or the ad valorem tax may be some small number because you don't impose a large ad valorem tax, but it's applied as a rate to a value and collected over time and goes on in perpetuity.

That's different than an assessment in two ways. An assessment, by law, has to be levied and lump sum. We have 10 million dollars' worth of improvements; we're levying in assessment for 10 million dollars. It's static; it never changes no matter what the property value does, it's static. The lien is static, and then it gets paid off. The owner of the property always, by law, has the right to pay the assessment off in lump sum.

Perhaps, an end-user says, "I don't want to pay annual installments. I want to pay my allocable share for my one acre in lump sum" they're entitled by law to do that. More often, the assessment is collected with the tax bill, so it looks and feels and smells like a tax. The annual installment of the collection is used to pay the debt service on the bonds. Does that make sense?

**Councilmember McLeod:** One nice thing with the PID is, unlike virtually every other tax is this is an entirely voluntary tax.

**Misty Ventura:** Yes, sir. The condition precedent to using this tool is a property owner coming forward and saying, "Please, burden my land with a lien and then use that lien to help fund public infrastructure."

**Mayor Pro-tem Bradt:** Bill, do you have anything to add or comment?

**Mr. Ferebee:** No. I really was going to get Clark to--

**Clark Lord:** Sure. Okay. I'll come up and just have a discussion with council. If you don't mind, I'll come up here.

**Councilmember Bevers:** Clark, would it be okay if we got a list of what the infrastructure is that we're talking about right now?

**Clark Lord:** Thanks, Bill. Again, I'm Clark Lord. Some of you I've met and some of you I haven't. I'm a partner at Bracewell which is the law firm that for some time has been representing the city on some of the finance matters as bond council, and other legislative matters as well. During the process of discussing with this developer, financing options for this public infrastructure, the city has asked us as your finance council to come and help you decide and determine whether this is good for the city, answer questions about the legality of what we're talking about and how it would work and how the city would be protected.

Then once the city would give us the direction to move forward with this, it'd be our job to act as your bond council in this transaction to make sure that all the documents, the development agreement that would come forward, the bond issuance, and all the transcript-related documents;

ancillary documents related to that, that we would represent the city to make sure that your interests were protected and that what you understood that this transaction to be actually was followed through into the documents.

Having said that, I'm here to supplement what the developer has laid forth to you, answer your questions, and I'm happy to answer as many questions as you have. Publicly in the past, we have also, and Bill help me with this, if you have specific questions about a negotiation, or particular negotiation with the developer we might consider going into closed session, but I understand today, this is really an open session to understand the general parameters of what a PID is, what this project is, and how the city might make a decision to move forward with it or not.

**Mr. Ferebee:** If you don't mind Clark, from my standpoint, could you address what are the advantages and disadvantages? If the city does this, what's negative for the city, and if we do it, what if anything is positive for the city?

**Clark Lord:** Thank you. Sure. Let me start with the benefits. As it's been described, it is true that the city never wants to raise its taxes on its citizens, and particularly, doesn't want other citizens to pay for improvements that benefit one particular part of the city. A PID is a financing alternative and a taxing alternative that allows a city and a property developer or a group of property owners, in this case one property owner, to take advantage of a financing without burdening the rest of your property owners with an additional assessment or tax.

Basically, requiring that property to pay for the public improvements so that everyone eventually will benefit from their own taxes generated from their property with the special assessment. That's the benefit, and what's described is a win-win is, the city gets public improvements that it doesn't have to pay for, out of its general fund, out of its taxes, out of other property owners' taxes or any other revenues, and then it gets the benefit of those public improvements.

Then, what is the downside? In the question that typically gets asked is; well, if the city is issuing the bonds, isn't the city on the hook for those bonds? The answer to that is; well, while the city's name is on the face of those bonds and you are the issuer of those bonds, no bondholder, no trustee, no person collecting money for those bonds could ever look for any source of revenue other than those assessments from those property owners. Or, in the event they didn't pay those assessments, the commitment of the city to foreclose on that property to pay what may be leftover unpaid on those bonds.

But in no circumstance would the city have to come out of its general fund, out of any pocket of money that the city has, to pay for those bonds. It's a very common question, a very legitimate question. It's sometimes difficult to explain and have understood that, "Well, how can a city be the issuer of bonds and not be on the hook for those bonds?" Well, it's a special statutory financing that's authorized on the Texas constitution.

We, as bond council to other issuers, do this a lot, and we draft documents to ensure that the city agrees to this type of financing and then agree that it's in their best interests that that transaction happens; there's no way that the city would have to come out of pocket to pay for the bonds. The only obligation is the city are to collect the assessments. Then if the assessments are not paid foreclose on the property that isn't paying the assessment.

**Councilmember McLeod:** Have you ever gotten a good answer on the effect, if any, this would have one any sort of credit rating? In other words, if somebody runs a credit report on the city that they see an outstanding balance or is that set off to the side?

**Clark Lord:** Yes. That's another good question and related to the first one. We will probably have your financial advisor to come in a supplement an answer to that question to give you -- it's really your financial advisor's job to tell you what affects the credit. But from a legal standpoint, I'll tell you this. This is way I've answered the question. I know it's not fully satisfactory. But, the bondholders or the underwriters of the bonds, what they're looking at when they look at this transaction and decide whether to buy these bonds, is it the city's credit? They're looking at the credit of the people who are paying the assessment, or the property owners who are paying the assessments, in this case, Misty's client; the developer.

That's what they're underwriting. They're not underwriting the credit of the city. The bonds are rated, not based on the credit of the city, but on the credit of the transaction which is the developer; their ability to pay. In fact, an appraisal is done -- I think it's being done, I don't know what's the status of that is -- in order to have something that the potential underwriters and bondholders could look at to value the property and say, "Well, how strong is this project? How strong is the credit for these bonds?" No. They're not looking at the credit of the city.

If there's a default, it's not the credit of the city that is being looked at. But I think, your financial advisor -- is there some abstract impact on the city, perhaps? You are not a default on the bonds. Your credit is not impacted by this. The credit of the project is what's being underwritten.

**Mr. Smith:** Furthermore, there will be a sole owner of the property when the bonds are issued, and that will be Moons. There will be no other property owner. There will only be one owner, and these assessments and this PID, contractually will be passed down if Moon does ever sell any of the property. At this point in time, Moon is saying he'll be the sole owner and will be the sole operator of it. But in the event, he does sell later down the line. This debt in the PID is contractually passed to any future property owners.

**Mayor Pro-tem Bradt:** Greg, a question for you and Bill. I've noticed, City of Kyle, City of Fort Worth, City of Dallas, City of Austin, all have a Public Improvement District policy. Do we have such a thing, and would it be advisable if we do that; build it, should we go along with this?

**Mr. Smith:** We do not have a policy. As far as creating policy, we certainly can. I think we have very limited amounts of property left that would qualify for a PID, but we certainly can create a policy.

**Mayor Pro-tem Bradt:** Would it be advisable Bill?

**Mr. Ferebee:** Well, I would go back to what Greg said. If we can create a policy, it's not hard; easy to do. Looking at what the city currently has left to develop, I'm not sure -- I'm trying to think if there's a tract of land big enough for one. There may be, I need to study the map. But, not hard to pass a policy.

**Mayor Pro-tem Bradt:** We can discuss that. I mean if it's--

**Mr. Smith:** Yes. If the council likes the idea of PIDs, and we think we may do some in the future, it's probably not a bad idea especially if we're taking consideration in redevelopment. If we look at redevelopment, then it certainly can, but it's only relevant if council thinks that want to continue to offer PIDs to any other developers.

**Mayor Pro-tem Bradt:** Thank you.

**Councilmember Bevers:** What's the timeline we're looking at?

**Clark Lord:** Well, that's interesting question. We were standing up here, I guess in January, February, we were thinking that we need to have a very accelerated timeline to create the PID in order to develop an agreement, levy an assessment and issue bonds, which time has passed. I think the developer is eagerly waiting for the council direction on whether or not the council supports the transaction. If the council were to determine that it would, we would probably come up with a timeline. There's some statutory hearing dates. There's a marketing -- the bond transaction has a built-in transact; that's a 60 to 90-day window.

**Misty Ventura:** If I may Clark, the PID has been created; you created the PID in March. We would need two council meetings to finalize this if you support this tool. We would need one meeting in which the council would consider the PID development agreement, which is the contract promise between the developer and the city on the mechanics of how things work. Then in addition to that, we would need at that same meeting the council to pass a resolution determining the costs, which is supported by an engineer's estimate of probable cost, and calling a public hearing to levy the assessments.

Statutorily, that public hearing can only be called after 10 days published and mailed notice, I've spoken with the underwriter. Remember the council approved the professional team working on this project, not only the bond council, Clark, but also a PID consultant Rick Rosenberg with DPF, an appraiser. I believe the appraiser is CBRE, and that's in the works. An underwriter, Tripp Davenport FSM-Bonds. I spoke with Tripp, the underwriter, on the way to the meeting this morning, and I said, "How long will it take you to market these bonds?"

He said given the credit-worthiness of the project, he believes it can be done in two weeks. With the council's support, all we need is two meetings, and we would like to move as quickly as you are willing.

**Mr. Ferebee:** There's also a deadline indirectly is once the improvements are dedicated to the city, it's too late for a PID, correct?

**Misty Ventura:** Yes, sir. That's a fair statement. One of my concerns for this project and one reason that I've been advocating that we need to move, is because these projects, at least the first five million dollars' worth of projects or four million dollars' worth of projects, were started in January and will likely be completed within months. Dan Elkins what's your best guess? If those projects are completed and the city accepts them, then we can no longer use this tool to finance those improvements, because Chapter 372 of the local government code says, "You can do with PID financing two things; construct or acquire." Construct or acquire.

If they've already been constructed, then you have to acquire them. If you've already accepted them, then there's nothing left to construct or acquire, and so time is important to this developer. The other detail that I would remind the council is that, the expectation if the project is supported, is that when the bonds are issued, part of the money would reimburse the developer for the improvements under construction. The balance of the money would be used to fund directly the remaining improvements.

In other words, the money would be held in trust by trustee, and as the projects are completed on a percentage of completion basis, you would go to the trustee and say, "Pay this guy that poured the concrete. Pay this guy that put the pipe in the ground." That's in contrast to a different model that some cities adopt, which is they say -- more of a MUD model, they say to the developer, "You go get construction financing. You go put all your dollars in the ground, and then after you've done all that, come back to us and we'll think about reimbursing you for that." That is not an efficient way to use this tool.

The more efficient way to use the tool and what's been discussed, is to use directly the proceeds from the bonds to finance the remaining infrastructure, so that it eliminates that interim construction financing need.

**Councilmember McLeod:** Is the city responsible for oversight and paying the engineers in your direct funding model?

**Misty Ventura:** Yes, and no. Let me explain what I mean by that answer. The city has its normal inspection and oversight role. That does not change with the PID financing. What does change is that there's one more piece of paper which is reduced to writing in the development agreement that the city has to sign and send to the trustee saying, "Yes, we received everything we normally receive from the developer. Yes, we've inspected it. Yes, it's okay to pay that bill."

There is that one additional piece of oversight. I would remind the council, however, that all of the administrative costs and all of the professional fees costs are paid as part of the PID project cost, so it's not an additional burden economically on the community.

**Mr. Smith:** To give council a little bit update on the schedule of where we are; we have a draft developer's agreement. It needs to be submitted to the council if you want continue to proceed forward. The last draft had not had Mr. Moon's comments. I believe now Mr. Moon, and his staff and attorney has made comments, so we can get that developer's agreement to council probably in the next -- if council wants to proceed forward -- probably in the next five to seven days, Clark, I would think we could get that.

Then, council needs to have some additional discussions to make sure they're satisfied with the developer's agreement. Where Misty said two council meetings, that's formal action at two council meetings. I don't think that's back-to-back council meetings, because council will need some time to review the developer's agreement and make sure that they are comfortable with it as well.

**Mayor Pro-tem Bradt:** I agree with that assessment.

**Councilmember Bevers:** In the direct funding model, the city itself will not be a party to the construction contracts?

**Misty Ventura:** No, sir.

**Councilmember Bevers:** Okay. That's fine. In the background documents that we were provided, the total dollar amount has changed significantly. Can you provide some color on why that has got from 39 million to 12 million?

**Clark Lord:** I'll describe it this way and let Misty fill in. But that when you have a petition to create the PID, which Misty described where the developer comes and asks the city and say, "Hey. Assess me for these improvements." The developer typically comes in and has probably a more expansive list of improvements than they might actually want to finance through the assessments. But to retain flexibility in developing the project, they may decide they want 20 million worth of roads, water and sewer, but once they get to the point of issuing the bonds, they may not want to do all those.

They typically will have a more expansive menu of options to choose from than what they will actually do. At one point, I think the petition had 39 million dollars' worth of improvements, which was a laundry list of things that potentially could be financed through the Public Improvement District. When it got down to actually looking at the numbers and what's the most efficient way for

this project to move forward, I think the developer said, “Well, let's use 20 million dollars as a number that we would want to finance through the PID and have a PID bond issue.” It’s simply a matter of that.

**Misty Ventura:** Excuse me. Clark is exactly right. Two reasons drive those numbers. First, that the PID creation petition is jurisdictional, and so the number in that PID creation petition is always high because it becomes a cap; it can never go up. It's particularly important for it to be high on multi-phase projects where there might be future assessments, because nobody's crystal ball as perfect.

We want that number to be conservatively high, knowing when we submit that PID creation petition, not all the engineering has been done and we don't know what the markets were going to do with respect to interest rates and timing and all that good stuff. In addition to that, it becomes an iterative process because as more engineering work is done, more costs are refined, so we know more.

In addition to that, it's a market-driven process. We want a big number in the PID creation petition because it's jurisdictional, but when it comes down to you levying an assessment which becomes a lien that burdens this property, it has to be paid. It runs with the land even if the property is sold. Then developer said, “Well, hold on. You mean you are going to put a lien on my property?”

Well, no, I really don't need all of that or I don't need all of that right now. It has a natural selection process that governs that number down over time. One thing that I would point out is, with respect to the infrastructure list that was circulated, those are the authorized improvements that were focused on the finance; the vast majority of the infrastructure needed for this project.

There's one exception to that, and Greg and Dan might be able to speak to that. There is this idea that maybe in the future there's a drainage project, and that could be years away, and it could be a big number, or it could never materialize. We want to leave open the idea that we could come back if that drainage project materializes and say, “We would like to finance our share of the drainage project with PID assessments.” The piece is being done now, but this isn’t the only piece, and I just wanted to make sure everybody understood that.

**Mayor Pro-tem Bradt:** Go ahead.

**Councilmember Bevers:** What's the maximum number in the PID creation?

**Misty Ventura:** I don't remember, but I do think it was a big number like 29 million.

**Clark Lord:** I think it was originally 39 million, then we revised it to bring it down to 29 million.

**Mr. Ferebee:** I believe it’s 29 million.

**Clark Lord:** 20 million. I’ll supplement that. I know there’s confusion around this number, but no matter what the PID petition says, ultimately, until the city levies the assessment and authorizes the bonds, the city is in total control of what that number is. Again, that sort of the menu. If the city decides to move forward, you are the sovereign entity here, you decide what that final number will be based on the economics of the project and what you’re comfortable with.

**Councilmember Bevers:** Okay. On the drainage project is being tossed around. Can the PID spend money or assess money for the projects that are outside actual district?

**Misty Ventura:** Yes. As long as the project provides a special benefit to the property burdened with the assessment.

**Councilmember Bevers:** Okay. Clark, I'd like for you to give some more details about what she is saying about the special benefits to the property.

**Clark Lord:** All right. The statute and the Texas constitution in order to issue the bonds, the Texas Attorney General has a test, a cost benefit analysis that is applied to any special assessment under Texas law. Unlike a tax, which the general levy which can be spent anywhere in the city, a special assessment bylaw has to, the assessment has to benefit the property owner in an amount equal to or greater than the assessment paid. How do you make that finding as a city that this is a legal assessment, that you are not over-assessing property, that there is a benefit equal to the assessment?

Well, we have a market study done, an appraisal done, that shows that the property -- support the assessment, and then there's a cost benefit analysis within that, that shows that, this property cannot exist without a water line, sewer line, any road, and therefore the benefit is to that property and not to others. It's part a mathematical test and somewhat subjective when it gets to something, but it's a test.

**Councilmember Bevers:** Okay.

**Clark Lord:** That the basic rule is that, by law, you cannot levy your assessment on property unless we can make a finding based on evidence that the benefit is equal to the assessment.

**Councilmember Bevers:** Can some of those benefits be regulatory in nature? As an example, the commercial benefit for a road, the developer will probably reach that benefit if the road is asphalt or concrete, but city ordinance may require it to be concrete and maybe more expensive. Is that differential cost or that regulatory requirement still able to be assessed through those?

**Clark Lord:** I think that would come down on the cost side. If a regulation, increase the cost of a road, can you allocate that benefit to the property owner? Yes.

**Councilmember Bevers:** Okay.

**Mayor Pro-tem Bradt:** Would you know that up front then, through the PID?

**Misty Ventura:** I just want to be clear. This is my land use, not my incentive hat on here. Remember, Texas local government Code 212-904 is your illegal exaction statute is the codification of Flower Mound versus Stafford Estates, which simply says, government cannot impose on development costs that are not roughly proportional to the new development. Most of the time, developers look at the rules and they say, "Yes. Those are rules. Rules are rules. Let's just get our checkbook and pay for wherever the rules say."

But sometimes, the rules get so burdensome; folks come to me and say, "Do I really have to pay for that?" and the answer is; well, it depends. Is it roughly proportional? Is it required for your new development? If it's required for your new development, the law requires you to pay for it. The analysis stops there. But if it's not required for your new development, then additional discussions are needed on that topic. Yes. Can the PID pay for public improvements? Absolutely. Can they pay for the public improvements regulated by the government? Absolutely, as long as those regulations don't overreach and go too far.

**Councilmember Bevers:** Okay. What was that statute?

**Misty Ventura:** 212-904. 212.904, the local government code is a codification of the Texas' Supreme Court case, Flower Mound versus Stafford Estates.

**Councilmember Bevers:** Yes. Thank you. If it's all right, I've got a couple more questions. The Moons own 100% of the property that's described in the PID creation, is that correct?

**Clark Lord:** Done by one entity that is controlled by--

**Councilmember Bevers:** When I looked at the metes and bounds descriptions, it actually goes all the way to railroad right of way. I think that the city has some right of way adjacent to, or between the main property and the railroad. This project is too detailed that you might have answer, but--

**Clark Lord:** Is that the piece of property that Moon bought for -- I'm not sure what piece of property.

**Mr. Smith:** Byron is correct. When Moon developed his first piece of property, the city required him to dedicate right of way along his original piece of property. Since that time, Mr. Moon has acquired additional property that I don't think there was city right of way. But Byron you are correct. There is city right of way on part of Mr. Moon's property.

**Councilmember Bevers:** They may still own the full title underneath the right of way. I'm not very sure how all that works, but the metes and bounds description, definitely goes to the railroad right of way. It appears to be for the entire North-South boundary of the Moon property, so I don't know if that makes the city -- since there is city right of way in there, is the city now--?

**Clark Lord:** No. The assessment wouldn't be on public property. When we levied our assessment, we would specify what property within it is exempt from the assessment and public rights-of-way and public-owned properties would be exempted.

**Mr. Smith:** Because, all the roadways if I am not mistaken Dan, now, I believe all the roadways in Metro Park are going to be public roadways in the latest plan, correct?

**Dan Elkins:** Yes. That is correct, and all the right-of-way along the railroad tracks and interior to the property is dedicated currently, so the way it would work out is the partition to the commercial parcels within there to the right-of-way segments.

**Mr. Smith:** That's been something that has floated from the initial inception of this PDD to current. There was, initially, some thoughts that some of the roads could be private and not be public, but the main thoroughfare would be public, that has since changed and now all the road-ways within the project would be public.

**Councilmember Bevers:** It appeared from some of these other cities the policies then that we have reviewed, that some maintenance of the public facilities can be included in the PID district, is that correct?

**Clark Lord:** Yes.

**Councilmember Bevers:** The assessment could be a little bit larger to pay for the maintenance of those facilities in the future?

**Clark Lord:** That's typically done in a PID where you have a developer who's having enhanced maintenance of their facilities, landscaping and things like that. I don't think we've contemplated ongoing maintenance because the city is going to accept these rights of way; there's no enhanced maintenance cost that I'm aware of. Misty, is that correct?

**Misty Ventura:** Yes, sir. That's correct. The finding of special benefit speaks to the issue regarding a supplemental maintenance assessment. In some jurisdictions, let's say it's a jurisdiction that doesn't have water improvements, sometime we pay for a special supplemental assessment to maintain water lines because nobody else is paying for it. But it wouldn't be case that you have a special supplemental service assessment to maintain public improvements that are traditionally maintained by payment of taxes.

**Councilmember Bevers:** I guess, it triggered in my mind because if there's a negotiation between, this road would be public or this road would be private, there is ongoing burden to the city at that point if it is public versus private, even if the initial constructions is fully paid for through the PID.

**Misty Ventura:** Yes, sir. That is true. A fair comment, I would submit to you that the reason communities ascribe to that model is because they recognize that even though there is a burden of maintenance with new construction, that maintenance burden is low and far offset by incremental increase in ad valorem taxes from the new development associated with those public improvements.

But for your belief that this property developing, and all those private vertical improvements that goes on this property create more value to the community than the maintenance of those roads would burden it, you would likely support this project.

**Councilmember Bevers:** Yes. The increase in ad valorem taxes and value, I think unique in this community, just because our ad valorem tax rate is quite low.

**Misty Ventura:** I understood. I would hope the Road Maintenance obligation is equally low, but I would also submit to you because of the nature of this commercial property, there is also sales tax being collected by the community.

**Councilmember Bevers:** Absolutely. I'm not advocating at this point that that we should ask for that. I'm just trying to understand our full menu of options as a Council.

**Councilmember McLeod:** We still looked at all the roads and we decided this may be a greater view that every road in that development is useful to the community as a whole. That was the idea.

**Clark Lord:** Well, they'll be used by the community. There will be public roads and open to the community. There are ancillary public benefits I understand to the roads that we will be serving the development as well.

**Councilmember McLeod:** Then because of that we'll have all regulatory control over those?

**Clark Lord:** Yes, they will be public roads.

**Councilmember McLeod:** Stop signs, how we're paying them, crosswalks enforcement, all of that.

**Clark Lord:** These public roads will be subject to the exact same building codes and codes that the city requires of all roads in the city, yes.

**Councilmember McLeod:** So we'll build them to our quality?

**Mr. Smith:** Absolutely. Now, they could come in and ask for some architectural differences that may not be our standard, but they would be built to our standards. For instance, if they wanted to do a stamp pattern or a paver for crosswalks. They certainly could ask the city to allow that. We would

evaluate it and make sure it was built to our standards. We have some of those, that example in other areas.

**Councilmember McLeod:** We're not going to let seams go down the middle of the lanes and-

**Mr. Smith:** Absolutely not.

**Councilmember McLeod:** -stuff like that.

**Mr. Smith:** Absolutely not.

**Clark Lord:** Maybe the developer will require the developer to build all of the public facilities to have approval by the city. The city will approve the plans and specifications and they will have to be up to the city design manual or whatever other city engineer approved document that you will have.

**Misty Ventura:** The example of the stamped concrete is a good example of where a special supplemental assessment for maintenance is used. By way of example in PID projects where the developer says, "We want stamped concrete or we want special whitening or special tree wells," or things that are different than the city standard, nonstandard public improvements. I have communities that say, "The basics on us, we do that for everybody, but if you're going to do something nonstandard, we'll approve it, but you have to maintain it." That's not uncommon.

**Councilmember Bevers:** The usual method of that is the developer maintains it directly or you increase the assessment?

**Misty Ventura:** There are two options for that. One is that you burden the developer with a private obligation often through an Owner's Association. So an Owner's Association has the responsibility of maintaining it or alternatively through a supplemental assessment for maintenance, distinguished though, when you think about the supplemental services for maintenance with a capital improvement assessment for the construction of the infrastructure.

Remember we talked about the assessments have to be levied in lump sum? Well, how do you levy in lump sum for maintenance? Because maintenance is ongoing. The way you do it is a practical matter is each year when you approve the annual update of the PIDs Service and Assessment Plan, at that juncture you have a budget for the next year's maintenance and you levy the maintenance yearly.

That's the way all of the PIDs in Dallas are done. Dallas doesn't have any capital improvement PIDs, but they've got more than 20 service PIDs. Once a year they hold a public hearing and they levy assessments based on a budget for the next year's maintenance.

**Councilmember Bevers:** Okay. What is the method by which we will levy these properties? Is it square footage of the ground? Is it square footage of the building? Value of the building? How will we apportion that levy?

**Clark Lord:** It's simply determined on the cost of the bonds in this case.

**Misty Ventura:** If I may? We have a draft Service and Assessment Plan. We can circulate that along with the draft Development Agreement. The methodology for levying the assessment is based on acreage, so effectively a square-foot basis. We take all the costs and divide it by all the acres.

**Clark Lord:** It's a mathematical formula. If the city wants to move forward, when we bring forward the final Service and Assessment Plan and ordines to levy the assessment, you'll have the costs

and then you'll have the acreage and the dollar amount will be spit out there out of that formula. That'll be the assessment.

**Councilmember Bevers:** Okay. Who will actually do the assessment?

**Clark Lord:** The city will levy the assessment. Then we'll hire a firm to collect those assessments annually and then we'll be responsible for paying it to the Trustee.

**Mr. Smith:** I actually believe the County Tax Office in Montgomery County will perform those duties for us.

**Clark Lord:** They had some discussions about that. I think in this situation they will do that.

**Mr. Smith:** We contacted the tax office and said, "Could you do this?" Because that is the better way to handle it. The county tax office, if my memory serves me correct, "We'll do this for this PID."

**Councilmember Bevers:** Okay, so there will be ongoing costs associated with that the PID will pay for, will reimburse, will assess, I guess, the city that amount.

**Mr. Smith:** Correct. Any cost with the PID for the life of the PID, any administrative cost will be paid by the PID. If any auditing is done, there are certain other things, all of that is covered by the PID. It will have no direct cost to the City.

**Councilmember McLeod:** You will keep a certain amount in reserve for that or is it we're just the Trustees of the PID Funds? We would bill them, how would that?

**Mr. Smith:** I would like some of that to not be discussed here, because that's part of the negotiations of the developer's agreement.

**Councilmember Bevers:** Will the PID automatically dissolve whenever the bonds, the capital improvement has gone away?

**Clark Lord:** It's a good question. There's no specific provision for dissolving a PID. Once the assessments are part-paid and the maximum has been reached, the assessments will stop. I do -- at the end of the game for cities to actually pass a resolution, you can pass an ordinance dissolving the PID. It stays in existence until the city takes action to either levy a new assessment or terminate the assessment.

**Councilmember Bevers:** In the future if the city decide to levy a new assessment, is that solely a decision--

**Clark Lord:** It would have to be within the boundaries of the petition, that's the property owner.

**Councilmember Bevers:** Does the property owner have a say in that at that point, say 20 years from now?

**Clark Lord:** We can't levy assessment beyond what the property owner has petitioned for.

**Councilmember Bevers:** Right now the petition I believe is \$29 million. We're looking at going out potentially for about 11 and a half million, so there's a gap there. Could the city in the future sell bonds for that, that differential for improvements on that property, within the district without the developer?

**Clark Lord:** There would be a phase two of the project and our initial development agreement would only cover phase one. We'd have to come back and have a new agreement or supplemental agreement to whatever cost, whatever projects were being funded by that delta and at that time come and deal with it. City couldn't on its own go in and levy it and put in those improvements.

**Councilmember Bevers:** It sounds like the-- correct me if I'm wrong, but the PID itself would allow that, but we'll be constrained via developer--

**Clark Lord:** It's a mutual. Yes, it'll require a mutual agreement with the developer.

**Councilmember Bevers:** Thank you.

**Councilmember Fletcher:** Ultimately, the really only risk, risk is the wrong term, but the only obligation the city would have in all of this would be upon default. If there was a default issue then the city is responsible at that point to collect the remaining amount of the PID and pay that assessment officer for it.

**Clark Lord:** Right, the remedy there would be that their lien on the property. When you have a delinquent tax payer the next remedy is foreclosure, tax foreclosure of the property, to collect an amount sufficient to pay the unpaid assessments.

**Misty Ventura:** Clark, if I may, one thing I would point out about this project that's unique is that the existing vertical improvements that are there today are benefiting by these new improvements being constructed, because of some drainage issues and some access issues. As a result those existing vertical improvements were being assessed in the same way that all the other properties are assessed. The value of those existing improvements alone mitigates the risk of default, because the folks who know all that value are not likely to let it be foreclosed upon for failure to pay an annual installment on this assessment.

**Councilmember Fletcher:** Right. I noticed that the professional services agreement has expired. Have we met everything that we need to under that agreement?

**Clark Lord:** We probably need to re-up that. We have that that we've been on hold on this project for a couple of months now. That's something--

**Misty Ventura:** The developer is fully aware that he's responsible for all of the city's professional fees. We may have a technical expiration on the professional services agreement and we're happy to correct that, but we continue to and are committed to funding the city's professional fees.

**Councilmember Fletcher:** Where are we at in that process? As far as what's been outlined in the professional services agreement. Maybe you can shed some light on that Greg; How far along are we in that professional services agreement at this point?

**Mr. Smith:** The valuation of the property by CBRE has been completed. That's probably the big one. The other ones have not been completed yet. We still have ongoing legal fees with Bracewell for the negotiations and once we get through the development agreement, then those should be then relative with the issuance of the bond as well as the service agreement that has not yet been completed because that will be done in the next 60 or 90 days based off of counsels moving forward. I think those were the two big left out.

**Councilmember Fletcher:** We do have the appraisal back from CBRE?

**Mr. Smith:** Yes sir.

**Councilmember Fletcher:** I didn't see that in our packet.

**Mr. Smith:** I believe it was sent to the council individually. I'll go back to my emails but I thought I forwarded it to council individually when I got in.

**Councilmember Fletcher:** I may have missed that.

**Mr. Smith:** I may also not have sent that but I will check right now.

**Councilmember Fletcher:** Not a problem. I appreciate that.

**Mayor Pro-Tem Bradt:** Clark and Misty, I'd like to remind you that we're just in this discussion to receive, so I don't think Council is prepared to give you any indication moving forward at this time.

**Clark Lord:** We will wait for further direction.

**Councilmember Bevers:** One last question I have; since the city is not a party to the contract, the infrastructure does not have to be publicly bid, is that correct?

**Clark Lord:** In our development agreement we have requirements for how to meeting; public bidding requirements and so forth.

**Misty Ventura:** I would point out that the PID statute has an express exemption to public bidding, so public bidding is not required.

**Clark Lord:** But in the development; we will be reviewing and improving the process for procurement and so forth.

**Misty Ventura:** For all the going forward stuff but obviously not that spent under construction.

**Councilmember Bevers:** I do have a couple more questions but I think it would be probably best in the executive session. So I hope we want to do that today or whenever a future developers agreements comes forward.

**Clark Lord:** It's up to the council. The council wants time to think about this.

**Councilmember McLeod:** We've got questions that would help in the thought process --

**Mr. Ferebee:** I would recommend Byron, if you think that they're relevant to moving forward that we go ahead and adjourn into executive session.

**Councilmember Bevers:** I'd like to do that.

**Mayor Pro-Tem Bradt:** We'll take a five minute break and recess this meeting and go into executive session at 11 am.

**Mayor Pro-Tem Bradt:** We're back in session at 11:50 AM. No action taken. We reconvene the meeting at 11:50.

**Councilmember Raymaker:** I'm sorry that took a while, Dan. He was going to do a presentation.

**Councilmember McLeod:** Ask them if they have any questions.

**Mayor Pro-Tem Bradt:** Anybody else have any questions on item number six.

**Councilmember Bevers:** Thank you very much, Misty, you were very helpful.

**Mayor Pro-Tem Bradt:** Very helpful Misty.

**Councilmember McLeod:** Good to hear again.

**Councilmember Raymaker:** Before we close that, does that preclude Dan from giving his update? I wanted a project update.

**Councilmember McLeod:** Nope. Go ahead

**Misty Ventura:** I have one quick question at the council's pleasure. Maybe it's a statement, not a question. I know that the council's just been briefed on this today, and that we're asking you to make decisions. The quicker that you make these decisions, the more helpful then it would be, because the cost of the professional team are high. What I encourage all the cities I work in is, if in your heart of hearts you know you're not going to support this, just tell the developer knows, so that they can move on.

**Mayor Pro-Tem Bradt:** No, we're not at that point, I don't believe, no.

**Misty Ventura:** Thank you.

**Mr. Smith:** I'll be in touch with Daniel.

**Misty Ventura:** Thank you.

**Dan Elkins:** Okay, I want to give you time for a quick update on where we are on the project.

**Mayor Pro-Tem Bradt:** Get your mic.

**Dan Elkins:** You guys can hear me okay?

**Mr. Smith:** Actually, if you will stand in front of the mic for the audio recording will be a lot better for us.

**Dan Elkins:** I gotcha.

**Mr. Smith:** Thank you.

**Councilmember Raymaker:** What happened to your mobile mic?

**Dan Elkins:** Yes, I returned it so I didn't -- Okay, so where we are at today is this road right here that you can kind of-- I don't know if you can see it on here but it kind of separating the parking garage and the AMC. Everything west of here is what we call phase 1A and that's all permitted under construction. The AMC is up now, they've got the roof on, it's dried in. They've really got all the public utilities in the road and a lot of the private utilities too; so they've got all the sewer, water, storm drain.

Still working on some of the dry utilities like gas and electric and communications but all the storm drain, sewer water is in for all of this phase 1A area. They're forming up the roads right now for metro park drive and this North-South drive and kind of some of the interiors. Looking to have

paving done here in the next 30 days and around the time that they finish up the paving they're going to be going vertical on the retail buildings A, B, D, J and H.

**Councilmember Bevers:** Are there leases for those buildings at this point that you can share?

**Dan Elkins:** Not that I'm aware of.

**Councilmember Raymaker:** What does that look like in terms of months?

**Dan Elkins:** In terms of time? I think that Daniel is looking at having the AMC open and the restaurant retail open around it -- at around the middle of 2018. Probably, about a year from now the latest. We've got design done for the parking garage over here and the south drive that leads up to here. We're still working on permitting that but the goal will be to get the parking garage online the same time as the movie theater opening. So all of that late first quarter, early second quarter of 2018.

Then we're under design on the multifamily piece and some more entertainment over here. Just working on some wetland issues in terms of getting that permitted but this is multifamily piece I think where wanting to start construction around the same time that this phase 1 A opens, so start construction around middle of 2018. That's about an 18 month process.

**Councilmember Raymaker:** So you did say that the AMC Theater, that will be mid-2018?

**Dan Elkins:** I think at the latest. Maybe more first quarter 2018.

**Councilmember Raymaker:** The adjacent food and beverage?

**Dan Elkins:** At the same time.

**Councilmember Raymaker:** Those will be at the same time?

**Dan Elkins:** Yes.

**Councilmember Raymaker:** I'm sorry I don't know why I thought that I had heard November.

**Mr. Smith:** Dan, can you elaborate? I know there's been two dates with AMC. The first date is when the building is going to be completed and turned over to AMC for their build out versus when it opens. Can you elaborate because I'm like Ron, I've heard the exact the same that they actually wanted the building in November of this year and try to open in December?

**Dan Elkins:** Yes. I think they'd still love to do that. I just think with the weather delays they've had and you know some of the others the slow up side -- I don't think that's the latest plan but the two dates definitely is so the general contractors trying to finish I think before Christmas, November-December time frame and then they turn it over to AMC. AMC has about a 90 day to fit it with the screens and the sound system and that kind of stuff. That's kind of why I'm coming up with maybe end of first quarter, second quarter of 2018 is by the time AMC gets their kind of fit out done.

**Councilmember Raymaker:** Would you be able to give us a monthly update similar to this so we can get a feel for where everything is at and add it to a slide maybe that has? I don't care how you build the timeline or what product you used to do that so that we can see a visual?

**Dan Elkins:** Yes, I think we can do that. We have some other-- no, I didn't send those to Kathie but there have been some drone videos taken-- not videos but stills taken from above of the progress. I didn't send those to Kathie.

**Councilmember McLeod:** On the multi-family housing, is that big gray spot parking garage?

**Dan Elkins:** Yes, that's probably a five level parking garage wrapped in the--

**Councilmember McLeod:** Then I guess the question for you and Greg maybe, I was looking at the streets. Is there a dedicated-- I understand you necessarily want to build streets straight away. I'm looking at specifically right now Metro Park Drive. Is there going to be ride away where you see the trees right now dedicate for future street expansion? Is parking generally considered and built I guess has taken off to be responsibility of the city? I ask that because I see we've got a bunch of sort of on-street parking.

Those are two question but the one about that the right away like I said answer first. In other words if we're looking at Metro Park drive and right now to me those are fairly shallow streets or fairly they're not really meant, they're not thoroughfare streets, are not big streets. Is that right-of-way dedicated that if we need to add lanes, we can add lanes?

**Dan Elkins:** Yes, so let me kind of speak to that. Right now the ride away that's dedicated is all of Metro Park Drive from David Memorial up to I-45 so it doesn't stop. For example; where you see the green space, it goes all the way out right away is dedicated all in the north-south direction for these two north-south stand it's dedicated all the way in the east-west direction for these two streets as well. That's on the final plot that is recorded about a month ago. The way that a typical right of way I would say is let's say a 60 foot right of way you might have a 40 foot road in the middle and a 10 foot parkway on each side. These right-of-ways are a little bit different in that they run along the curb phase.

**Councilmember McLeod:** That's where I'm working off of.

**Dan Elkins:** Everything behind the curb phase, the trees, the landscaping all of that stuff is not in the right of way. And even all of the angle parking, so the right-of-way actually runs right behind the angle parking and--

**Councilmember McLeod:** So Daniel Moon is responsible for taking care of angle parking?

**Dan Elkins:** Correct. There's no on-street parking technically.

**Mr. Smith:** Probably a better way to say it, "There will be no on-street city right-of-way parking."

**Dan Elkins:** Right. To answer your question about-- I guess there is not really ride away to add lanes in the future. The intent is that, you know, when this was designed it's trying to get like a downtown type of feel. That's why the ride away sections are not to say downtown feel but like a dense urban type of feel. Not a four lane boulevard type of feel. We did look at the circulation in here as part of the overall development and we don't think that these streets are going to be a major through streets. For example; we're not anticipating people getting off I-45 going through Metro Park Drive up to David Memorial up to 242.

**Councilmember McLeod:** But that's exactly what they're-- I mean --

**Dan Elkins:** We looked at that and we think that Shenandoah Park Drive is a better east/west access than Metro Park Drive in terms of the width of it and going through here we have kind of an

enhanced paving section by the AMC and it's got like a tabletop type of crossing and we're going to have stop control at all these intersections which are pretty close so if someone's just looking to cut through it doesn't make sense to use this as a cut through from just a timing perspective.

**Councilmember McLeod:** Again, you're talking about 900 units that means a minimum. Minimum of 900 vehicles that are going to need to move in and out of there every day in addition to shoppers and that kind of stuff.

**Dan Elkins:** Right now, this first phase is only around 300 units but you're right.

**Councilmember McLeod:** That doesn't include the hotel, that doesn't include anything else.

**Councilmember Raymaker:** That's likely just in and of itself 600 cars.

**Dan Elkins:** We did submit a TIA as part of the upfront stuff showing -- I guess traffic volumes along David Memorial and I-45. There was a pretty long wait to get out of Metro Park Drive onto I-45 and there's not really a good way to mitigate that. I think our approach with that is to wait and see the only way you'd be able to mitigate that is to expand I-45 with an acceleration lane along the frontage there.

**Councilmember Raymaker:** Could you elaborate on that -- an acceleration lane? For the non-engineers in the crowd.

**Dan Elkins:** Yes. Right now, you have through lanes on the furthest right lane is a through lane and you could have a right turn out lane.

**Councilmember Raymaker:** Where everybody's going about 50 miles an hour.

**Dan Elkins:** Yes, 50 miles an hour. In acceleration lane, you could turn out. You wouldn't have cars coming at you and you get up to speed and then get over. Basically, adding a third or fourth lane through here but along the frontage that would then taper off and go back into the main lanes.

**Councilmember McLeod:** Some of them merge on to Research Forest south.

**Mr. Smith:** Exactly.

**Councilmember Bevers:** Thank you, Dan.

**Councilmember Fletcher:** If you don't mind me asking, how many parking spaces are in the parking garage for AMC?

**Dan Elkins:** This is roughly around 900 garage spaces and then overall we did a parking study as part of phase 1 which includes this entertainment use. All of the restaurant retail in phase 1, the theater and then the restaurant retail attached to the parking garage and then we combined it with the existing retail. All of that uses generated the demand of a graph around 1,600 parking spaces and combined with the on street angle parking ahead in parking behind AMC, the parking garage and the surface parking over here around 2,000 spaces provided. We're providing around 2,000 versus a demand of 1,600 and the thought is that the multifamily and the future stuff over here will self-park or expand to that.

**Councilmember Bevers:** The 2,000 spaces are any of those included in the existing Sam Moon development?

**Dan Elkins:** Yes. I think there's probably 900, so there's around 900 in the garage, there's around 300 surface on the expansion and then there's the remainder 800 or so are in the existing Sam Moon Center.

**Councilmember Bevers:** So, the 1,600 demand includes the Sam Moon Center?

**Dan Elkins:** Correct, yes.

**Councilmember Fletcher:** Then the five story parking garage that's proposed for the multifamily, how many spaces are there?

**Dan Elkins:** Actually it's still under design, it hasn't been final.

**Councilmember Fletcher:** So, the reality is most are probably going to flow back over towards David Memorial and come out?

**Dan Fletcher:** Circulation wise, you mean, going back out that way?

**Councilmember Fletcher:** Correct, or eventually as the roads connect to 242, they're going to surface out towards 242 rather than the I-45.

**Dan Fletcher:** I don't recall what's-- trip generation splits we did in our TIA but I think it was roughly like half going out to back out to I-45 and half going out to David Memorial. Some of that half takes Metro Park Drive and some of it takes the South Drive and some of it's coming directly out of future multifamily parking garage.

**Councilmember Fletcher:** Do we have a copy of that report, the TIA report?

**Dan Fletcher:** It's been submitted to the city but we'd be glad to resubmit it if we need to.

**Mr. Smith:** It was submitted to building department in engineering. I can forward it on.

**Councilmember Fletcher:** Would you mind doing that?

**Mr. Smith:** Not a bit. I'll be glad to.

**Councilmember Raymaker:** Where David Memorial is proposed to come out and again that's probably four years away. Will those cars be able to take advantage immediately of the flyover to head south into Houston?

**Councilmember Bevers:** No, it will hit underneath the flyover.

**Councilmember Raymaker:** I have to go east again and come back. Do we know on the feeder road then on a typical afternoon where the backup is at this date? I know it backs up a lot at peak commute times. How far back does it generally go? Will it go back to the Sam Moon Center here?

**Dan Elkins:** I don't think we analyzed that as part of the TIA what the backup looks like along the feeder road. I know that we looked at the intersections in terms of what the level of services for turning out on to the feeder road but it doesn't go up to look at the-- it might but not that I recall. It doesn't look at the 242 I-45 frontage road intersection.

**Councilmember Raymaker:** I'm just thinking about the backup and things of that nature so. As to who might take the road in four years when it's built out.

**Dan Elkins:** I mean, we submitted also this TIA to TxDOT as part of our driveway permit application.

**Mr. Smith:** Now, one traffic improvement that will happen is Sam Moon and Chuy's have come to an agreement. You now see an access lane from Chuy's into this subdivision. With that, Chuy's will be cutting off their second driveway to the 45 feeder road. We've actually, we think have improved the safety by removing that drive and making it at that stop boulevard.

**Dan Elkins:** We also had in the same line there was, I believe two driveways for the car dealership and one driveway for numbers four, there was three or four driveways here that we've merged down into basically Metro Park Drive.

**Councilmember Bevers:** Are you going to have access to the Papa's development just south?

**Dan Elkins:** No, not currently.

**Mr. Smith:** There will be foot when people walk through the--

**Councilmember Bevers:** People park in Papa's parking lot and walk through that woods to get to Chuy's now.

**Dan Elkins:** I know that the Moons are willing to do that, we just haven't able to have a dialogue with the Papa's folks.

**Councilmember Bevers:** Sure they'd be willing? Hopefully, it can come together. It's a great project and something that the city's going to be really proud of.

**Councilmember McLeod:** We're all very excited about it.

**Dan Elkins:** I live 45 minutes away and I'm excited to come up here once it opens.

**Mayor Pro-tem Bradt:** Anybody else? Misty.

**Misty Ventura:** No, sir.

**Mayor Pro-tem Bradt:** Greg?

**Mr. Smith:** No, sir.

7. Citizens Forum (1:34:00)

**Mayor Pro-tem Bradt:** We'll move on to item number seven, citizen's forum. I see there's no citizens and I have nothing so—

**Councilmember Bevers:** You have any comments?

8. City Administrator's Comments (1:34:11)

**Mayor Pro-tem Bradt:** Number eight; city administrator's comment.

**Mr. Smith:** Council, I don't want to bring you up to speed on something that's happening in Austin with the state legislature. If you have not been following, there there's a bill regulating trees. If that bill passes, it will eliminate basically our tree ordinance and our vegetation ordinance. They have apparently amended the bill recently to where even HOAs and POAs cannot regulate or disallow any

removal of trees or vegetation. In essence, our tree ordinance will become invalid because if we make somebody put in landscaping, the day they open up or the day they move in, they can remove it all and we have no authority to stop them.

I tell you that just because we do not have enough time to do anything formally at the City Council with agendas because they're having hearings on tomorrow, Saturday. If you feel inclined to counsel, you may want to reach out to our state legislatures and give them your feedback on that bill. I just want to let you know that that hearing will be held tomorrow. It will basically allow anybody to remove any trees or all trees in landscaping without any responsibility to a city, an HOA, a property owner association. It is even gutting it off of covenants and deeds everything. I just want to counsel be aware since that public hearing is tomorrow. That's all I have.

9. Council Inquiry (1:36:02)

**Mayor Pro-tem Bradt:** Thank you, Council. Number nine, Counsel Inquiry. We'll start with Ron.

**Councilmember Raymaker:** Pass.

**Mayor Pro-tem Bradt:** Ted?

**Councilmember Fletcher:** Have we have any progress on the toddler fence?

**Mr. Smith:** Yes, there's an agenda item for Council to approve the layout. I'll give you a quick update on it right now. We looked at three different locations, excuse me, four different locations. Three of the locations required concrete work to meet ADA it's actually going to be a little bit further in on the park. We have a cost estimate but before we move forward, I wanted Council to make the final decision that you're okay moving in or do you want us to redo concrete and move it out. That is on the agenda for you to approve and then we'll move forward with it.

**Councilmember Fletcher:** Perfect. Thank you.

**Councilmember Bevers:** I have nothing.

**Councilmember McLeod:** I don't have anything.

**Mayor Pro-tem Bradt:** Okay, with that, we'll adjourn.

The meeting was adjourned at 12:12pm.

SUBMITTED BY:

  
Kathie Reyer, City Secretary

DATE APPROVED:

August 23, 2017

  
M. Ritchey Wheeler, Mayor

