

FILED IN
5TH COURT OF APPEALS

Oral Argument Requested

2007 MAY 23 PM 3:11
NO. 05-07-00137-CV
LISA MATZ, CLERK

IN THE
COURT OF APPEALS
FIFTH DISTRICT OF TEXAS
DALLAS, TEXAS

The City of Farmers Branch, Bob Phelps, Tim O'Hare, Bill Moses, Charlie Bird, James
Smith and Ben Robinson
Appellant

v.

Guillermo Ramos
Appellee

Appeal from the 116th District Court of Dallas County
The Honorable Bruce Priddy Presiding

APPELLANTS' REPLY BRIEF

BOYLE & LOWRY, L.L.P.

Matthew C. G. Boyle
State Bar No. 24001776
4201 Wingren, Suite 108
Irving, Texas 75062
Telephone: 972-650-7100
Facsimile: 972-650-7105
ATTORNEYS FOR APPELLANT

Oral Argument Requested

NO. 05-07-00137-CV

IN THE
COURT OF APPEALS
FIFTH DISTRICT OF TEXAS
DALLAS, TEXAS

The City of Farmers Branch, Bob Phelps, Tim O'Hare, Bill Moses, Charlie Bird, James
Smith and Ben Robinson
Appellant

v.

Guillermo Ramos
Appellee

Appeal from the 116th District Court of Dallas County
The Honorable Bruce Priddy Presiding

APPELLANTS' REPLY BRIEF

BOYLE & LOWRY, L.L.P.

Matthew C. G. Boyle
State Bar No. 24001776
4201 Wingren, Suite 108
Irving, Texas 75062
Telephone: 972-650-7100
Facsimile: 972-650-7105
ATTORNEYS FOR APPELLANT

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
INTRODUCTION	2
REPLY POINTS.....	2
APPELLEE FAILED TO PLEAD FACTS SUFFICIENT TO ASSERT A VALID CAUSE OF ACTION UNDER THE TEXAS OPEN MEETINGS ACT AND OVERCOME APPELLANTS’ SOVEREIGN IMMUNITY.	2
THE ISSUE OF MOOTNESS WAS PROPERLY PRESENTED TO.....	2
THE TRIAL COURT AND THE ENACTMENT OF ORDINANCE 2903 MAKES APPELLEE’S CLAIMS MOOT.	2
SUMMARY OF THE ARGUMENT	3
ARGUMENT OF AUTHORITIES	3
1. APPELLEE FAILED TO PLEAD FACTS SUFFICIENT TO ASSERT A VALID CAUSE OF ACTION UNDER THE TEXAS OPEN MEETINGS ACT AND OVERCOME APPELLANTS’ SOVEREIGN IMMUNITY.	3
2. THE ISSUE OF MOOTNESS WAS PROPERLY PRESENTED	7
TO THE TRIAL COURT AND THE ENACTMENT OF ORDINANCE 2903 MAKES APPELLEE’S CLAIMS MOOT.	7
TOMA AND ORDINANCES 2900 AND 2903.....	3
CONCLUSION AND PRAYER	11
CERTIFICATE OF SERVICE	12
APPENDICES	

TABLE OF AUTHORITIES

<i>Bell v. City of Dallas</i> , 146 S.W.3d 8194 (Tex.App.-Dallas 2002 no pet.)	
<i>Burks v. Yarbrough</i> , 157 S.W.3d 876, 88210,11 (Tex.App.-Hous. [14 th Dist.] 2005, mandamus denied)	
<i>City of Carrollton v. Harlan</i> , 180 S.W.3d 8943,4,7 (Tex. App.-Dallas 2006, rev. denied)	
<i>City of Dallas v. Blanton</i> , 200 S.W.3d 266.....4 (Tex.App.-Dallas 2006, no pet)	
<i>City of San Antonio v. River City Cabaret, Ltd.</i>11 32 S.W.3d 291 (Tex.App.-San Antonio 2000, rev. denied)	
<i>Cornyn v. City of Garland</i> , 994 S.W.2d 258, 2669 (Tex.App.-Austin 1999, no pet.)	
<i>Dahl v. State</i> , 92 S.W.3d 8565 (Tex.App.-Houston [14 th Dist.] 2002, no pet.)	
<i>Lower Colo. River Auth. v. City of San Marcos</i>5 523 S.W.2d 641, 646 (Tex. 1975)	
<i>Olympic Waste Services v. City of Grand Saline</i>4 204 S.W.3d 496 (Tex.App.-Tyler 2006 no pet)	
<i>Pantera Energy Co. v. R.R. Comm'n of Tex.</i> ,10 150 S.W.3d 466, 471 (Tex.App.-Austin 2004, no pet.)	
<i>Rettberg v. Tex. Dep't of Health</i> , 873 S.W.2d 408, 4115 (Tex.App.-Austin 1994, no writ).	
<i>Roark v. Stallworth Oil and Gas, Inc.</i> , 813 S.W.2d 492 (Tex. 1991).....8	
<i>Shelby Operating Co. v. City of Waskom</i> , 964 S.W.2d 75, 81.....10 (Tex.App.-Texarkana 1997, pet. denied)	
<i>Weatherford v. City of San Marco</i> , 157 S.W.3d 473, 4866 (Tex.App.-Austin 2004, pet. denied).	

RULES AND STATUTES

Tex.R.Civ.P 67.....8
Tex.Gov.Code § 551.0415
Tex.Gov.Code § 551.142 (emphasis added).....9

REPLY BRIEF FOR APPELLANT

TO THE HONORABLE COURT OF APPEALS:

NOW COMES the City of Farmers Branch, Bob Phelps, Tim O'Hare, Bill Moses, Charlie Bird, James Smith and Ben Robinson (Collectively "Appellants" or "City"), Appellants in the above entitled and numbered cause, and files this, their Appellants' Reply Brief in reply to Appellee's Brief and urging reversal of the trial court's Order dated February 2, 2007, denying Appellants' Plea to the Jurisdiction.

I.

INTRODUCTION

In denying Appellants' Plea to the Jurisdiction (the "Plea"), the court took into consideration "all evidence, and the arguments and authorities presented by counsel for Plaintiff and Defendants." (CR at 604)(emphasis added). As the record clearly reflects arguments and authority were presented over a series of hearings, including those on January 10, 16, 18, and 26, 2007. (RR vols. 1-6). The pleadings of the parties speak for themselves and are included in the Clerk's Record.

REPLY POINTS

1. **APPELLEE FAILED TO *PLEAD FACTS* SUFFICIENT TO ASSERT A VALID CAUSE OF ACTION UNDER THE TEXAS OPEN MEETINGS ACT AND OVERCOME APPELLANTS' SOVEREIGN IMMUNITY.**
2. **THE ISSUE OF MOOTNESS WAS PROPERLY PRESENTED TO THE TRIAL COURT AND THE ENACTMENT OF ORDINANCE 2903 MAKES APPELLEE'S CLAIMS MOOT.**

II.

SUMMARY OF THE ARGUMENT

Appellants' Plea to the Jurisdiction was founded on Appellants' general entitlement to immunity. Appellee failed to assert pleadings in his Amended Complaint (CR 418-35) which met the prerequisites to pierce Appellants' immunity. Primarily, Appellee failed, in his Amended Complaint to allege facts sufficient to show a valid claim under the Texas Open Meetings Act, Chapter 551 Texas Government Code ("TOMA"). In addition, Appellee's claims of alleged violations of TOMA are now moot since Ordinance 2892 has been repealed by and through the adoption of Ordinance 2903 (Brief of Appellant App. No. 2). For these reasons, the trial court's denial of the Plea should be reversed as a matter of law.

III.

ARGUMENT & AUTHORITIES

1. APPELLEE FAILED TO PLEAD FACTS SUFFICIENT TO ASSERT A VALID CAUSE OF ACTION UNDER THE TEXAS OPEN MEETINGS ACT AND OVERCOME APPELLANTS' SOVEREIGN IMMUNITY.

Appellee fails to state the correct standard for examining the sovereign immunity claim in the Plea. Appellee apparently confuses an examination of the merits of his claim with his burden to assert facts and introduce evidence sufficient to show a valid claim under TOMA and pierce Appellants' immunity. The trial court is not limited to the face of the pleadings in determining whether sovereign immunity is waived even when a statute affirmatively waives sovereign immunity. *See, City of Carrollton v. Harlan*, 180 S.W.3d

894, 896-97 (Tex. App.—Dallas 2006, rev. denied). In reversing the trial court’s denial of a plea to the jurisdiction and rendering judgment for the City in a Texas Tort Claims Act case, the Court said as to the plaintiff’s burden:

In performing this review, we do not look to the merits of the case, but consider only the pleadings and evidence relevant to the jurisdictional inquiry. The plaintiff has the burden to allege facts affirmatively demonstrating the trial court has subject-matter jurisdiction.

Id. (internal citations omitted and emphasis added). Therefore, the trial court is not limited to the face of the pleadings as argued by Appellee, and it is Appellee’s burden to introduce evidence that is needed to “affirmatively demonstrate” jurisdiction of the trial court. Like TOMA, the Texas Tort Claim Act expressly waives a city’s sovereign immunity but only if a valid claim is stated under that statute. *Id.* In *City of Carrollton*, the Court reversed a denial of the city’s plea to the jurisdiction and rendered judgment for the city saying:

[The Texas Tort Claims Act] does not apply to the claim against the City in this case. Appellee alleged no facts, and presented no evidence at the hearing on the plea to the jurisdiction, indicating a motor vehicle or motorized equipment was used by a city employee in a manner that could have caused the damage at issue in this lawsuit. To the contrary, the City employee specifically testified that none of the activities of the City employees caused the sewage to back-up into appellee’s house.

Id. (internal citations omitted). Clearly, it is the plaintiff’s burden to present a valid claim under any statute that purports to waive sovereign immunity. *Id.*, see also *Olympic Waste Services v. City of Grand Saline*, 204 S.W.3d 496, 499-500 (Tex.App.—Tyler 2006, no pet.)(contract claim); *City of Dallas v. Blanton*, 200 S.W.3d 266, 270-79 (Tex.App.—Dallas 2006, no pet.)(takings claim); *Bell v. City of Dallas*, 146 S.W.3d 819, 823-25 (Tex.App.—

Dallas 2002 no pet.)(takings claim); *Dahl v. State*, 92 S.W.3d 856, 862 (Tex.App.—Houston [14th Dist.] 2002, no pet.)(inverse condemnation).

As to Ordinance 2892, Appellee never plead or presented any evidence as to the specific language of the notice for the City Council’s November 13, 2006, meeting. Appellee’s brief points to one sentence in the Amended Petition that says: “the agenda for the November 13, 2006, City Council meeting ... did not mention or otherwise describe the Ordinance—although numerous other proposed ordinance [sic.] and resolutions are specifically identified therein:” (CR at 427). Appellee does not explain how the agenda was specifically worded regarding Ordinance 2892 or how other ordinances or resolutions were “specifically identified”. At a minimum, when a plaintiff alleges a TOMA cause of action for lack of notice in an agenda, the specific agenda language complained of must be set out and the violation explained sufficiently to invoke TOMA. While Appellee’s brief speaks extensively about specific authority for different alleged violations of TOMA, (Appellee’s Brief p.25-27), no citation is made to Appellee’s First Amended Petition to support these specific arguments because the First Amended Petition does not contain any similar allegations.

Notice under TOMA is sufficient if it would alert a reader to the fact that some topic would be discussed and action may be taken on a certain topic. Tex. Gov’t. Code Ann. §551.041; see *Lower Colo. River Auth. v. City of San Marcos*, 523 S.W.2d 641, 646 (Tex. 1975); see also *Rettberg v. Tex. Dep’t of Health*, 873 S.W.2d 408, 411 (Tex. App.-Austin 1994, no writ). As long as a reader is alerted to the topic for consideration, it is not necessary

to state all of the consequences that may flow from consideration of the topic. *See Weatherford v. City of San Marcos*, 157 S.W.3d 473, 486-87 (Tex. App.—Austin 2004, pet. denied). A plain reading of the notice for the November 13, 2006, meeting, a certified copy of which is attached hereto as Appendix No. 1, indicates that the challenged action was indeed properly and adequately noticed. When Ordinance 2892 was adopted, the applicable agenda item was posted as follows:

Discuss pending and contemplated litigation- Texas Government Code 551.071(1)

Consult with city attorney on proposed ordinances, resolutions, policies, and other issues related to English language proclamation, illegal immigration, business licensing, and rental licensing.

Consultation with city attorney on matters in which the duty of the city attorney under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551 of the Texas Government Code-Texas Government Code 551.071(2) (English language proclamation, illegal immigration regulations, business licensing, and rental licensing). (RR Ex. 8) (emphasis added).

Ordinance 2892 unquestionably relates to rental licensing, wholly consistent with the City Council agenda item's posting which provided more than reasonable notice of the topic to be considered. (RR Ex. 8; CR 543-577). Further, while Ordinance 2892 was initially discussed with the City Council in Executive Session, all action on Ordinance 2892 was conducted in open session on November 13. (RR Ex. 1).

Regarding Ordinance No. 2893, Appellee again confuses the notice pleading requirements with his burden to "affirmatively demonstrate" facts showing jurisdiction. Instead of attacking the notice of the "bus tour", Appellee now tries to assert a claim of

improper deliberations about Ordinance 2893. *See, City of Carrollton*, 180 S.W.3d at 896-97; (Appellee’s Brief at p. 33-34.) Appellee cites to vague language in the First Amended Petition to support his claim of improper deliberations. *Id.* However, Appellee does not mention the date, time, place, or number of council members who allegedly met in secret. Such bald face assertions cannot constitute facts sufficient to “affirmatively demonstrate” the subject matter jurisdiction of the trial court. *Id.*

The allegations as to Ordinance 2900 are even more insufficient than the previous discussions. Appellee’s sole premise in the First Amended Petition supporting a conclusion that improper discussion occurred regarding Ordinance 2900 is a quote from Mayor Phelps and an alleged remarks of an Assistant City Attorney from a newspaper article. (CR at p. 431). The alleged remarks are clearly predictions of what will happen and lend no support to the conclusion that secret meetings took place.

Appellee’s arguments in his Brief as to the improper deliberations during executive session do not impinge the arguments made in Appellants’ Brief and in the interest of judicial economy, we will not revise those in this Reply Brief.

2. THE ISSUE OF MOOTNESS WAS PROPERLY PRESENTED TO THE TRIAL COURT AND THE ENACTMENT OF ORDINANCE 2903 MAKES APPELLEE’S CLAIMS MOOT.

Appellee’s argument on the issue of mootness is two fold: (1) the City has not specifically plead mootness in its Plea to the Jurisdiction, and (2) even if plead, remedial relief is still possible and necessary. Both arguments must fail for lack of a proper foundation.

The trial court, the plaintiff, and the defendant, frequently raised and discussed issue of mootness long before the trial court ruled on the Appellants' Plea to the Jurisdiction. (RR vol. no.2 at p. 59 line 8-14; vol. no. 3 at p. 10 line 7, p. 28 line 22, p. 49 line 12, p. 50 lines 13 and 23, p. 51 line 11, p. 53 line 25, p. 54 lines 9 and 22, p. 75 line 13, p. 86 line 6, p. 91 line 23, p. 93 line 21, p. 102 line 10, p. 134 lines 17 and 24, p. 144 line 10, p. 218 line 14; vol. no. 4 at p. 44 line 14, p. 26 line 25; vol. no. 5 at pp. 5-33)(discussing mootness)(RR vol. no. 5 at p. 17 line 19, p. 19 line 15, p. 23 line 8, p. 24 line 22, p. 25 line 6, p. 28 line 5, p. 29 line 2)(discussing effects of Ordinance 2903 specifically). In addition, the trial court's Order Denying Plea to the Jurisdiction specifically states that the denial is based on "the associated Brief in Support, all evidence, and the arguments and authorities presented". (CR at 604)(emphasis added). Based on the "arguments" on the issue of mootness presented to the trial court and discussed, without objection by Defendant, prior to the trial court's ruling, the issue has been tried by consent. Tex. R. Civ. P. 67; *Roark v. Stallworth Oil and Gas, Inc.*, 813 S.W.2d 492, 495 (Tex. 1991)("the party who allows an issue to be tried by consent and who fails to raise lack of a pleading before submission of the case cannot later raise the pleading deficiency for the first time on appeal"). Since, the issue was tried by consent, the question of mootness is properly before this Court.

Remedial measures are not permitted by the plain language of TOMA against the City of Farmers Branch and inappropriate against the individual Appellants. TOMA provides for injunctive relief as follows:

An interested person, including a member of the news media, may bring an

action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of this chapter by *members* of a governmental body.

Tex. Gov. Code § 551. 142 (emphasis added). The plain language of the statute provides a cause of action for injunction only against “members” of the governmental body and not against the governing body itself. Thus, no remedial measure is possible against the City of Farmers Branch.

As to the individual Appellants, remedial action is inappropriate because TOMA provides for a remedy in case of future violations. TOMA provides that any interested person has the right to immediate judicial review by way of an application for writ of mandamus or injunction to stop, prevent, or reverse a violation or threatened violation. The ability to seek immediate relief of even threatened violations makes remedial relief as to future actions inappropriate as the one Court put it:

If a violation evades review, the reason does not lie in the inherent nature of the allegedly wrongful act. It lies rather in the failure of the ‘interested person’ to invoke the immediate remedy expressly provided by the legislature.

Cornyn v. City of Garland, 994 S.W.2d 258, 266-67 (Tex.App.—Austin 1999, no pet.). In addition, as the court in *Cornyn* said “the legal sufficiency of an such notice [of a future executive session] will depend on its particular content.” *Id.* In his First Amended Petition, Appellee asks only for injunctive relief to prohibit “further violations of TOMA”. (CR at 432). This claim for injunctive relief clearly cannot stand as appropriate relief since the particulars of future meetings cannot be known. *See Cornyn*, 994 S.W.2d at 266-67.

TOMA and Ordinances 2900 and 2903

The City of Farmers Branch repealed Ordinance 2892 on January 22, 2007, by

Ordinance 2903. (CR 602-3). A case becomes moot “when one seeks a judgment on some matter which, when rendered for any reason, cannot have any practical legal effect on a then-existing controversy.” *Pantera Energy Co. v. R.R. Comm’n of Tex.*, 150 S.W.3d 466, 471 (Tex. App.—Austin 2004, no pet.). When a case is moot, “the only proper judgment is one dismissing the cause.” *Shelby Operating Co. v. City of Waskom*, 964 S.W.2d 75, 81 (Tex. App. – Texarkana 1997, pet. denied) (case decided after Sept. 1, 1992). The passage of Ordinances 2903 makes claims for relief moot. *See, Burks v. Yarbrough*, 157 S.W.3d 876, 882-83 (Tex.App.—Hous. [14th Dist.] 2005, mandamus denied).

In *Burks*, the party complaining of a TOMA violation by the County Commissioners Court requested that the issue be reconsidered, and the approval after reconsideration ratified the previous action and cured any possible TOMA violations. *Id.* at 882-83. *Burks* involved the settlement of possible claims against the County for termination of a former employee (Plaintiff in the lawsuit). *Id.* A settlement was reached between the County and the Plaintiff, and payment of a settlement was approved by the County on July 31, 2000. *Id.* Plaintiff complained that the settlement approval violated TOMA and requested the County reconsider his settlement payment. *Id.* The County complied and on August 28, and again on September 11, reconsidered and re-approved the settlement to Plaintiff. *Id.* The Court held that “any impropriety was corrected when the Commissioners Court, at [Plaintiff’s] request, subsequently reconsidered the issue and again approved payment.” *Id.* at 883.

Similar to *Burks*, Farmers Branch, through the action of Plaintiff and others that signed the petition, reconsidered Ordinance 2892 at its January 8, 2007, meeting. At that

meeting, the Ordinance was approved again when the City Council decided to call an election on Ordinance 2892 instead of repealing it. Any impropriety was corrected when the City Council reconsidered Ordinance 2892, as required by the City Charter, and upheld the ordinance. *See, Burks*, 157 S.W.3d at 882-83; *City of San Antonio v. River City Cabaret, Ltd.*, 32 S.W.3d 291, 292-93 (Tex.App.—San Antonio 2000, rev. denied)(ratifying city attorney's authority to file suit after the suit had been filed). Therefore, no present controversy exists that the Court could remedy by its judgment and the case should be dismissed.

CONCLUSION AND PRAYER

The trial court's denial of the Appellants' Plea to the Jurisdiction was in error because the Appellee's claims are moot, their pleadings do not waive sovereign immunity, and any alleged violation has been ratified.

WHEREFORE, PREMISES CONSIDERED, Appellant prays that this Court reverse the trial court's denial of the Plea to the Jurisdiction. Appellant prays further for such other further relief, both in law and in equity, to which Appellant may show itself justly entitled.

Respectfully submitted,

BOYLE & LOWRY, L.L.P.



John F. Boyle, Jr.
State Bar No. 02797000

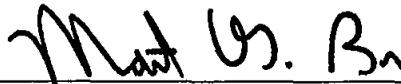
Matthew C. G. Boyle
State Bar No. 24001776
Michael K. Kallas
State Bar No. 24004731
Kristy J. Orr
State Bar No. 24041632
4201 Wingren, Suite 108
Irving, Texas 75062-2763
(972)650-7100 Phone
(972)650-7105 Fax

ATTORNEYS FOR APPELLANTS

CERTIFICATE OF SERVICE

THIS WILL CERTIFY that a true and correct copy of the foregoing instrument has been served by the below signed person via certified mail return receipt requested to the following attorneys of record for Appellee, Guillermo Ramos, in this cause of action on the 23rd day of May, 2007:

William A. Brewer III
State Bar No. 02967035
James S. Renard
State Bar No. 16768500
C. Dunham Biles
State Bar No. 24042407
1717 Main Street
Dallas, Texas 75201
Telephone: (214) 653-4000
Facsimile: (214) 653-1015



Matthew C. G. Boyle
Attorney for Appellants

APPENDICES

1. Certified Copy of Agenda for November 13, 2006.



THE STATE OF TEXAS

§
§
§
§
§

County of Dallas

City of Farmers Branch

I, the undersigned City Secretary of the City of Farmers Branch, hereby certifies that the attached five pages of photographic copies are true and correct complete copies of the City of Farmers Branch City Council agenda for its meeting of November 13, 2006, as the same is kept by my office in accordance with the duties of my office imposed by the Farmers Branch City Charter, and is currently of record in my office in City of Farmers Branch, Dallas County, Texas, and that I am the lawful possessor and custodian of such record.

[Seal]

Cindee Peters
City Secretary
City of Farmers Branch, Texas

J:\Boyle-Lowry\Farmers Branch\fb-litigation\fb-ramos\fb-ramos-Form-certification of records-Agendas.doc

City of Farmers Branch
City Council Regular Meeting Agenda
City Hall Plaza
Council Chambers
13000 William Dodson Parkway
Farmers Branch, Texas
Monday, November 13, 2006
6:30 p.m.

Hard copies of the full City Council agenda information packet are accessible prior to every regularly scheduled Monday Council meeting according to the following locations and schedule:

- Manske Library on the Saturday prior to the meeting
- Justice Center on the Friday evening prior to the meeting
- City Hall on the day of the meeting

Additionally, the agenda packet is available for download from the City's web site at www.farmersbranch.info after 10 a.m. the day of every regularly scheduled Council meeting. This download may be accessed from any computer with Internet access, including computers at the Manske Library and in the lobby of the City Hall.

- A.1 Invocation and Pledge of Allegiance.
- A.2 Presentation by Brookhaven Country Club regarding their 50th year anniversary celebration plans and request to partner with the City to place banners in selected locations and to use the City logo, and take appropriate action.
- A.3 Consider acceptance of a bronze sculpture from the Arts Foundation of Farmers Branch ~~to the Manske Library and take appropriate action.~~
- A.4 Consider acceptance of donations from Stanley Works, Inc., Glazer's, Inc., and North Texas Tollway Authority to the Parks and Recreation Department in support of the annual Christmas Tree Lighting event at the Farmers Branch Historical Park and take appropriate action.
- A.5 Presentation of Board Applications.
- A.6 Report on Study Session items.
- B.0 Consider the following as Consent Items and take appropriate action.
- B.1 Consider approval of minutes of City Council meeting of October 16, 2006 and take appropriate action.

Any item on this posted agenda may be discussed in Executive Session provided it is within one of the permitted categories under Chapter 551 of the Texas Government Code.

- B.2 Consider adopting Resolution No. 2006-120 nominating The Delta Companies as an Enterprise Zone project and take appropriate action.
- B.3 Consider adopting Resolution No. 2006-124 accepting three sanitary sewer easements on properties addressed as 3273 and 3277 Brincrest Drive and 3140 Brook Hollow Drive dedicated by Mr. and Mrs. Travis Henderson, Mr. and Mrs. Gregory Dimijian, and Ms. Gail Cope, respectively, to facilitate the construction of erosion protection improvements for an existing sanitary sewer main along Farmers Branch Creek and take appropriate action.
- B.4 Consider adopting Resolution No. 2006-122 accepting a five-foot wide aerial easement for streetlight installation dedicated by Mr. and Mrs. Gordon Highfill of 3821 Blue Trace Lane and take appropriate action.
- B.5 Consider adopting Resolution No. 2006-126 authorizing the City Manager to execute a Commercial Lease Agreement for the lease of the city-owned facility at 500 Huffines Boulevard, Lewisville, Texas with Nortex Modular Leasing and Construction Company and take appropriate action.
- B.6 Consider adopting Resolution No. 2006-121 authorizing the City Manager to execute a lease agreement with MetroPCS Texas, LLC for certain property located at 3725 Valley View Lane and take appropriate action.
- B.7 Consider adopting Ordinance No. 2880 approving the request from MetroPCS for a specific use permit to collocate a six-panel cellular antenna system on the Farmers Branch Water Tower located on approximately 6.01 acres at 3725 Valley View Lane, generally located on the north side of Valley View Lane and east of Marsh Lane within the One Family Residence District-2 zoning district and take appropriate action.
- B.8 Consider adopting Resolution No. 2006-117 awarding the bid for the 2006-2007 supply of asphalt to Austin Asphalt for a unit price of \$41.00 per ton and take appropriate action.
- C.1 Public Hearing: Consider adopting Ordinance No. 2889 approving the request by Chandler Signs on behalf of SMC Hotels, L.P. for a specific use permit amendment to allow for modifications to signage for the existing Marriott Fairfield Inn hotel located at 13900 Parkside Center Boulevard within the Planned Development No. 64 zoning district and take appropriate action.
- C.2 Public Hearing: Consider request for approval of the Final Plat of FNP America Addition being a replat of Lot 1, Valwood Distribution Way Industrial Park and take appropriate action.
- C.3 Public Hearing: Consider request to approve a revised Final Plat of Cambridge Crossing and take appropriate action.

Any item on this posted agenda may be discussed in Executive Session provided it is within one of the permitted categories under Chapter 551 of the Texas Government Code.

- C.4 Consider adopting Resolution No. 2006-119 approving the request from Richard Busby on behalf of Carlyle Heritage, L.P. and Carlyle Heritage II, L.P. for concept plan approval for the existing Heritage Square office development, approximately 11.8 acres located at 4835 and 5001 LBJ Freeway within Planned Development No. 84 zoning district and take appropriate action.
- C.5 Public Hearing: Consider request for approval of the Final Plat of Carlyle Heritage being a replat of Lot 1, Block A Heritage Square Addition and take appropriate action.
- C.6 Public Hearing: Consider adopting Ordinance No. 2891 approving the request from Woodmont Companies to change the zoning on approximately 7.18 acres addressed as 4825 LBJ Freeway and generally located northwest of the intersection of LBJ Freeway and the Dallas North Tollway, from Planned Development No. 84 zoning district to Planned Development No. 89 zoning district, establishing permitted uses, development standards and processes and take appropriate action.
- C.7 Consider adopting Resolution No. 2006-118 approving the request from Woodmont Companies for site plan approval of a multi-family residential development on an approximate 7.18-acre tract located at 4825 LBJ Freeway, generally northwest of the intersection of LBJ Freeway and Dallas North Tollway within the Planned Development No. 89 zoning district and take appropriate action.
- C.8 Public Comments from Farmers Branch Residents.
- C.9 Consider necessary action on items discussed in Executive Session.
- D.1 Consider adopting Ordinance No. 2893 amending the property maintenance section of the Code of Ordinances and take appropriate action.
- D.2 Consider adopting Resolution No. 2006-116 awarding the bid for the purchase of the annual ~~supply of refuse sacks for the Public Works Department~~ to Duro Bag Mfg., Co. and take appropriate action.
- D.3 Consider adopting Resolution No. 2006-115 awarding the bid for the 2006-2007 supply of ready-mix concrete to Redi Mix Concrete and take appropriate action.
- D.4 Consider appointments to the Zoning Board of Adjustment and Building Code Board of Appeals, and Metrocrest Hospital Authority, and take appropriate action.
- D.5 Consider Council travel reports and requests, and Council Committee and Organization reports, and take appropriate action.
- D.6 Public Comments continued from non-Farmers Branch residents.

Any item on this posted agenda may be discussed in Executive Session provided it is within one of the permitted categories under Chapter 551 of the Texas Government Code.

The Mayor announces that the items on the agenda for the General Session have been concluded. After a short recess, the meeting will convene for items in the Executive Session. The meeting will reconvene into General Session after the items have been discussed in the Executive Session to consider any necessary action. Texas Government Code Chapter 551 of the Open Meeting Law provides that such items as personnel matters, land acquisition, and pending and contemplated litigation may be discussed in closed session.

Executive Session

- E.1 Discuss economic development incentives - Texas Government Code Section 551.087.
Discuss economic development incentives for businesses with which the City is conducting economic development negotiations.
- E.2 Discuss pending and contemplated litigation - Texas Government Code Section 551.071(1)
Consult with city attorney on proposed ordinances, resolutions, policies, and other issues related to English language proclamation, illegal immigration, business licensing, and rental licensing.

Consultation with city attorney on matters in which the duty of the city attorney under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551 of the Texas Government Code-Texas Government Code 551.071(2) (English language proclamation, illegal immigration regulations, business licensing, and rental licensing).

- E.3 Discuss personnel matters - Texas Government Code Section 551.074.
Discuss city manager recruitment and set special meeting dates.

The Council reconvenes into General Session.

- F.1 Consider necessary action on items discussed in the Executive Session.
- F.2 Adjournment.

City Hall is wheelchair accessible. A barrier free entry is available at the main entrance of City Hall with specially marked parking spaces nearby. The Council Chambers are accessible on the main floor of City Hall, to the left side. Requests for language interpretation or other special services should be received three (3) working days prior to the meeting. Such requests can be made to Mrs. Cindee Peters, City Secretary at (972) 919-2503.

Any item on this posted agenda may be discussed in Executive Session provided it is within one of the permitted categories under Chapter 551 of the Texas Government Code.

Certification

I certify that the above notice of meeting was posted on the bulletin board at City Hall on Friday, November 10, 2006 at 1:30 p.m.

Suzanne Reynolds
Acting City Secretary