



**LAKEWOOD VILLAGE TOWN HALL
100 HIGHRIDGE DRIVE
LAKEWOOD VILLAGE, TEXAS**

**TOWN COUNCIL MEETING
MAY 11, 2017 7:00 P.M.**

REGULAR SESSION – AGENDA

Call to Order and Announce a Quorum is Present

A. PLEDGE TO THE FLAG:

B. VISITOR/CITIZENS FORUM: At this time, any person with business before the Council not scheduled on the agenda may speak to the Council. No formal action may be taken on these items at this meeting.

C. CONSENT AGENDA: All of the items on the Consent Agenda are considered to be self-explanatory and will be enacted by one motion. There will be no separate discussion of these items unless a Council Member or citizen so request. For a citizen to request removal of an item from the Consent Agenda a speaker card must be filled out and submitted to the Town Secretary prior to the call to order.

1. Minutes of April 13, 2017 Council Meeting (Asbell)
2. Canvass of Election Returns for the May 6, 2017 Lakewood Village General Election (Asbell)
3. Resolution Declaring the Results of the May 6, 2017 Lakewood Village General Election (Asbell)

D. REGULAR AGENDA:

1. Consideration of Replat Request for 3959 Spinnaker Run Pointe (Asbell)
2. Consideration of Lakewood Village Municipal Development District Board of Directors Request to Operate United States Army Corps of Engineers Water System at Boy's Camp Road (Asbell)
3. Presentation by Patterson Professional Services on Status of Water & Wastewater Systems (Asbell)
4. Consideration of Resolution Opposing Senate Bill 1515 and Senate Bill 1004 (Asbell)
5. Consideration of Resolution Opposing House Bill 2485 (Asbell)?

E. EXECUTIVE SESSION: In accordance with Texas Government Code, Section 551.001, et seq., the Town Council will recess into Executive Session (closed meeting) to discuss the following: (1) §551.071(2): Consultation with Attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter re: Town boundaries, annexations, dis-annexation, and interlocal agreements; and (2) §551.087: To discuss or deliberate regarding commercial or financial information that the Town of Lakewood Village has received from a business prospect that the Town seeks to have locate, stay, or expand in or near the territory of the Town of Lakewood Village and with which the Town is conducting economic development negotiations; and/or to deliberate the offer of a financial or other incentive to the business prospect.

F. RECONVENE: Reconvene into regular session and consideration of action, if any, on items discussed in executive session

G. COUNCIL AND STAFF COMMENTS: Comments may be made by Council or Staff. No formal action may be taken on these items at this meeting.

H. ADJOURNMENT

I do hereby certify that the above notice of meeting was posted on the designated place for official notice at 4:30 p.m. on Saturday, May 6, 2017.

Linda Asbell, TRMC, Town Secretary



The Town Council reserves the right to adjourn into closed session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by Texas Government Code Section 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices) and 551.087 (Economic Development), 418.183 (Homeland Security)

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the Town Secretary's office at 972-294-5555 or FAX 972-292-0812 for further information.

One or more members of the LAKEWOOD VILLAGE MUNICIPAL DEVELOPMENT DISTRICT may attend this meeting. No action will be taken by the MDD Board during this meeting.

LAKEWOOD VILLAGE TOWN COUNCIL

COUNCIL MEETING

APRIL 13, 2017

Council Members:

Dr. Mark Vargus, Mayor
Ed Reed – Mayor Pro-Tem
Clint Bushong
Gary Newsome
Ray Duff
Dan Tantalo – Arrived at 7:04 p.m.

Town Staff:

Linda Asbell, TRMC, Town Secretary

REGULAR SESSION - 7:00 P.M.

With a quorum of the Council Members present, Mayor Vargus called the Regular Meeting of the Town Council to order at 7:00 p.m. on Thursday, April 13, 2017, in the Council Chambers of the Lakewood Village Town Hall, 100 Highridge Drive, Lakewood Village, Texas.

PLEDGE TO THE FLAG:

(Agenda Item A)

Mayor Vargus led the Pledge of Allegiance

VISITOR/CITIZENS FORUM:

(Agenda Item B)

No one requested to speak.

CONSENT AGENDA:

(Agenda Item C)

1. Minutes of February 9, 2017 Council Meeting (Asbell)
2. Minutes of March 9, 2017 Council Meeting (Asbell)

MOTION: Upon a motion made by Councilman Bushong and seconded by Councilman Ray Duff, council voted four (4) “ayes”, no (0) “nays” to approve consent items as presented. *The motion carried.*

REGULAR AGENDA:

(Agenda Item D)

**Consideration of Replat Request for 3959
Spinnaker Run Pointe (Asbell)**

(Agenda Item D.1)

The owner of 3959 Spinnaker Run Pointe has requested that consideration of this item be postponed until a future meeting.

**Consideration of Expenses for Finalization of
Ground Storage Tank Installation (Vargus)**

(Agenda Item D.2)

Mayor Vargus reported that the ground storage tank was purchased at a significantly discounted price from Lincoln Water System. The storage tank has been installed, sealed, and leak tested. Mayor Vargus discussed the plumbing on the three storage tanks that allows for isolation of each tank for repairs or upgrades without affecting water distribution to the town. The electronics need to be installed to control the water level in the tanks, connect the full system together, and coordinate fill levels. Mayor Vargus reported that the council approved acquiring and installation of the tanks but council needs to review the proposal from C&S Services for the controls. He would like to have the full water system installed and operational prior to the high demand of the summer. There was some discussion about all the equipment being located in the well house at the water system. Councilman Tantalo asked for the total cost of the project. There was some discussion about the project being undertaken without a full project plan being in place prior to beginning the project. Councilman Tantalo stated that he applauds the work done but would have preferred seeing a project plan prior to commencement. Mayor Vargus reported that Kimley Horn, the former Town Engineer, provided an estimate for additional water storage. The cost estimate was between \$300,000 and \$500,000. Mayor Vargus stated that when the equipment became available from Lincoln Park it was an opportunity that the town could not pass up.

MOTION: Upon a motion made by Clint Bushong and seconded by Councilman Newsome, council voted four (4) “ayes”, and one (1) “nay” (Councilman Tantalo) to authorize the Mayor to enter into an agreement with C&S Services to complete the controls for the new water storage tank. *The motion carried.*

Discussion of Road Repairs (Newsome)

(Agenda Item D.3)

Councilman Newsome reviewed the asphalt repairs made to Carrie Lane and Melody Lane. Councilman Newsome reported that the vendor that made the repairs would make additional repairs at the same price of \$2.00 per square foot. There was some discussion about the road damage to Carrie Lane due to the home construction equipment being driven on the roads.

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Mayor Vargus reported that Town Secretary Asbell recommended moving the weight limit sign to a more visible location. There was some discussion about the balance of the road repair fund and the size of repairs needed. There was some discussion about the budget approved for road repairs. There was some discussion about the condition of the current road repairs and the vendor warranty covering new repairs and fixing failed previous repairs.

**Consideration of Revision to Lakewood
Village Code Compliance Form (Bushong)**

(Agenda Item D.4)

Councilman Bushong reported that council updated the building compliance code and he wanted to update the current forms to reflect the code council previously adopted. There was some discussion about the checklist that was included in the pre-construction meeting.

MOTION: Upon a motion made by Councilman Duff and seconded by Councilman Bushong, council voted five (5) “ayes”, no (0) “nay” to the adopt Revision to the Lakewood Village Code Compliance Form. *The motion carried.*

**Consideration of Certificate of Occupancy
Checklist Form (Bushong)**

(Agenda Item D.5)

Councilman Bushong reviewed the proposed occupancy checklist form. The items on the checklist are standard items that have been in the ordinance for many years.

MOTION: Upon a motion made by Councilman Duff and seconded by Councilman Bushong, council voted five (5) “ayes”, no (0) “nay” to the approve the certificate of occupancy checklist form. *The motion carried.*

**Discussion of Oversized Vehicle / On and Off
Street Parking (Vargus)**

(Agenda Item D.6)

Mayor Mark Vargus reported that the town has received a handful of questions about some of the oversized vehicles in town. Mayor Vargus stated that the town can regulate oversized vehicle parking on streets but many no-parking signs would be required to be posted around town. The transportation code does not cover parking of oversized-vehicles on private property. Mayor Vargus reported that regulation of parking on private property is more difficult because it involves property use. Mayor Vargus stated that the town cannot regulate the number of vehicles parked at a property. There was some discussion about the definition and regulation of junked

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vehicles and the change in the State law after the town ordinance was passed. There was some discussion about protecting property owner's rights to park vehicles on their private property.

**Consideration of Temporary Waving of
Fence Permit Fee and Town Clean-Up
(Newsome)**

(Agenda Item D.7)

Councilman Newsome stated that he would like to assist citizens in spring-clean up by temporarily waiving the \$25 fence permit fee and possibly providing a roll-off for contractors/citizens to deposit old fencing. Councilman Newsome reported that any time the town has attempted to provide roll-offs the containers people have filled it with prohibited items. Mayor Vargus reported that Allied Waste will not provide a roll-off unless the town provides constant monitoring. The town would incur fines if the waste was taken to the landfill and prohibited items like paint or other household hazardous materials are mixed in with the trash. Councilman Newsome asked for the town to investigate the cost of providing bulk-trash pick up two months in a row. Town Secretary Asbell clarified that the permit requirement and fee for pool enclosures cannot be waived.

MOTION: Upon a motion made by Councilman Bushong and seconded by Councilman Newsome, council voted five (5) "ayes", no (0) "nay" to waive the fence permit beginning April 13, 2017 through June 30, 2017. *The motion carried.*

Discussion of Budget Review (Tantalo)

(Agenda Item D.8)

Councilman Tantalo reported that in general the town is running well but he has concerns about some of the specific budget line items. Councilman Tantalo reported that all revenue received is a "tax on the people" and that is the only way he will define revenue. Councilman Tantalo reported that he has a concern about legal bills. He would like to open a budget discussion every month so council knows what is going on and what is being spent. Mayor Vargus stated that he submits the first draft of the budget in June. Mayor Vargus spends time with the Town Secretary reviewing the expenses because the town reports on a cash basis. He reviews the line items on an accrual basis for preparing the budget. Mayor Vargus stated that Lakewood Village operates on a modified cash basis approved by the Government Account Standards Board. During the audit the accountant converts the finances into modified accrual. Mayor Vargus explained that using the accrual basis would not help in the operation of the town and management of the funds. There was some discussion about council monitoring the budget numbers more often. There was some discussion about the intent of this agenda item and Councilman Tantalo's desire to watch the budget. Town Secretary Asbell reported that she places financial reports on the town website each month.

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EXECUTIVE SESSION:

(Agenda Item E)

At 8:29 p.m. Mayor Vargus recessed into executive session in accordance with Texas Government Code, Section 551.001, et seq., the Town Council will recess into Executive Session (closed meeting) to discuss the following: (1) §551.071(2): Consultation with Attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter re: Town boundaries, annexations, dis-annexation, and interlocal agreements; and (2) §551.087: To discuss or deliberate regarding commercial or financial information that the Town of Lakewood Village has received from a business prospect that the Town seeks to have locate, stay, or expand in or near the territory of the Town of Lakewood Village and with which the Town is conducting economic development negotiations; and/or to deliberate the offer of a financial or other incentive to the business prospect

RECONVENE:

(Agenda Item F)

Mayor Vargus reconvened the regular session of the Lakewood Village Town Council at 8:46 pm. No action was taken.

COUNCIL AND STAFF COMMENTS

(Agenda Item G)

Town Secretary Asbell, announced that the Easter Egg hunt will be from 10:00am to 12:00 pm on April 15, 2017 at Town Hall.

Councilman Newsome reported that he and Mayor Pro-Tem Ed Reed are going to rebuild the message board for the mail boxes on Highridge.

Mayor Pro-Tem Reed reported that striping on the road at the entrance to town has been completed.

Town Secretary Asbell reported that the renovation of 423 Hillside is nearing completion also that 474 Peninsula has been sold and the new owner plans on demolishing the home in the very near future.

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ADJOURNMENT

(Agenda Item H)

MOTION: Upon a motion made by Councilman Bushong and seconded by Councilman Duff council voted five (5) “ayes” and no (0) “nays” to adjourn the Regular Meeting of the Lakewood Village Town Council at 8:05 p.m. on Thursday, April 13, 2017. The motion carried.

These minutes approved by the Lakewood Village Town Council on the 11th day of May 2017.

APPROVED

Ed Reed
MAYOR PRO-TEM

ATTEST:

Linda Asbell, TRMC
TOWN SECRETARY



**MAY 6, 2017
GENERAL ELECTION**

**UNOFFICIAL TABULATION
OF VOTING TALLIES**

POSITION	CANDIDATE	Early Voting Total	Election Day Total	Unofficial Totals
Council Place 1	Ray Duff	81	27	108
	Elizabeth Shields	99	26	125
Council Place 3	Ed Reed		Unopposed	
Council Place 5	Paul Bowers	76	25	101
	Clint Bushong	105	28	133
TOTAL VOTES		361	106	467

Early Votes Cast	181
Election Day Votes Cast	54
Registered Voters	431
Total Ballots Cast	235
Voter Turnout	54.5%

Linda Asbell, TRMC,
Town Administrator/Town Secretary

Jane Schoknecht,
Election Judge



RESOLUTION NO. 17-02

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LAKEWOOD VILLAGE, TEXAS, DECLARING THE RESULTS OF THE CANVASS FOR THE ELECTION RETURNS OF THE ELECTION OF MAY 6, 2017, FOR THE PURPOSE OF ELECTING THREE MEMBERS OF COUNCIL OF THE TOWN OF LAKEWOOD VILLAGE

WHEREAS, the Town Council of the Town of Lakewood Village, Texas, duly ordered a general election to be held in said Town on May 6, 2017, for the purpose of electing three members of the Town Council of the Town of Lakewood Village; and

WHEREAS, proper notice of said election was duly and legally given and that said election was held in accordance with the election laws of the State of Texas; and

WHEREAS, a Canvass of the Election including the returns was conducted on May 11, 2017; and

WHEREAS, it was found that the persons herein named received the following votes for said term of office on the Town Council of the Town of Lakewood Village:

Council, Place 1. **Ray Duff** received 108 or 46% of the votes cast;
 Elizabeth Shields received 125 or 54% of the votes cast;

Council, Place 3. **Ed Reed** was unopposed;

Council Place 5. **Paul Bowers** received 101 or 43% of the votes cast;
 Clint Bushong received 133 or 57% of the vote cast;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF LAKEWOOD VILLAGE, TEXAS:

SECTION 1. The findings set forth above are incorporated into the body of this Resolution as if fully set forth herein.

SECTION 2. Elizabeth Shields is hereby declared to be duly elected as Council Member, Place 1.

SECTION 3. Ed Reed is hereby declared to be duly elected as Council Member, Place 3.

SECTION 4. Clint Bushong is hereby declared to be duly elected as Council Member Place 5.

SECTION 5. The Lakewood Village Town Council hereby finds and determines, as a result of the Canvass, held on May 11, 2017, that a combined, Early Voting and Election Day, total of 235 ballots were cast in the Election, with 181 early ballots cast, and 54 Election Day ballots cast as indicated by the poll list for the Election held on May 6, 2017.

SECTION 6. It is hereby declared that the Town Council of Lakewood Village approves and accepts the results of the Election for Council Place 1, Council Place 3, and Council Place 5, as determined by the vote of the qualified voters of the Town of Lakewood Village as set out in the Summary of Returns, Exhibit A.

SECTION 7. This Resolution shall become effective immediately upon its passage by the Lakewood Village Town Council.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF LAKEWOOD VILLAGE, TEXAS, on this 11th day of May, 2017.

Dr. Mark E. Vargus
MAYOR

ATTEST:

Linda Asbell, TRMC
Town Secretary

SUMMARY OF RETURNS FOR OFFICIAL CANVASS

I, Dr. Mark E. Vargus, Mayor, and the presiding officer of the canvassing authority for the Election, held on the 6th day of May, 2017, Lakewood Village, Denton County, Texas, do hereby certify that the following is a total of all votes received by each candidate for the General Election as shown by the final tally. I further certify that the following vote totals are reported in compliance with the Texas Election Code

<i>Position</i>	<i>Candidate Name</i>	<i>Early Voting</i>	<i>Election Day</i>	<i>Total</i>
Council Place 1	Ray Duff	81	27	108
	Elizabeth Shields	99	26	125
Council Place 3	Ed Reed	Unopposed		
Council Place 5	Paul Bowers	76	25	101
	Clint Bushong	105	28	133

Combined Election Day and Early Voting Ballots Cast: 234

Provisional Votes Cast (Uncurable): 1

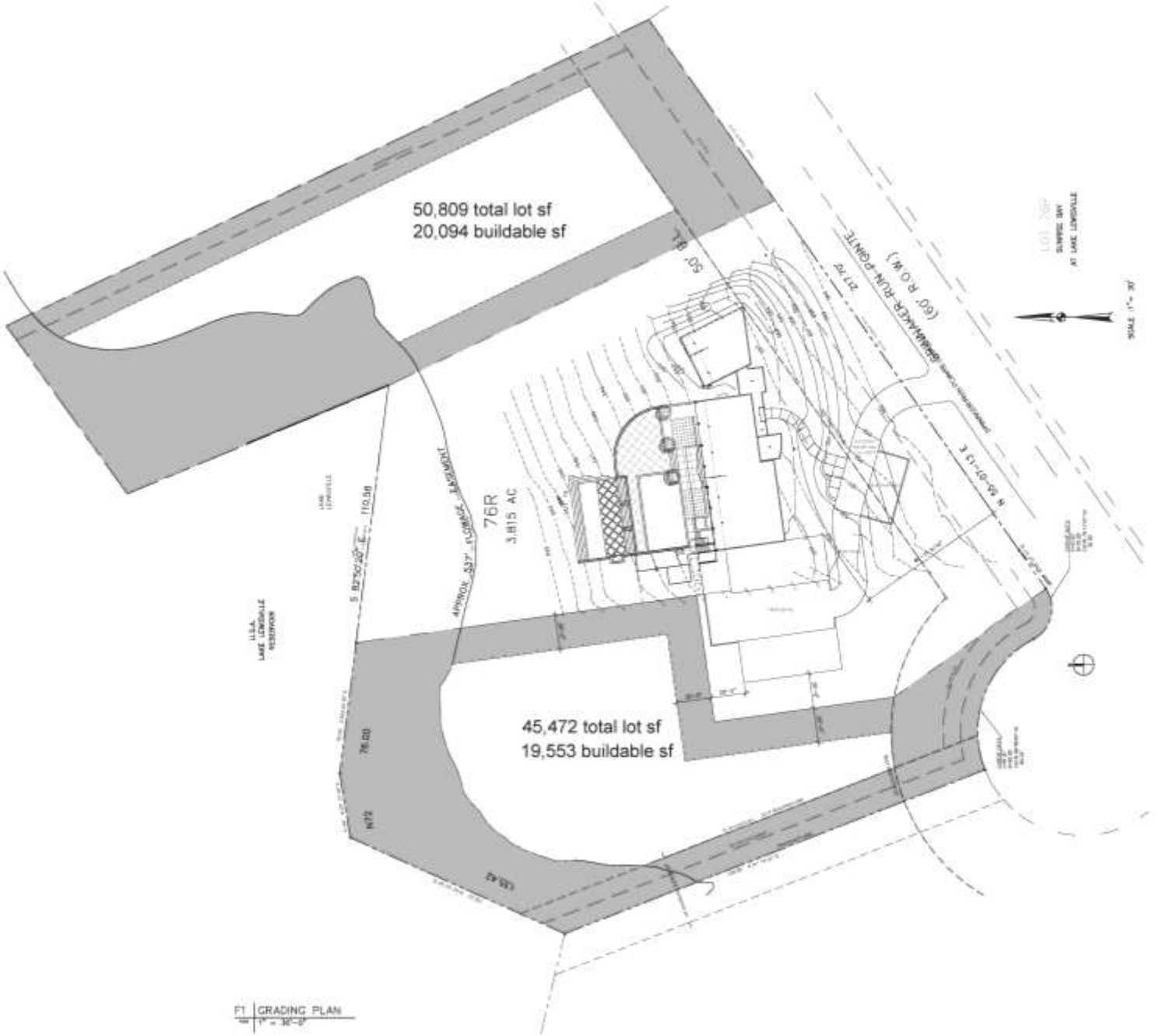
Under Votes: 5

Total Number of Registered Voters in the Town of Lakewood Village: 431

Percentage of Registered Voters in the Town of Lakewood Village that Cast Ballotss: 54%

Dated this 11th day of May, 2017

Dr. Mark E. Vargus, Mayor
Presiding Officer of Canvassing Authority



50,809 total lot sf
20,094 buildable sf

76R
3.815 AC

45,472 total lot sf
19,553 buildable sf

FT GRADING PLAN
1" = 30'-0"

101.50' SW
SUNNY SW
AT LAKE LINDSAY
N
SCALE 1" = 30'

Linda Asbell

To: Strouse, Todd
Subject: RE: 3959 Spinnaker Run Pointe

From: Strouse, Todd [<mailto:todd.strouse@kimley-horn.com>]
Sent: Monday, April 10, 2017 9:38 AM
To: Linda Asbell
Subject: RE: 3959 Spinnaker Run Pointe

Linda,

I recommend rejecting the preliminary plat. My comments are below:

- A “Lot Buildability” detail shall be submitted along with the Preliminary Plat, and shall verify that the buildable portions of the lots can accommodate a dwelling in accordance with Section 8.5.E.3 of the Subdivision Ordinance.
- Verify that Denton County will allow On-Site Sewage Facilities (Septic Systems) within the proposed areas and if property area outside of the flood plain is less than 1 acre.
 - All on-site wastewater disposal systems shall be designed, permitted, constructed, operated and maintained in compliance with all applicable local, County and State regulations, and a permit for such system shall be acquired prior to Preliminary Plat and Construction Plans approvals.
(Re: Section 8.2.E.5.b of Subdivision Ordinance)

I have attached the current hourly rate schedule. How would you like me to proceed with billing this effort moving forward?

Thanks,

Todd Strouse, P.E.
Kimley-Horn | 106 West Louisiana Street, McKinney, TX 75069
Direct: (469) 301-2592 | Mobile: (972) 971-2600
Celebrating nine years as one of FORTUNE's 100 Best Companies to Work For

- a. Would expect to generate over one hundred (100) directional trips during the peak hour of traffic generator or the peak hour on the adjacent streets;
- b. Over seven hundred fifty (750) trips in an average day; or
- c. High traffic volumes on surrounding roads that may affect movement to and from the proposed development.
- d.

5. Stub Streets

- a. Connections are required to adjacent vacant properties at locations as approved by the Town Engineer.
- b. A note shall be clearly placed on the Final Plat indicating that the stub street will be extended with the future development.
- c. All stub streets shall have a sign prominently posted at the terminus of the street to indicate that the street will be extended in the future. Installation and cost of the sign shall be the responsibility of the developer.

6. Street Connectivity

- a. New developments shall provide street connections to adjacent developments, as determined by the Town, allowing access between developments of neighborhood traffic and to enhance pedestrian and bicycle connectivity as recommended in the Comprehensive Plan.
- b. The use of cul-de-sac streets shall be limited within new developments to the greatest extent possible. The Fire Chief and the Town shall have the authority to determine whether or not the use of cul-de-sacs in a development meets the intent of this section during Town review and consideration of the Preliminary Plat.

7. Street Lighting

Street lighting shall be provided at all street intersections and furthest extensions of cul-de-sacs.

8.5. EASEMENTS, LOT & BLOCK DESIGN, MONUMENTS, SUBDIVISION NAMES, FRANCHISE UTILITIES

A. Easements

The type, size and location of easements shall be determined by the Town Engineer. All existing and proposed easements shall be shown on the Preliminary and Final Plats. All easements shall be labeled on the Final Plat and dedicated for the specific purpose intended.

B. Zoning Compliance

All lots shall conform to the zoning district requirements, unless located in the ETJ in which they shall comply with the agreements between the Town and Denton County.

C. Residential Lots Adjacent to Drainage Areas

Lots shall be exclusive of any portion of a natural drainage area, maintenance access, and/or erosion hazard setback. Retaining walls may be allowed on lots adjacent to natural drainage areas as approved by the Town Engineer.

D. Lot Shape

The Town reserves the right to disapprove any lot which, in its opinion, will not be suitable or desirable for the purpose intended, or which is so oddly shaped as to create a hindrance to the logical lot layout of surrounding properties and/or create an irregular building envelope. The following requirements shall also apply.

1. Lots shall be generally rectangular in shape. Sharp angles between lot lines shall be avoided. Flag lots are prohibited.
2. Irregularly shaped lots shall have sufficient width at the building line to meet minimum lot width and frontage requirements for the appropriate zoning district, and shall provide the minimum building pad required by zoning without encroachment into front, side or rear yard setbacks or into any type of easement.

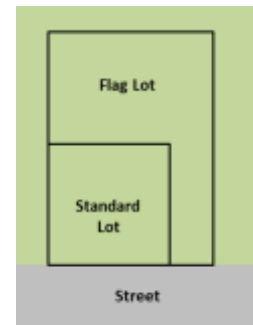


Figure 1: Flag Lots

E. Lot Lines

1. Side Lot Lines

Side lot lines shall be at ninety degree (90°) angles or radial to street right-of-way lines to the greatest extent possible.

2. Lot Lines and Jurisdictional Boundaries

All lot lines shall, to the greatest extent possible, align along county, school district and other jurisdictional boundary lines such that lots are fully within one county, school district or other jurisdiction.

3. Lot Buildability

Any portion of a lot that is non-buildable for any reason shall be clearly shown as such on the Preliminary and Final Plats. A "Lot Buildability" detail shall be submitted along with the Preliminary and Final Plats, and shall verify that the buildable portion of such a lot can accommodate a dwelling or main structure that complies with applicable Town zoning regulations, if located within the Town's limits, and building code.

F. Lot Frontages

1. Street Frontage

Each lot shall have adequate access to a street by having frontage on such a street that is not less than sixty feet (60) at the street right-of-way, or otherwise specified in the Zoning Ordinance or a Planned Development (PD) Ordinance, if applicable. Lots fronting onto an eyebrow or bulb

portion of a cul-de-sac shall have a minimum frontage of forty feet (40) at the street right-of-way line.

2. Double Frontage

a. Single Family

Double frontage lots are prohibited, except that single family lots may back or side onto a Type C2U thoroughfare or larger with appropriate screening. Where lots back or side onto a Type C2U thoroughfare or larger, no driveway access is allowed onto the thoroughfare from the rear or side of the lot.

b. Where lots have frontage on more than one street, a front building line shall be established for each street.

3. Lots Facing Other Lots

Whenever feasible, each residential lot shall face the front of a similar lot, or shall face a park or open space if one exists or is planned across the street. In general, an arrangement placing adjacent lots at right angles to each other should be avoided.

G. Lots in Relation to Parks/Open Space

All lots that are located directly across a street from a park/open space shall face onto the park/open space.

H. Lot & Block Numbering

All lots within each phase of a development are to be numbered consecutively within each block. Each block shall have an alpha designation.

I. Building Lines

Building lines shall not be shown on the Preliminary and Final Plats.

J. Subdivision Names

New subdivisions shall be named so as to prevent conflict or "sound-alike" confusion with the names of other subdivisions. The subdivision name shall be approved by the Town prior to any Plat approval, and prior to approval of the Construction Plans.

K. Franchise Utility Policy

1. General Requirements

The Town may require easements for poles, wires, conduits, gas, telephone, cable TV or other utility lines if necessary.

2. Locations

Utilities shall be located in easements provided adjacent to the street rights-of-way along the front of lots or tracts.

3. Ground-Mounted Equipment



MEMORANDUM

TO: Town Council
FROM: Linda Asbell, TRMC, Town Secretary
DATE: May 4, 2017
RE: Agenda Item D.2. – MDD Request to Operate USACE Water System

MDD President, Eric Farage, will speak to Council regarding this request.



MEMORANDUM

TO: Town Council
FROM: Linda Asbell, TRMC, Town Secretary
DATE: May 4, 2017
RE: Agenda Item D.4. – Resolution Opposing Senate Bills 1515 & 1004

These bills impose various mandates that require cities allow access for “wireless nodes” not only to place new poles in the rights-of-way, but also to place antennas on city light poles, traffic poles, street signs, and other city owned poles. Third-party access to traffic control devices threatens serious safety issues. There are some restrictions in residential areas but the bill has no spacing requirement for poles 50 feet or taller in the right-of-way. It also does not have any clear limitations on how many antennas that could be placed on a single street sign.

As written these bills give any company the right to come into a city right-of-way and set up, potentially, hundreds of antenna nodes on city poles. The industry will soon roll out the “5G” networks, which will require thousands of nodes on public property in municipal neighborhoods.

These bills take aim at municipal control of our own rights-of-way/infrastructure and seek to hand it over to private business. While this might not be a critical issue in Lakewood Village currently, we should protect the citizens we have now and the ones we will have in the future. Lakewood Village also has an opportunity to stand in support with cities that will be immediately and negatively impacted by this legislation.

85R10896 GRM-F

By: Hancock

S.B. No. 1515

A BILL TO BE ENTITLED

AN ACT

relating to the authority to install a small wireless facility in a
public right-of-way.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 181, Utilities Code, is amended by
adding Subchapter G to read as follows:

SUBCHAPTER G. PROVISIONS APPLYING TO WIRELESS SERVICE PROVIDERS

Sec. 181.151. DEFINITIONS. In this subchapter:

(1) "Small wireless facility" means a wireless

facility in which:

(A) each antenna is located inside an enclosure

of not more than six cubic feet in volume or, if an antenna has

exposed elements, the antenna and all of the antenna's exposed

elements could fit within an imaginary enclosure of not more than

six cubic feet; and

(B) all other wireless equipment associated with

the wireless facility is cumulatively not more than 28 cubic feet in

volume after excluding the following associated ancillary

equipment:

(i) electric meters;

(ii) concealment elements;

(iii) telecommunications demarcation

boxes;

(iv) ground-based enclosures;

(v) grounding equipment;

(vi) power transfer switches;

(vii) cutoff switches; and

(viii) vertical cable runs for the

connection of power and other services.

(2) "Wireless facility" means equipment at a fixed

location that enables wireless communications between user

equipment and a communications network. The term:

(A) includes small wireless facilities and:

(i) equipment associated with wireless

communications; and

(ii) radio transceivers, antennas, coaxial

or fiber optic cable, regular and backup power supplies, and

comparable equipment, regardless of technological configuration;

and

(B) does not include the structure or
improvements on, under, or within which equipment is collocated.

(3) "Wireless service provider" means a carrier
licensed by the Federal Communications Commission to provide
wireless services.

(4) "Wireless services" means a service provided to
the public using a wireless facility, regardless of whether the
service is at a fixed location or mobile.

(5) "Wireless support structure" means a utility pole
or other existing or proposed structure designed to support
wireless facilities.

Sec. 181.152. AUTHORITY TO INSTALL WIRELESS FACILITIES AND
WIRELESS SUPPORT STRUCTURES ON PUBLIC RIGHT-OF-WAY. (a) A
wireless service provider may install wireless facilities and
wireless support structures in a right-of-way owned or managed by a

political subdivision or municipally owned utility in a manner that

does not inconvenience the public in the use of the right-of-way.

(b) A political subdivision or municipally owned utility

may not require a wireless service provider that installs a

wireless facility or wireless support structure under Subsection

(a) to compensate the political subdivision or municipally owned

utility at a rate that is higher than a rate that is sufficient to

cover the direct cost of managing the right-of-way.

SECTION 2. (a) In this section, "wireless facility,"

"wireless service provider," and "wireless support structure" have

the meanings assigned by Section 181.151, Utilities Code, as added

by this Act.

(b) Except as provided by Subsection (c) of this section,

this Act does not apply to an agreement for the use of a public

right-of-way entered into before the effective date of this Act.

That agreement is governed by the law in effect on the date the agreement was entered into, and the former law is continued in effect for that purpose.

(c) Notwithstanding the terms of an agreement described by Subsection (b) of this section, a wireless service provider may elect to compensate the political subdivision or municipally owned utility in accordance with Section 181.152(b), Utilities Code, as added by this Act, for wireless facilities and wireless support structures deployed on or after the effective date of this Act.

(d) If an agreement described by Subsection (b) of this section is terminated in accordance with the agreement's terms, the wireless service provider may elect to apply the rates and terms provisions of Subchapter G, Chapter 181, Utilities Code, as added by this Act, to wireless facilities and wireless support structures deployed before that termination.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

By: Hancock

S.B. No. 1004

A BILL TO BE ENTITLED

AN ACT

relating to the deployment of network nodes in public right-of-way; authorizing fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 9, Local Government Code, is amended by adding Chapter 284 to read as follows:

CHAPTER 284. DEPLOYMENT OF NETWORK NODES IN PUBLIC RIGHT-OF-WAY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 284.001. FINDINGS AND POLICY. (a) The legislature

finds that:

(1) network nodes are instrumental to increasing

access to advanced technology and information for the citizens of

this state;

(2) this state has delegated to each municipality the

fiduciary duty, as a trustee, to manage the public right-of-way for

the health, safety, and welfare of the public, subject to state law;

(3) network nodes often may be deployed most

effectively in the public right-of-way;

(4) network providers' access to the public

right-of-way and the ability to attach network nodes to poles and

structures in the public right-of-way allow network providers to

densify their networks and provide next-generation services;

(5) expeditious processes and reasonable and
nondiscriminatory terms, conditions, and compensation for use of
the public right-of-way for network node deployments are essential
to state-of-the-art wireless services;

(6) network nodes help ensure that this state remains
competitive in the global economy;

(7) the timely permitting of network nodes in the
public right-of-way is a matter of statewide concern and interest;

(8) requirements of this chapter regarding fees,
charges, rates, and public right-of-way management, when
considered with fees charged to other public right-of-way users
under this code, are fair and reasonable and in compliance with 47
U.S.C. Section 253; and

(9) to the extent this state has delegated its

fiduciary responsibility to municipalities as managers of a
valuable public asset, the public right-of-way, this state is
acting in its role as a landowner in balancing the needs of the
public and the needs of the network providers by allowing access to
the public right-of-way to place network nodes in the public
right-of-way strictly within the terms of this chapter.

(b) It is the policy of this state to promote the adoption of
and encourage competition in the provision of wireless services by
reducing the barriers to entry for providers of services so that the
number and types of services offered by providers continue to
increase through competition.

(c) It is the policy of this state that municipalities:
(1) retain the authority to manage the public
right-of-way to ensure the health, safety, and welfare of the
public; and

(2) receive from network providers fair and reasonable compensation for use of the public right-of-way.

Sec. 284.002. DEFINITIONS. In this chapter:

(1) "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

(2) "Applicable codes" means:

(A) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and

(B) local amendments to those codes to the extent not inconsistent with this chapter.

(3) "Collocate" and "collocation" mean the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public right-of-way on or

adjacent to a pole.

(4) "Decorative pole" means a streetlight pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory municipal codes.

(5) "Historic district" means an area that is zoned or otherwise designated as a historic district under municipal, state, or federal law.

(6) "Law" means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance.

(7) "Macro tower" means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Section 284.103 and that supports or is capable of supporting antennas.

(8) "Micro network node" means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

(9) "Municipally owned utility pole" means a utility pole owned or operated by a municipally owned utility, as defined by Section 11.003, Utilities Code, and located in a public right-of-way.

(10) "Network node" means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term:

(A) includes:

(i) equipment associated with wireless communications;

(ii) a radio transceiver, an antenna, a

battery-only backup power supply, and comparable equipment,

regardless of technological configuration; and

(iii) coaxial or fiber-optic cable that is

immediately adjacent to and directly associated with a particular

collocation; and

(B) does not include:

(i) an electric generator;

(ii) a pole; or

(iii) a macro tower.

(11) "Network provider" means:

(A) a wireless service provider; or

(B) a person that does not provide wireless

services and that is not an electric utility but builds or installs

on behalf of a wireless service provider:

(i) network nodes; or

(ii) node support poles or any other

structure that supports or is capable of supporting a network node.

(12) "Node support pole" means a pole installed by a

network provider for the primary purpose of supporting a network

node.

(13) "Permit" means a written authorization for the

use of the public right-of-way or collocation on a service pole

required from a municipality before a network provider may perform

an action or initiate, continue, or complete a project over which

the municipality has police power authority.

(14) "Pole" means a service pole, municipally owned

utility pole, node support pole, or utility pole.

(15) "Private easement" means an easement or other

real property right that is only for the benefit of the grantor and

grantee and their successors and assigns.

(16) "Public right-of-way" means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term does not include:

(A) a private easement; or

(B) the airwaves above a public right-of-way with regard to wireless telecommunications.

(17) "Public right-of-way management ordinance" means an ordinance that complies with Subchapter C.

(18) "Public right-of-way rate" means an annual rental charge paid by a network provider to a municipality related to the construction, maintenance, or operation of network nodes within a public right-of-way in the municipality.

(19) "Service pole" means a pole, other than a municipally owned utility pole, owned or operated by a municipality

and located in a public right-of-way, including:

(A) a pole that supports traffic control

functions;

(B) a structure for signage;

(C) a pole that supports lighting, other than a

decorative pole; and

(D) a pole or similar structure owned or operated

by a municipality and supporting only network nodes.

(20) "Transport facility" means each transmission

path physically within a public right-of-way, extending with a

physical line from a network node directly to the network, for the

purpose of providing backhaul.

(21) "Utility pole" means a pole that provides:

(A) electric distribution with a voltage rating

of not more than 34.5 kilovolts; or

(B) services of a telecommunications provider,
as defined by Section 51.002, Utilities Code.

(22) "Wireless service" means any service, using
licensed or unlicensed wireless spectrum, including the use of
Wi-Fi, whether at a fixed location or mobile, provided to the public
using a network node.

(23) "Wireless service provider" means a person that
provides wireless service to the public.

Sec. 284.003. LIMITATION ON SIZE OF NETWORK NODES.

(a) Except as provided by Section 284.109, a network node to which
this chapter applies must conform to the following conditions:

(1) each antenna that does not have exposed elements
and is attached to an existing structure or pole:

(A) must be located inside an enclosure of not
more than six cubic feet in volume;

(B) may not exceed a height of three feet above
the existing structure or pole; and

(C) may not protrude from the outer circumference
of the existing structure or pole by more than two feet;

(2) if an antenna has exposed elements and is attached
to an existing structure or pole, the antenna and all of the
antenna's exposed elements:

(A) must fit within an imaginary enclosure of not
more than six cubic feet;

(B) may not exceed a height of three feet above
the existing structure or pole; and

(C) may not protrude from the outer circumference
of the existing structure or pole by more than two feet;

(3) the cumulative size of other wireless equipment
associated with the network node attached to an existing structure

or pole may not:

(A) be more than 28 cubic feet in volume; or

(B) protrude from the outer circumference of the

existing structure or a node support pole by more than two feet;

(4) ground-based enclosures, separate from the pole,

may not be higher than three feet six inches from grade, wider than

three feet six inches, or deeper than three feet six inches; and

(5) pole-mounted enclosures may not be taller than

five feet.

(b) The following types of associated ancillary equipment

are not included in the calculation of equipment volume under

Subsection (a):

(1) electric meters;

(2) concealment elements;

(3) telecommunications demarcation boxes;

(4) grounding equipment;

(5) power transfer switches;

(6) cut-off switches; and

(7) vertical cable runs for the connection of power

and other services.

(c) Equipment attached to node support poles may not

protrude from the outer edge of the node support pole by more than

two feet.

(d) Equipment attached to a utility pole must be installed

in accordance with the National Electrical Safety Code, subject to

applicable codes, and the utility pole owner's construction

standards.

SUBCHAPTER B. USE OF PUBLIC RIGHT-OF-WAY

Sec. 284.051. APPLICABILITY OF SUBCHAPTER. This subchapter

applies only to activities related to transport facilities for

network nodes, activities of a network provider collocating network nodes in the public right-of-way or installing, constructing, operating, modifying, replacing, and maintaining node support poles in a public right-of-way, and municipal authority in relation to those activities.

Sec. 284.052. EXCLUSIVE USE PROHIBITED. A municipality may not enter into an exclusive arrangement with any person for use of the public right-of-way for the construction, operation, marketing, or maintenance of network nodes or node support poles.

Sec. 284.053. ANNUAL PUBLIC RIGHT-OF-WAY RATE. (a) A public right-of-way rate for use of the public right-of-way may not exceed an annual amount equal to \$250 multiplied by the number of network nodes installed in the public right-of-way in the municipality's corporate boundaries.

(b) At the municipality's discretion, the municipality may

charge a network provider a lower rate or fee if the lower rate or

fee is:

(1) nondiscriminatory;

(2) related to the use of the public right-of-way; and

(3) not a prohibited gift of public property.

Sec. 284.054. PUBLIC RIGHT-OF-WAY RATE ADJUSTMENT. (a) In

this section, "consumer price index" means the annual revised

Consumer Price Index for All Urban Consumers for Texas, as

published by the federal Bureau of Labor Statistics.

(b) A municipality may adjust the amount of the public

right-of-way rate not more often than annually by an amount equal to

one-half the annual change, if any, in the consumer price index.

The municipality shall provide written notice to each network

provider of the new rate, and the rate shall apply to the first

payment due to the municipality on or after the 60th day following

that notice.

Sec. 284.055. USE OF PUBLIC RIGHT-OF-WAY AND APPLICABLE

RATE. (a) A network provider that wants to connect a network node

to the network using the public right-of-way may:

(1) install its own transport facilities subject to

Subsection (b); or

(2) obtain transport service from a person that is

paying municipal fees to occupy the public right-of-way that are

the equivalent of not less than \$28 per node per month.

(b) A network provider may not install its own transport

facilities unless the provider:

(1) has a permit to use the public right-of-way; and

(2) pays to the municipality a monthly public

right-of-way rate for transport facilities in an amount equal to

\$28 multiplied by the number of the network provider's network

nodes located in the public right-of-way for which the installed
transport facilities provide backhaul unless or until the time the
network provider's payment of municipal fees to the municipality
exceeds its monthly aggregate per-node compensation to the
municipality.

(c) A public right-of-way rate required by Subsection (b) is
in addition to any public right-of-way rate required by Section
284.053.

Sec. 284.056. COLLOCATION OF NETWORK NODES ON SERVICE
POLES. A municipality shall allow collocation of network nodes on
service poles on nondiscriminatory terms and conditions and at a
rate not greater than \$20 per year per service pole.

SUBCHAPTER C. ACCESS AND APPROVALS

Sec. 284.101. RIGHT OF ACCESS TO PUBLIC RIGHT-OF-WAY.
(a) Except as specifically provided by this chapter, and subject

to the requirements of this chapter and the approval of a permit application, if required, a network provider is authorized, as a permitted use, without need for a special use permit or similar zoning review and not subject to further land use approval, to do the following in the public right-of-way:

- (1) construct, modify, maintain, operate, relocate, and remove a network node or node support pole;
- (2) modify or replace a utility pole or node support pole; and
- (3) collocate on a pole.

(b) A network provider taking an action authorized by Subsection (a) is subject to applicable codes, including applicable public right-of-way management ordinances.

Sec. 284.102. GENERAL CONSTRUCTION AND MAINTENANCE REQUIREMENTS. A network provider shall construct and maintain

network nodes and node support poles described by Section 284.101

in a manner that does not:

(1) obstruct, impede, or hinder the usual travel or

public safety on a public right-of-way;

(2) obstruct the legal use of a public right-of-way by

other utility providers;

(3) violate nondiscriminatory applicable codes;

(4) violate or conflict with the municipality's

publicly disclosed public right-of-way design specifications; or

(5) violate the federal Americans with Disabilities

Act of 1990 (42 U.S.C. Section 12101 et seq.).

Sec. 284.103. GENERAL LIMITATION ON PLACEMENT OF POLES. A

network provider shall ensure that each new, modified, or

replacement utility pole or node support pole installed in a public

right-of-way in relation to which the network provider received

approval of a permit application does not exceed the greater of:

(1) 10 feet in height above the tallest existing

utility pole located within 500 linear feet of the new pole in the

same public right-of-way; or

(2) 50 feet above ground level.

Sec. 284.104. INSTALLATION IN RESIDENTIAL AREAS. (a) A

network provider may not install a new node support pole in a public

right-of-way without the municipality's discretionary,

nondiscriminatory, and written consent if the public right-of-way

is adjacent to a street or thoroughfare that is:

(1) not more than 50 feet wide; and

(2) adjacent to single-family residential lots or

other multifamily residences or undeveloped land that is designated

for residential use by zoning or deed restrictions.

(b) In addition to the requirement prescribed by Subsection

(a), a network provider installing a network node or node support pole in a public right-of-way described by Subsection (a) shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.

Sec. 284.105. INSTALLATION ON DECORATIVE POLES OR IN HISTORIC DISTRICTS. (a) A network provider must obtain advance approval from a municipality before collocating new network nodes or installing new node support poles on decorative poles or in an area of the municipality zoned or otherwise designated as a historic district. As a condition for approval of new network nodes or new node support poles on a decorative pole or in a historic district, a municipality may require reasonable design or concealment measures for the new network nodes or new node support poles. A municipality may request that a network provider explore the feasibility of using certain camouflage measures to improve the

aesthetics of the new network nodes, new node support poles, or related ground equipment, or any portion of the nodes, poles, or equipment, to minimize the impact to the aesthetics on decorative poles or in a historic district.

(b) This section may not be construed to limit a municipality's authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. Section 332(c)(7), the requirements for facility modifications under 47 U.S.C. Section 1455(a), or the National Historic Preservation Act of 1966 (16 U.S.C. Section 470 et seq.), and the regulations adopted to implement those laws.

Sec. 284.106. EQUIPMENT CABINETS. A network provider shall ensure that the vertical height of an equipment cabinet installed as part of a network node does not exceed the height limitation prescribed by Section 284.003, subject to approval of the pole's

owner if applicable.

Sec. 284.107. COMPLIANCE WITH UNDERGROUNDING REQUIREMENT.

(a) A network provider shall, in relation to installation for which the municipality approved a permit application, comply with nondiscriminatory undergrounding requirements, including municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way without first obtaining zoning or land use approval.

(b) A requirement or restriction described by Subsection (a) may not be interpreted to prohibit a network provider from replacing an existing structure.

Sec. 284.108. DESIGN MANUAL. (a) A municipality may adopt a design manual for the installation and construction of network nodes and new node support poles in the public right-of-way that

includes additional installation and construction details that do

not conflict with this chapter.

(b) A network provider shall comply with a design manual, if
any, in place on the date a permit application is filed in relation
to work for which the municipality approved the permit application.

A municipality's obligations under Section 284.154 may not be
tolled or extended pending the adoption or modification of a design
manual.

Sec. 284.109. EXCEPTIONS. Subject to Subchapter D, a
network provider may construct, modify, or maintain in a public
right-of-way a network node or node support pole that exceeds the
height or distance limitations prescribed by this chapter only if
the municipality approves the construction, modification, or
maintenance subject to all applicable zoning or land use
regulations and applicable codes.

Sec. 284.110. DISCRIMINATION PROHIBITED. A municipality,
in the exercise of the municipality's administrative and regulatory
authority related to the management of and access to the public
right-of-way, must be competitively neutral with regard to other
users of the public right-of-way.

SUBCHAPTER D. APPLICATIONS AND PERMITS

Sec. 284.151. PROHIBITION OF CERTAIN MUNICIPAL ACTIONS.

(a) Except as otherwise provided by this chapter, a municipality
may not prohibit, regulate, or charge for the installation or
collocation of network nodes in a public right-of-way.

(b) A municipality may not directly or indirectly require,
as a condition for issuing a permit required under this chapter,
that the applicant perform services unrelated to the installation
or collocation for which the permit is sought, including in-kind
contributions such as reserving fiber, conduit, or pole space for

the municipality.

(c) A municipality may not institute a moratorium, in whole or in part, express or de facto, on:

(1) filing, receiving, or processing applications; or

(2) issuing permits or other approvals, if any, for

the installation of network nodes or node support poles.

Sec. 284.152. AUTHORITY TO REQUIRE PERMIT. (a) Except as otherwise provided by this chapter, a municipality may require a network provider to obtain one or more permits to install a network node, node support pole, or transport facility in a public right-of-way if the permit:

(1) is of general applicability to users of the public

right-of-way;

(2) does not apply exclusively to network nodes; and

(3) is processed on nondiscriminatory terms and

conditions regardless of the type of entity submitting the

application for the permit.

(b) A network provider that wants to install or collocate
multiple network nodes inside the territorial jurisdiction of a
single municipality is entitled to file a consolidated permit
application with the municipality for not more than 30 network
nodes and receive a single permit for the installation or
collocation of those network nodes.

Sec. 284.153. GENERAL PROCESS RELATING TO PERMIT

APPLICATION. (a) Except as otherwise provided by this section, a
municipality may not require an applicant to provide more
information to obtain the permit than a telecommunications utility
that is not a network provider is required to provide unless the
information directly relates to the requirements of this chapter.

(b) As part of the standard form for a permit application, a

municipality may require the applicant to include applicable
construction and engineering drawings and information to confirm
that the applicant will comply with the municipality's publicly
disclosed public right-of-way design specifications and applicable
codes.

(c) A municipality may require an applicant to provide:

(1) information reasonably related to the provider's
use of the public right-of-way under this chapter to ensure
compliance with this chapter;

(2) a certificate that the network node complies with
applicable regulations of the Federal Communications Commission;
and

(3) certification that the proposed network node will
be placed into active commercial service by or for a network
provider not later than the 60th day after the date the construction

and final testing of the network node is completed.

Sec. 284.154. MUNICIPAL REVIEW PROCESS. (a) A

municipality shall process each permit application on a

nondiscriminatory basis.

(b) Not later than the 30th day after the date the

municipality receives an application for a permit for a network

node or node support pole, or the 10th day after the date the

municipality receives an application for a permit for a transport

facility, the municipality shall determine whether the application

is complete and notify the applicant of that determination. If the

municipality determines that the application is not complete, the

municipality shall specifically identify the missing information.

(c) A municipality shall approve an application that does

not require zoning or land use approval under this chapter unless

the application or the corresponding work to be performed under the

permit does not comply with the municipality's applicable codes.

(d) A municipality must approve or deny an application for a node support pole not later than the 150th day after the date the municipality receives the complete application. A municipality must approve or deny an application for a network node not later than the 60th day after the date the municipality receives the complete application. A municipality must approve or deny an application for a transport facility not later than the 21st day after the date the municipality receives a complete application.

An application for a permit for a node support pole, network node, or transport facility shall be deemed approved if the application is not approved or denied on or before the applicable date for approval or denial prescribed by this subsection.

(e) A municipality that denies a complete application must document the basis for the denial, including the specific

applicable code provisions on which the denial was based. The
municipality shall send the documentation by electronic mail to the
applicant on or before the date the municipality denies the
application.

(f) Not later than the 30th day after the date the
municipality denies the application, the applicant may cure the
deficiencies identified in the denial documentation and resubmit
the application without paying an additional application fee, other
than a fee for actual costs incurred by the municipality.

Notwithstanding Subsection (d), the municipality shall approve or
deny the revised completed application after a denial not later
than the 90th day after the date the municipality receives the
completed revised application. The municipality's review of the
revised application is limited to the deficiencies cited in the
denial documentation.

Sec. 284.155. TIME OF INSTALLATION. (a) A network provider shall begin the installation for which a permit is granted not later than nine months after final approval and shall diligently pursue the installation to completion.

(b) Notwithstanding Subsection (a), the municipality may place a longer time limit on completion or grant reasonable extensions of time as requested by the network provider.

Sec. 284.156. APPLICATION FEES. (a) A municipality may charge an application fee for a permit only if the municipality requires the payment of the fee for similar types of commercial development inside the municipality's territorial jurisdiction other than a type for which application or permit fees are not allowed by law.

(b) The amount of an application fee charged by a municipality may not exceed the lesser of:

(1) the actual, direct, and reasonable costs the municipality determines are incurred in granting or processing an application that are reasonably related in time to the time the costs of granting or processing an application are incurred; or

(2) \$100 per application covering up to five network nodes and \$50 for each additional network node per application.

(c) In determining for purposes of Subsection (b) (1) the amount of the actual, direct, and reasonable costs, the municipality may not:

(1) include costs incurred by the municipality in relation to third-party legal or engineering review of an application; or

(2) direct payments or reimbursement of third-party public right-of-way rates or fees charged on a contingency basis or under a result-based arrangement.

Sec. 284.157. CERTAIN WORK EXEMPTED. (a) Notwithstanding

any other provision of this chapter, a municipality may not require

a network provider to submit an application, obtain a permit, or pay

a rate for:

(1) routine maintenance that does not require

excavation or closing of sidewalks or vehicular lanes in a public

right-of-way;

(2) replacing or upgrading a network node or pole with

a node or pole that is substantially similar in size or smaller and

that does not require excavation or closing of sidewalks or

vehicular lanes in a public right-of-way; or

(3) the installation, placement, maintenance,

operation, or replacement of micro network nodes that are strung on

cables between existing poles or node support poles, in compliance

with the National Electrical Safety Code.

(b) For purposes of Subsection (a) (2):

(1) a network node or pole is considered to be

"substantially similar" if:

(A) the new or upgraded network node, including

the antenna or other equipment element, will not be more than 10

percent larger than the existing node, provided that the increase

may not result in the node exceeding the size limitations provided

by Section 284.003; and

(B) the new or upgraded pole will not be more than

10 percent higher than the existing pole, provided that the

increase may not result in the pole exceeding the applicable height

limitations prescribed by Section 284.103;

(2) the replacement or upgrade does not include

replacement of an existing node support pole; and

(3) the replacement or upgrade does not defeat

existing concealment elements of a node support pole.

(c) The determination under Subsection (b) (1) of whether a replacement or upgrade is substantially similar is made by measuring from the dimensions of the network node or node support pole as approved by the municipality.

(d) Notwithstanding Subsection (a):

(1) a municipality may require advance notice of work described by that subsection;

(2) a network provider may replace or upgrade a pole only with the approval of the pole's owner; and

(3) the size limitations may not in any event exceed the parameters prescribed by Section 284.003 without the municipality's approval in accordance with Section 284.109, with the municipality acting on behalf of this state as the fiduciary trustee of public property.

SUBCHAPTER E. ACCESS TO MUNICIPALLY OWNED UTILITY POLES

Sec. 284.201. USE OF MUNICIPALLY OWNED UTILITY POLES.

(a) The governing body of a municipally owned utility shall allow collocation of network nodes on municipally owned utility poles on nondiscriminatory terms and conditions and pursuant to a negotiated pole attachment agreement, including any applicable permitting requirements of the municipally owned utility.

(b) The annual pole attachment rate for the collocation of a network node supported by or installed on a municipally owned utility pole shall be based on a pole attachment rate consistent with Section 54.204, Utilities Code, applied on a per-foot basis.

(c) The requirements of Subchapters B, C, and D applicable to the installation of a network node supported by or installed on a pole do not apply to a network node supported by or installed on a municipally owned utility pole.

SUBCHAPTER F. EFFECT ON OTHER UTILITIES AND PROVIDERS

Sec. 284.251. DEFINITIONS. In this subchapter:

(1) "Cable service" and "video service" have the

meanings assigned by Section 66.002, Utilities Code.

(2) "Electric cooperative" has the meaning assigned by

Section 11.003, Utilities Code.

(3) "Electric utility" has the meaning assigned by

Section 31.002, Utilities Code.

(4) "Telecommunications provider" has the meaning

assigned by Section 51.002, Utilities Code.

(5) "Telephone cooperative" has the meaning assigned

by Section 162.003, Utilities Code.

Sec. 284.252. EFFECT ON INVESTOR-OWNED ELECTRIC UTILITIES,

ELECTRIC COOPERATIVES, TELEPHONE COOPERATIVES, AND

TELECOMMUNICATIONS PROVIDERS. Nothing in this chapter shall govern

attachment of network nodes on poles and other structures owned or
operated by investor-owned electric utilities, electric
cooperatives, telephone cooperatives, or telecommunications
providers. This chapter does not confer on municipalities any new
authority over those utilities, cooperatives, or providers.

Sec. 284.253. EFFECT ON PROVIDERS OF CABLE SERVICES OR

VIDEO SERVICES. (a) An approval for the installation, placement,
maintenance, or operation of a network node or transport facility
under this chapter may not be construed to confer authorization to
provide:

(1) cable service or video service without complying
with all terms of Chapter 66, Utilities Code; or

(2) information service as defined by 47 U.S.C.
Section 153(24), or telecommunications service as defined by 47
U.S.C. Section 153(53), in the public right-of-way.

(b) Except as provided by this chapter, a municipality may not adopt or enforce any regulations or requirements that would require a wireless service provider, or its affiliate, that holds a cable or video franchise under Chapter 66, Utilities Code, to obtain any additional authorization or to pay any fees based on the provider's provision of wireless service over its network nodes.

SUBCHAPTER G. GENERAL CONDITIONS OF ACCESS

Sec. 284.301. LOCAL POLICE-POWER-BASED REGULATIONS.

(a) Subject to this chapter and applicable federal and state law, a municipality may continue to exercise zoning, land use, planning, and permitting authority in the municipality's boundaries, including with respect to utility poles.

(b) A municipality may exercise that authority to impose police-power-based regulations for the management of the public right-of-way that apply to all persons subject to the municipality.

(c) A municipality may impose police-power-based regulations in the management of the activities of network providers in the public right-of-way only to the extent that the regulations are reasonably necessary to protect the health, safety, and welfare of the public.

Sec. 284.302. INDEMNIFICATION. The indemnification provisions of Sections 283.057(a) and (b) apply to a network provider accessing a public right-of-way under this chapter.

Sec. 284.303. RELOCATION. Except as provided in existing state and federal law, a network provider shall relocate or adjust network nodes in a public right-of-way in a timely manner and without cost to the municipality managing the public right-of-way.

Sec. 284.304. INTERFERENCE. (a) A network provider shall operate all network nodes in accordance with all applicable laws, including regulations adopted by the Federal Communications

Commission.

(b) A network provider shall ensure that the operation of a network node does not cause any harmful radio frequency interference to a Federal Communications Commission-authorized mobile telecommunications operation of the municipality operating at the time the network node was initially installed or constructed. On written notice, a network provider shall take all steps reasonably necessary to remedy any harmful interference.

SECTION 2. (a) In this section, "collocation," "network node," and "public right-of-way" have the meanings assigned by Section 284.002, Local Government Code, as added by this Act.

(b) Agreements between a municipality and a network provider for the deployment of network nodes in the public right-of-way are public/private contracts, and accordingly those contracts shall be conformed as provided by this section.

(c) Subject to Subsection (d) of this section, the rates, terms, and conditions of contracts entered into before the effective date of this Act shall apply to all network nodes installed and operational before the effective date of this Act.

(d) For all network nodes installed and operational on or after the effective date of this Act:

(1) if a rate, term, or condition of a contract related to the construction, collocation, operation, modification, or maintenance of network nodes does not comply with the requirements of Chapter 284, Local Government Code, as added by this Act, a municipality shall amend the contract to comply with the requirements of Chapter 284, Local Government Code, as added by this Act, and the amended rates, terms, or conditions shall take effect for those network nodes on the six-month anniversary of the effective date of this Act; and

(2) the rates, terms, and conditions of each contract executed on or after the effective date of this Act shall comply with the requirements of Chapter 284, Local Government Code, as added by this Act.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

THE TOWN OF LAKEWOOD VILLAGE, TEXAS

RESOLUTION NO. 17-XX

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LAKEWOOD VILLAGE, TEXAS, IN OPPOSITION TO THE ENACTMENT OF SENATE BILL 1004 AND SENATE BILL 1515, AND ANY MEASURE WHICH RESTRICTS THE ABILITY OF A MUNICIPALITY TO REGULATE THE PLACEMENT OF ITEMS IN A RIGHT-OF-WAY OR PUBLIC PROPERTY.

WHEREAS, Senate Bill 1004 and Senate Bill 1515 restrict the ability of municipalities to regulate the placement of communications equipment in public rights of way and on public property; and

WHEREAS, Regulation of municipal rights of way and other public properties is integral to the police powers of a municipality, and necessary to protect public safety and to provide for orderly development; and

WHEREAS, The proposed legislation would threaten property values by limiting the ability of local officials to set consistent policies for land use; and

WHEREAS, The proposed legislation does not provide a mechanism for municipalities to address safety concerns caused by the placement of items in the right of way, or adjacent to sensitive users, such as residences, schools and parks; and

WHEREAS, The proposed legislation would hamper the ability of municipalities to plan public infrastructure projects in an orderly and cost-effective manner, by denying them a say in the placement of items in the right of way, as well as potentially forcing municipalities to incur expense for the relocation of infrastructure that was placed on their property without their consent; and

WHEREAS, The proposed legislation violates the principle of local control, and represents the potential transfer of public resources to a private business; and

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF LAKEWOOD VILLAGE, TEXAS:

Section 1. The findings set forth above are incorporated into the body of this resolution as if fully set forth herein.

Section 2. The Town of Lakewood Village, Texas, is OPPOSED to Senate Bill 1004 and Senate Bill 1515, and any effort to restrict the ability of municipalities to regulate the use of rights of way or other municipal property.

Section 3. Senate Bill 1004 and Senate Bill 1515 interferes with municipalities ability to regulate public resources and set consistent policies necessary to protect public safety.

Section 4. This resolution shall become effective from and after the date of its passage by the Town Council.

PASSED, APPROVED, AND RESOLVED this 11th day of May 2017.

APPROVED:

Dr. Mark E. Vargus,
Mayor

ATTEST:

Linda Asbell, TRMC
Town Secretary



MEMORANDUM

TO: Town Council
FROM: Linda Asbell, TRMC, Town Secretary
DATE: May 4, 2017
RE: Agenda Item D.5. – Resolution Opposing House Bill 2485

House Bill 2485 would eliminate the May election date in even-numbered years for cities. Not having an even-number year May election would either (1) force the majority of cities with May elections to untagger their terms of office; or, (2) force cities with may elections to move their general elections to the November election date. Elimination of the May even-numbered year election also would force citizens to wait up to a year to hold special elections to fill vacancies in office, proposition elections, and several other special elections. If the terms of office were untaggered there would be the possibility of an entire council being unelected in the same election and seats filled by freshman councilmen which could compromise the continuity of operations.

May elections typically are held on a much smaller scale than November elections, requiring fewer polling places and less paid staff. Operating a municipal election during the November cycle, with the additional polling locations that are required, will significantly increase expenses for larger cities.

My primary concern is that holding municipal elections in November in conjunction with state and federal races can reasonably be expected to have a chilling effect on voter participation in municipal races. Voters will primarily be focused on Presidential, Gubernatorial and Legislative races and there will be less attention paid to local races, resulting in a less-informed and less-motivated electorate. Local races would be listed at the end of a lengthy ballot, which means voters would be more likely to skip those races. In addition, our city election, as well as the elections of most other cities are non-partisan; therefore, anyone voting a straight-party ticket in November would not register a vote in the city elections. While overall voter turnout might be higher in November, forcing cities onto this ballot might actually result in more "No Votes" and compromise city elections.

It is the municipal level of government that has the most direct impact on citizen's daily lives. Any measure that carries a reasonable possibility of reducing public participation in municipal government and municipal elections must be placed under extreme scrutiny. This bill falls short when examined and the ultimate consequences are considered.

85R25323 SRS-F

By: Elkins

H.B. No. 2485

Substitute the following for H.B. No. 2485:

By: Laubenberg

C.S.H.B. No. 2485

A BILL TO BE ENTITLED

AN ACT

relating to the uniform election date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 41.001(a) and (c), Election Code, are

amended to read as follows:

(a) Except as otherwise provided by this subchapter, each general or special election in this state shall be held on one of the following dates:

(1) the first Saturday in May in an odd-numbered year;

(2) the first Saturday in May in an even-numbered year, for an election held by a district created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution

~~[political subdivision other than a county]~~; or

(3) the first Tuesday after the first Monday in November.

(c) Except for an election under Subsection (a) or Section 41.0011 ~~[or a runoff election following an election held under Subsection (a) (2)]~~, an election may not be held within 30 days before or after the date of the general election for state and county officers, general primary election, or runoff primary

election.

SECTION 2. Section 41.0052(a), Election Code, is amended to read as follows:

(a) The governing body of a political subdivision, other than a county or municipal utility district, that holds its general election for officers on a date other than the November uniform election date may, not later than January 1, 2018 [~~December 31, 2016~~], change the date on which it holds its general election for officers to the November uniform election date.

SECTION 3. Section 41.001(d), Election Code, is repealed.

SECTION 4. This Act takes effect September 1, 2017.

THE TOWN OF LAKEWOOD VILLAGE, TEXAS

RESOLUTION NO. 17-XX

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LAKEWOOD VILLAGE, TEXAS, IN OPPOSITION TO HOUSE BILL 2485 AND ANY MEASURE WHICH ELIMINATES THE ABILITY OF A MUNICIPALITY TO HOLD AN ELECTION IN MAY OF EVEN-NUMBERED YEARS.

WHEREAS, House Bill 2485 eliminates the May election date in even-numbered years for municipalities; and

WHEREAS, Elimination of the May election date in even-numbered years would force municipalities to either unstagger their terms of office or move their general elections to November of each year; and

WHEREAS, The proposed legislation also eliminates one date on which municipalities could hold special elections to fill vacancies in office, initiative and referendum elections, and many other types of special elections; and

WHEREAS, The proposed legislation threatens the continuity of municipal operations by allowing for an entire city council to be unelected at once and filled by freshman council members if terms of office are unstaggered; and

WHEREAS, The proposed legislation would compromise municipal elections if held in November by forcing municipal races to be listed at the end of a lengthy partisan ballot which could result in “no votes” for straight-party ticket voters; and

WHEREAS, House Bill 2485 will have a severe fiscal impact on municipalities as more polling locations and more paid staff is required during November elections.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF LAKEWOOD VILLAGE, TEXAS:

Section 1. The findings set forth above are incorporated into the body of this resolution as if fully set forth herein.

Section 2. House Bill 2485 would likely have a significant and negative impact on voter participation in municipal elections.

Section 3. House Bill 2485 would likely have a costly financial impact on municipalities and threaten the continuity of municipal operations.

Section 4. The Town of Lakewood Village, Texas, is OPPOSED to House Bill 2485 and any effort to eliminate the May election date for municipalities.

Section 5. This resolution shall become effective from and after the date of its passage by the Town Council.

PASSED, APPROVED, AND RESOLVED this 11th day of May 2017.

APPROVED:

Dr. Mark E. Vargus,
Mayor

ATTEST:

Linda Asbell, TRMC
Town Secretary