



Travis County Commissioners Court Agenda Request

Meeting Date: December 13, 2011

Prepared By/Phone Number: Julie Joe/854-4835

Elected/Appointed Official/Dept. Head: David Escamilla

Commissioners Court Sponsor: Commissioner Eckhardt, Precinct Two

AGENDA LANGUAGE: APPROVE APPROPRIATE DOCUMENTS TO COMPLETE THE SALE OF A 0.092 ACRE (3,990 SQUARE FEET) WASTEWATER UTILITY EASEMENT ON LAND LOCATED WITHIN NORTHEAST METRO PARK TO THE PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION (PCDC) FOR THE CONSTRUCTION OF A WASTEWATER LINE TO SERVE PCDC'S PLANNED RENEWABLE ENERGY PARK

BACKGROUND/SUMMARY OF REQUEST AND ATTACHMENTS:

On December 6, 2011, the Commissioners Court conducted a public hearing pursuant to Chapter 26 of the Texas Parks and Wildlife Code to receive comments regarding the potential sale of a 0.092 acre wastewater utility easement to the Pflugerville Community Development Corporation ("PCDC"). Following the public hearing, the Court approved the sale and directed that appropriate documents be prepared to finalize the sale.

STAFF RECOMMENDATIONS:

ISSUES AND OPPORTUNITIES:

FISCAL IMPACT AND SOURCE OF FUNDING:

PCDC has agreed to pay \$10,000 for the easement.

REQUIRED AUTHORIZATIONS:

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials must be submitted as a pdf to Cheryl Aker in the County Judge's office, Cheryl.Aker@co.travis.tx.us by Tuesdays at 5:00 p.m. for the next week's meeting.

**ORDER REGARDING THE SALE OF 0.092 ACRE WASTEWATER
UTILITY EASEMENT FROM NORTHEAST METROPOLITAN PARK
TO PFLUGERVILLE COMMUNITY DEVELOPMENT
CORPORATION**

RECITALS

Travis County received from the Pflugerville Community Development Corporation ("PCDC") a request to sell a 0.092 acre (3990 square feet) wastewater utility easement from a parcel of land located in the County's North East Metro Park. The proposed easement area is 20 feet in width and approximately 200 feet in length, and is needed by the adjoining property owner, PCDC, for the installation of a wastewater line to serve PCDC's planned Renewable Energy Park to the east.

In accordance with Chapter 26 of the Texas Parks and Wildlife Code, the Travis County Commissioners Court gave due notice of a public hearing to be held on December 6, 2011 to receive comments regarding the proposed sale of the 0.092 acre wastewater utility easement to PCDC.

The Travis County Commissioners Court conducted a public hearing on December 6, 2011.

APPROVAL OF SALE/FINDINGS

Having conducted a public hearing and received information from the Transportation and Natural Resources Department, the Travis County Commissioners Court approves the sale of the 0.092 acre wastewater utility easement to the Pflugerville Community Development Corporation and makes the following findings:

- (1) there is no feasible or prudent alternative to the use of the 0.092 acre tract for a wastewater utility easement for PCDC's proposed Renewable Energy Park, and
- (2) PCDC's project to use the 0.092 acre tract as a wastewater utility easement for PCDC's proposed Renewable Energy Park includes all reasonable planning to minimize harm to the Northeast Metropolitan Park resulting from the PCDC's use of the 0.092 acres as a wastewater utility easement.

The Travis County Commissioners Court further orders that all proceeds from the sale of the 0.092 acre wastewater utility easement be placed into an account that may be used only for open space parkland projects.

ORDERED on this _____ day of _____, 2011.

TRAVIS COUNTY COMMISSIONERS COURT

Samuel T. Biscoe
Travis County Judge

Ron Davis
Commissioner, Precinct 1

Sarah Eckhardt
Commissioner, Precinct 2

Karen Huber
Commissioner, Precinct 3

Margaret Gómez
Commissioner, Precinct 4

WASTEWATER UTILITY EASEMENT

STATE OF TEXAS §
COUNTY OF TRAVIS §
§

EFFECTIVE DATE:

GRANTOR: Travis County, Texas
A Political Subdivision of the State of Texas

GRANTOR'S MAILING ADDRESS: 411 West 13th Street
P.O. Box 1748
Austin, Texas 78767

GRANTEE: Pflugerville Community Development Corporation

GRANTEE'S MAILING ADDRESS: 203 West Main Street, Suite E
Pflugerville, Texas 78660

EASEMENT PROPERTY: That certain tract of land in Travis County, Texas as more fully described on Exhibit A.

PROJECT: Construction, installation, maintenance, and operation of a wastewater utility line, provided that such construction, installation, maintenance, operation and use of the easement area is limited to subsurface activity. The wastewater utility line to be constructed in the Easement Property shall be located entirely underground, and shall be installed, constructed, and maintained so that the top center of the line shall be located to a depth of at least ____ [inches/ feet] below the existing surface of the Easement Property.

Grantor, for consideration paid to Grantor, hereby grants to Grantee a non-exclusive underground easement (the "Easement") in, upon, and across the Easement Property solely for the purpose of the Project.

It is distinctly understood and agreed that the Easement granted herein does not constitute a conveyance in fee of the Easement Property, nor of the minerals therein and thereunder but grants only an underground easement subject to the following:

a. If all or any part of the Easement Property is not used for the stated purposes during any 60-day period or is used at anytime for any other purpose, or if Grantee at anytime permanently abandons the Easement, then in any such event this conveyance shall be null and void and of no further force and effect as to the Easement Property or any part thereof, and the Easement Property, or any part thereof, shall absolutely revert to and revest in Grantor, its successors or assigns, without the necessity of any further act, suit, or action on the part of either Grantor or Grantee. Provided, however, that Grantee agrees in such event to execute and deliver to Grantor, its successors or assigns, a proper deed of reconveyance, duly executed and acknowledged, on the written request of Grantor.

b. The Easement is made subject to any and all existing easements, prescriptive rights, rights-of-way, leases, and subleases affecting the Easement Property, or any part thereof, whether of record or not, and all presently recorded matters that affect the Easement Property. The Easement is further made subject to all future easements, leases and subleases to the extent the same do not unduly interfere with Grantee's rights hereunder.

c. Grantee hereby agrees to release Grantor and its agents, successors and assigns from and against, and to the fullest extent allowed by the Laws and Constitution of the State of Texas, to reimburse Grantor and its agents, successors and assigns with respect to, any and all claims, demands, damages, expenses or causes of action of whatever nature, specifically including, but not limited to, reasonable attorneys' fees and costs of suit paid or incurred by Grantor, its agents, successors and assigns, asserted by others that are caused by or arise in any manner out of acts or omissions of Grantee, its agents, employees, representatives, or any other persons acting under its control or at its direction or request.

d. If, in exercising Grantee's rights in and to the Easement, Grantee directly or indirectly causes any damage to the Easement Property not contemplated by this Wastewater Utility Easement or any damage to any property of Grantor, or any other property appurtenant thereto, or any improvements located on any property of Grantor or on any other property appurtenant thereto, Grantee shall, at Grantee's sole cost and expense and within a reasonable time after the exercise of such rights, but in no event later than thirty (30) days from the date the damage occurred, restore the Easement Property, all other such property, and/or such improvements to the original condition existing prior to the change or damage.

e. All work to be performed by Grantee or its agents, employees, representatives, or any other persons acting under its control or at its direction or request shall:

1. be done at the sole risk, cost and expense of Grantee;
2. be done in accordance with the applicable requirements of all Federal state and local governmental and regulatory authorities having jurisdiction thereof, including, without limitation, complying with all applicable zoning ordinances, building codes and environmental laws; and
3. be done in a manner as will not unreasonably interfere with access to the adjacent or remainder property of Grantor.

f. Grantee will not create or permit to be created or remain, and will discharge, at Grantee's sole cost and expense, any and all liens, encumbrances or charges levied on account of any builder's, supplier's, mechanic's, laborer's, materialmen's or similar lien that might become a lien, encumbrance or charge upon the Easement Property or other property of Grantor or any part thereof or the income derived therefrom, with respect to any work or services performed or material furnished by or at the direction of Grantee. If any such liens, encumbrances or charges shall at any time be filed against the Easement Property or the other property of Grantor or any part thereof by reason of work or services performed or material furnished by or at the direction of Grantee, Grantee within thirty (30) days after the filing thereof will cause the same to be fully discharged and released of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise.

g. By its exercise of its rights hereunder, Grantee will not cause or permit the Easement Property, any other property of Grantor, or Grantor to be in violation of, or do anything or permit anything to be done by Grantee, its contractors, subcontractors, agents or employees that will subject the Easement Property, any other property of Grantor, or Grantor to any remedial obligations under applicable laws pertaining to health or the environment (such laws as they now exist or are hereafter enacted and/or amended are hereinafter sometimes collectively call "Applicable Environmental Laws"), including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (as amended, hereinafter called "CERCLA"), the Resource Conservation and Recovery Act of 1976, as amended by the Used Oil Recycling Act of 1980, the Solid Waste Disposal Act Amendments of 1980, and the Hazardous and Solid Waste Amendments of 1984 (as amended hereinafter called "RCRA"), the Texas Water Code and the Texas Solid Waste Disposal Act, as each of said laws may be amended from time to time, assuming disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to Grantee's exercise of its rights hereunder. Grantee agrees to obtain any permits, licenses or similar authorizations for the Project by reason of any Applicable Environmental Laws that concern or result from the use of the Easement Property. Grantee will promptly notify Grantor in writing of any existing, pending or, to the best knowledge of Grantee threatened, investigation or inquiry by any governmental

authority in connection with any Applicable Environmental Laws concerning the Project and/or Grantee's use of the Easement Property. In connection with the Project, Grantee will not cause or permit the disposal or other release of any hazardous substance or solid waste on or to the Easement Property or any other property of Grantor. In connection with the Project, Grantee covenants and agrees to keep or cause the Easement Property and any other property of Grantor to be kept free of such hazardous substance or solid waste and to remove the same (or if removal is prohibited by law, to take whatever action is required by law) promptly upon discovery, at Grantee's sole cost and expense. If Grantee fails to comply with or perform any of the foregoing covenants and obligations, Grantor may (without any obligation, express or implied) remove any hazardous substance or solid waste from the Easement Property or any other property of Grantor (or if removal is prohibited by law, take whatever action is required by law) and the cost of the removal or such other action shall be reimbursed by Grantee to Grantor. Grantee grants to Grantor and its agents, employees, contractors and consultants access to the Easement Property and the license (which is coupled with an interest and irrevocable) to remove such hazardous substance or solid waste (or if removal is prohibited by law, to take whatever action is required by law) and to the fullest extent permitted by the Constitution and the laws of the State of Texas, agrees to reimburse Grantor for and to hold Grantor harmless from all costs and expense involved therewith. The terms "hazardous substance" and "release" as used in this Wastewater Utility Easement have the meanings specified in CERCLA, and the terms "solid waste" and "disposal" (or "disposed") shall have the meanings specified in RCRA; provided, that if either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply hereunder subsequent to the effective date of such amendment and provided further to the extent that any other federal or state law establishes a meaning for "hazardous substance," "release," "solid waste," or "disposal" that is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply.

h. Grantee, to the fullest extent permitted by the Constitution and the laws of the State of Texas, agrees to release Grantor from and against, and to reimburse Grantor with respect to, any and all claims, demands, losses, damages (including consequential damages), liabilities, causes of action, judgment, penalties, costs and expenses (including attorneys' fees and court costs) of any and every kind or character, known or unknown, fixed or contingent, imposed on, asserted against or incurred by Grantor at any time and from time to time by reason of, in connection with or arising out of (a) the failure of Grantee to perform any obligation herein required to be performed by Grantee regarding Applicable Environmental Laws, (b) any violation of Applicable Environmental Laws by Grantee, its contractors, subcontractors, agents or employees occurring after Grantee's acquisition of the Easement, (c) the removal of hazardous substances or solid wastes that result from the use by Grantee, its contractors, subcontractors, agents or employees from the Easement Property or any other property of Grantor (or if removal is prohibited by law, the taking of whatever action is required by law), and (d) any act, omission or event occurring after Grantee's acquisition of the Easement (including, without limitation, the presence on the Easement Property or release from the Easement Property of hazardous substances or solid

wastes disposed of or otherwise released after Grantee's acquisition of the Easement, resulting from or in connection with the Project), regardless of whether the act, omission, event or circumstance constituted a violation of any Applicable Environmental Law at the time of its existence or occurrence. Any amount to be paid under this paragraph by Grantee or Grantor shall be paid within thirty (30) days of Grantee's receipt of demand therefore from Grantor. Nothing in this paragraph or elsewhere in this Elective Utility Easement shall limit or impair any rights or remedies of Grantor against Grantee or any third party under Applicable Environmental Laws, including without limitation, any rights of contribution available thereunder.

GRANTEE shall not excavate or penetrate the surface of the Easement Property without GRANTOR'S express written consent.

Grantor reserves the right to use and enjoy the Easement Property insofar as the exercise thereof does not endanger or interfere with the existence and maintenance of the Project.

This instrument, and the terms and conditions contained herein, shall insure to the benefit of and be binding upon Grantee and Grantor, and their respective personal representatives, successors, and assigns.

TO HAVE AND HOLD the possession of the Easement Property for the purposes and subject to the limitations described above, without warranties or representatives of any kind, express or implied.

Each party acknowledges that it and its counsel have reviewed this Easement Agreement and that the normal rule of construction shall not be applicable and there shall be no presumption that any ambiguities will be resolved against the drafting party in interpretation of this Easement Agreement.

When the context requires, singular nouns and pronouns include the plural. When appropriate, the term "Grantee" includes the employees and authorized agents of Grantee.

GRANTOR:

COUNTY OF TRAVIS

By: _____

Samuel T. Biscoe
Travis County Judge

GRANTEE:

**PFLUGERVILLE COMMUNITY
DEVELOPMENT CORPORATION**

By: _____
Name: _____
Title: _____

ACKNOWLEDGEMENTS

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, 20__, by Samuel T. Biscoe, County Judge of Travis County, Texas, on behalf of said county.

Notary Public in and for
The State of Texas

Notary's Name (Printed): _____
My commission expires: _____

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the _____ day of _____, 20__, by _____, for and on behalf of the Pflugerville Community Development Corporation.

Notary Public in and for
The State of Texas

Notary's Name (Printed): _____
My commission expires: _____

AFTER RECORDING RETURN TO:
Travis County
Transportation and Natural Resources
P.O. Box 1748
Austin, Texas 78767
Attn: Dee Heap

EXHIBIT A
PROPERTY DESCRIPTION

EXHIBIT **A**

PROPERTY DESCRIPTION

DESCRIPTION OF A 0.092 ACRE (3,990 SQUARE FOOT), TRACT OF LAND SITUATED IN THE WILLIAM CALDWELL SURVEY ABSTRACT NO. 192, IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT REMNANT OF A 17.800 ACRE TRACT OF LAND CONVEYED TO TRAVIS COUNTY BY INSTRUMENT RECORDED IN DOCUMENT NO. 1999122493 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, SAID 0.092 ACRE (3,990 SQUARE FOOT) TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a calculated point, being in the westerly boundary line of Lot 3 of the Renewable Energy Park Preliminary Plat (unrecorded at this time), same being the westerly boundary line of a 159.788 acre tract of land conveyed to Pflugerville Community Development Corporation by instrument recorded in Document No. 2008190959, of the Official Public Records of Travis County, Texas, being the easterly boundary line of said remnant tract, for the southeasterly corner and the POINT OF BEGINNING of the herein described tract and from which a capped iron rod found stamped "TRAVIS COUNTY", being an angle point in said remainder tract, and said Lot 3, bears S 26°18'09" W at a distance of 2.63 feet;

- 1) THENCE, departing said common boundary line, through the interior of said remainder tract, N 61°43'32" W for a distance of 189.53 feet to a calculated point in the common boundary line of a 2.66 acre tract of land conveyed to City of Pflugerville by instrument recorded in Volume 9238, Page 994 of the Real Property Records of Travis County, Texas, also being the westerly boundary line of said remnant tract, for the southwest corner of the herein described tract;
- 2) THENCE, with said common boundary line, N 28°22'06" E for a distance of 20.00 feet to a calculated point, for the northwest corner of the herein described tract;
- 3) THENCE, departing said common boundary line, through the interior of said remainder tract, S 81°43'32" E for a distance of 189.51 feet to a calculated point, being the common boundary line of said Lot 3, and in the easterly boundary line of said remainder tract, for the northeast corner of the herein described tract, and from which a capped iron rod found marked "CHAPARRAL", being the southeast corner of said a 7.320 acre tract, also known as Sun Light Near Way (R.O.W. width varies), to be dedicated by the final plat (Pending Renewable Energy Park), bears N 26°18'09" E at a distance of 1,405.13 feet;
- 4) THENCE, with said common boundary line, S 26°18'09" W for a distance of 20.00 feet to the POINT OF BEGINNING, containing 0.092 acres (3,990 square feet) of land, more or less.

All bearings recited herein are based on the Texas State Plane Coordinate System, Central Zone No. 4203, NAD 83.

This property description is accompanied by a separate plat.

That I, M. Stephen Truesdale, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Round Rock, Williamson County, Texas.

M. Stephen Truesdale 19 OCT 2011
M. Stephen Truesdale Date

M. Stephen Truesdale
Registered Professional Land Surveyor No. 4933
Licensed State Land Surveyor
Inland Geodetics, L.P.
Firm Registration No. 100891-00
1604 Chisholm Trail Road Suite 103
Round Rock, TX 78681
612-239-1200



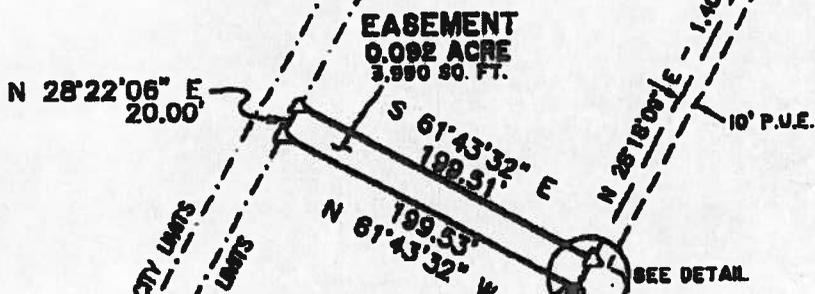
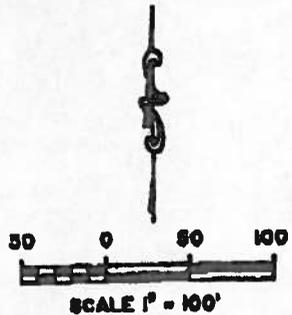
EXHIBIT "A"

PLAT TO ACCOMPANY DESCRIPTION

LEGEND

	CAPPED IRON ROD FOUND UNLESS NOTED OTHERWISE
	PROPERTY LINE
O.P.R.W.C.T.	OFFICIAL PUBLIC RECORDS TRAVIS COUNTY, TEXAS
R.P.R.W.C.T.	REAL PUBLIC RECORDS TRAVIS COUNTY, TEXAS
()	RECORD INFORMATION

SUN LIGHT NEAR HWY
(RIGHT-OF-WAY WIDTH VARIES)
7.380 ACRES
TO BE DEDICATED
BY FINAL PLAT
(PENDING RENEWABLE
ENERGY PARK)



EASEMENT
0.092 ACRE
3,990 SQ. FT.

**PFLUGERVILLE COMMUNITY
DEVELOPMENT CORPORATION**
(158.788 AC.)
DOC. NO. 2008180659
O.P.R.T.C.T.

LOT 3
PENDING FINAL PLAT
RENEWABLE ENERGY PARK
(187.123 AC.)

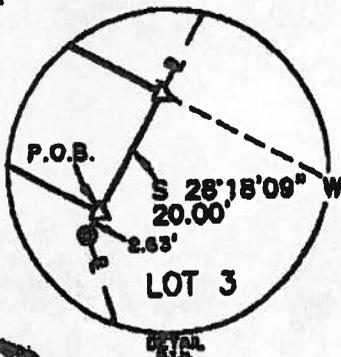
TRAVIS COUNTY
(REMAINDER OF A
17.600 AC.)
DOC. NO. 1999122493
O.P.R.T.C.T.

CITY OF PFLUGERVILLE
(2.56 AC.)
VOL. 9236, PG. 954
R.P.R.T.C.T.

WILLIAM CALDWELL SURVEY
ABSTRACT NO. 162

SEE DETAIL

30' WASTEWATER
EASEMENT



NOTES:
1) ALL BEARINGS ARE BASED ON GRID BEARINGS. DISTANCES ARE SURFACE DISTANCES. COORDINATES ARE SURFACE VALUES BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, NAD 83, CENTRAL TEXAS ZONE, USING A COMBINED SURFACE ADJUSTMENT FACTOR OF 0.99990506.
2) THIS SURVEY WAS PERFORMED WITHOUT BENEFIT OF A TITLE REPORT. THERE MAY BE EASEMENTS OR OTHER ENCUMBRANCES UPON THIS TRACT THAT ARE NOT DEPICTED HEREON.

AS SURVEYED BY:

M. Stephen Truesdale 19 OCT 2011



M. STEPHEN TRUESDALE DATE
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 4933
LICENSED STATE LAND SURVEYOR
INLAND GEODETICS, LP
FIRM REGISTRATION NO. 100591-00

**INLAND
GEODETICS**
PROFESSIONAL LAND SURVEYORS
1504 CHRISWOLM TRAIL RD. STE 103
ROUND ROCK, TX 78681
PH. (512) 238-1300, FAX (512) 238-1891

EASEMENT
0.092 ACRE
3,990 SQUARE FEET