



## **COUNCIL COMMITTEE REPORT**

### **Public Utilities Committee**

**Date:** June 17, 2015

**Agenda Item #:** 5

**Agenda Item:** Staff briefing, invited testimony, and policy discussion to consider a resolution to accept the approved connection tap plan at 10713 North FM 620 as a permanent service installation.

**Vote:** None taken given nature of item

**Original Sponsors/Department:** Austin Water

#### **Summary of Discussion:**

Bart Jennings, Division Manager of Utility Development Services at Austin Water, began the discussion by explaining the location of and existing land uses on the subject property, and existing water connections on the property and in the adjacent area. The subject property is the 620 Oaks Office Park, which encompasses Lot 12 and Lot 14-15. A car sales lot is located on Lot 12 and there is no existing water or wastewater service to that lot. Lots 14 and 15 are developed with multiple buildings and is currently served by a temporary connection between a City water transmission main and fire hydrant, and an on-site wastewater system. The property was previously served by a water well.

Mr. Jennings explained the Service Extension Request (SER, or request for service from Austin Water) submitted for the property in July 2012 and its associated history to date. He also explained the SER requirements requested by Austin Water, which include a 12-inch water main across the property and permanent easement to allow for future 'gridding' of water service in the adjacent area.

Mr. Jennings stated that, in February 2013, Austin Water discovered that the property owner was using water from a fire hydrant through an agreement with a contractor that had been constructing the City's 24-inch water transmission main, which is a violation of City Code; and that water was also being used to fill a water tank on the property that previously held ground water, which was a violation of TCEQ regulations. Austin Water notified the owner that such was not permissible but Austin Water agreed to allow the

temporary interconnection between the hydrant and the transmission main as long as the applicant would work to pursue a permanent connection.

Mr. Jennings noted that the connection between the fire hydrant and the transmission main was not a normal engineering practice and explained the City's concerns. These include a concern that if the hydrant or transmission main needed to be operated on or maintained, water would have to be shut off to the office park. Additionally, Mr. Jennings conveyed concerns about use of the hydrant and the potential for infiltration of groundwater back into the hydrant and thus back into the City's distribution system.

Mr. Jennings continued to convey additional details about the history of the property owner's non-compliance with the agreement between the City, TCEQ and the property owner over the next year, including a request by the applicant that the temporary hydrant connection be made permanent [in lieu of complying with the City's SER requirements]. Austin Water denied this request.

Mr. Jennings also explained that the applicant had cited a Unified Development Agreement that governed the property, which [if it existed] would not require the 12-inch water main and easement, but instead allow a shorter extension of a 16-inch main serving an adjacent property and then a private plumbing connection into that extension that would serve Lot 12 and also Lot 14-15. However, Mr. Jennings noted that the Planning and Development Review Department determined that there is no history of a Unified Development Agreement for the property, which means that a private plumbing line connected to any extension of the 16-inch main could not cross Lot 12 to also serve Lot 14-15 [necessitating the construction of a 12-inch main across Lots 12 and Lot 14-15, which had been requested by Austin Water as a requirement of approval of the Service Extension Request].

Mr. Jennings continued to convey more details about the history of the property owner's non-compliance with the agreement, including a disconnection notice issued by Austin Water, which Austin Water deferred; and introduction of legal counsel by Mr. Payne, which found no inappropriate actions taken by the City.

Mr. Jennings concluded his presentation by summarizing the final proposal offered by the City as of February/March 2015, which was that

- In exchange for the City
  1. Extending an adjacent 12-inch water line to the property boundary of Lot 12 and setting a meter vault at that location (at the City's cost though this is typically paid for by the developer),
  2. Moving the temporary meter and capping the existing tap (at the City's cost though this is typically borne by the developer), and
  3. Allowing the temporary connection installed by the owner between the City's 24-inch transmission main and fire hydrant on Lot 14-15 to remain unless a utility bill was not paid or a new Code violation related to water services occurred.

- The owner/developer would
  1. Grant an easement across the frontage of Lots 12 and Lot 14-15 for the future installation by a developer of a 12-inch water main, and retain the existing easement on Lot 14-15 so that the public infrastructure for the service line and the meter could remain on private property, and
  2. Adhere to applicable metering and SER requirements upon redevelopment of Lot 12 or Lot 14-15.

Council Member Zimmerman posed the question of when the property was developed and whether it was in the City limits at that time. Mr. Jennings said he did not have that information. Council Member Troxclair asked what was the defining issue related to when it was built, and Council Member Zimmerman, Austin Water Director Greg Meszaros and Mr. Jennings engaged in discussion about this and whether the property had any vested rights given the date of development. Council Member Zimmerman stated that the development date was important given that building codes change over time. Mr. Meszaros stated that it was not connected to the public water supply when it was first developed. He added that Austin Water was not asking them to modernize a connection that already existed but that the situation arose because the connection was made illegally in 2012.

In response to a question posed by Council Member Kitchen, Council Member Kitchen and Mr. Jennings engaged in discussion about the solution the committee was being asked to consider. Mr. Jennings explained that the parties were trying to resolve how to make the temporary connection a permanent one.

Council Member Kitchen summarized what she saw as the three points of the agreement:

- a re-platting of the lots or compliance with the applicable metering and SER requirements upon redevelopment of Lot 12 and Lot(s) 14-15, with the SER requirements being an extension of the 12-inch water line across Lots 12 into Lot 14 and then at the meter;
- the retention of and granting of the easement that the existing meter is located in, which is on private property; and
- the allowance of the temporary connection until the time of redevelopment, or unless the utility bill is not paid or there is a new violation.

Mr. Jennings noted that the Austin Water could live with the temporary connection for now given the time spent on the issue already but noted that the City's preference is that there be a re-platting of the lots or that the SER requirements are met. Mr. Jennings also stated that, in regards to the vested rights question, he believed that [current] Code requirements and State law would apply in the case of public health and safety and that there were no vested rights with regard to water service.

The applicant, Mr. John Payne, then delivered his testimony. Mr. Payne noted that he purchased the property in 1993. He stated that from 1993-1997, the property was under a Unified Development Agreement. Mr. Payne stated that the current situation is culmination of mistakes on the City's part. He noted that they had run out of water but

had used a temporary connection of a hose connected to a fire hydrant with water being fed into a water tank. Mr. Payne noted that he had agreed to meet all of the requirements requested by the City for the temporary connection, which totaled \$20,000, including work related to backflow prevention to ensure that the City water supply was not contaminated. He stated that the tap plan was approved by the City on March 12, 2014 and that they had been trying to make the current situation a permanent one. He also noted that they were within nine feet of a legal lot and that TCEQ says that if you are within 100 feet, the City has to bring the water to you but City did not recognize that. He stated that the property falls under rules from 1990-1997 [because of the Unified Development Agreement he cited].

Monty Lowell, Mr. Payne's consultant, then spoke. He noted that he was a 27-year employee of the City previously and used to perform all of commercial plumbing plan review. Mr. Lowell stated that the site had not been reviewed accurately by the water utility. He stated that in 2009, water service had been requested for Lot 12 [part of the subject property], but an Austin Water employee denied the tap plan and communicated then that the applicant would need to extend the water main 250 feet [along Lot 12 and Lot 14-15]. Mr. Lowell stated that this is not according to Code since current Code says that if there is a legal lot within 100 feet, with a parenthetical notation in the code of the "closest practical access route," you are granted service.

Mr. Lowell stated that Austin Water's service extension division was not related to this case [implying that a service extension request is not required]. He also stated that rules from 1990-1997 permitted water and sewer lines to cross lot lines. He stated that the Plumbing Code says that you cannot cross lot lines but that the Plumbing Code includes exceptions. He also noted that water lines and sewer lines have crossed all three lot lines of the subject property since 1994, and that the well house that served all three lots [Lot 12 and Lot 14-15] was on Lot 12.

Mr. Lowell also stated that three City departments were opposed to 1993-1997 Unified Development Rule: the plumbing department, Austin Water Utility and the Fire Department. As such, Mr. Lowell stated that he was asked to rewrite the rule and the prohibition on private plumbing crossing lot lines was added. He stated that, at that time, four options were incorporated in the event of a subdivision:

1. If [private] utility lines cross lot lines, the City can accept those utilities if they meet the City's Utility Criteria Manual;
2. A one-time assessment fee can be imposed by the City if the [private] utilities do not meet the standards of the City's Utility Criteria Manual, which Mr. Lowell stated is an option that has never been exercised;
3. There can be a private easement; or
4. All of the [private] utilities can be re-done, which Mr. Lowell stated is an option that no one wants to do.

Mr. Lowell stated that when he worked at the City previously, many applicants came before him with pre-existing and non-conforming utilities and requested a water meter.

He noted that the subject lots are all “married,” and stated that Lot 12 of the subject property is immediately adjacent to the 16-inch water main that is in an easement adjacent to the subject lot. He stated that the subject lot is a legal lot within 100 feet and service should have been granted.

Council Member Kitchen clarified with Mr. Lowell that they would like to see the temporary connection become permanent.

Council Member Zimmerman commented that he had reviewed the professional engineer’s work, and that it was technically solid, complies with Code and that there is no reason why it shouldn’t just be made a permanent connection. Council Member Troxclair clarified the actual configuration of the connection with Mr. Jennings, who also referred to David Juarez, Assistant Director of Austin Water, who is an engineer. Mr. Juarez replied that Austin Water is not arguing that the engineer’s work on the temporary connection did not meet the City’s requirements for a temporary meter, but that the interconnection itself is not in compliance with the City’s design criteria. Mr. Juarez explained that the City does not allow metered services to be connected to a transmission main, or for water service to be tied on to a fire lead for a number of reasons. He noted that if the City had to perform maintenance on the hydrant, service would be shut down. Council Member Zimmerman remarked that water is cut off on occasion when the City needs to do work and as such he did not understand Mr. Juarez’s concern. Mr. Juarez explained that unlike with smaller mains where shut-offs can be isolated, this line [the 24-inch transmission main connected to the fire hydrant in question] moves water for [some/a long] distance. Additionally, Mr. Juarez noted that materials are not always readily available for lines of this size.

Council Member Troxclair asked if there was anywhere else in the City where we allow such configurations on a permanent basis. Mr. Juarez replied that the utility does allow it temporarily but not on a permanent basis. Council Member Troxclair asked what was preventing the combination of the lots, to which the applicant responded that they lots were already connected.

Greg Guernsey, Director, Planning and Zoning Department (formerly Planning and Development Review Department) stated that there is no documentation of a Unified Development Agreement for this property per his department’s research.

Council Member Troxclair asked if the connection to a fire hydrant posed any risk or if it would prohibit water from being used in the event of a fire. Mr. Juarez said that it would not but that the service [to Lot 14-15] would not provide water [to the property] if the fire hydrant was in use.

Council Member Kitchen clarified that one point of disagreement is whether a Unified Development Agreement (UDA) exists but asked whether they could access the extension of 12-inch line if a UDA were in place. Mr. Guernsey stated that there is nothing to stop the property owner today from removing lot lines. He also stated this this

is not so much a vesting issue under Chapter 245 [of state law] but a health and safety issue.

Council Member Kitchen asked Mr. Guernsey if the applicant could get a UDA now and he replied that they could but there would be the plumbing issue that does not allow the crossing of lot lines.

Council Member Kitchen clarified the applicant's position regarding staff's proposal that the temporary connection be allowed but only until redevelopment.

Concerns were raised by both the applicant and Council Member Zimmerman about Austin Water's position regarding the well onsite. Mr. Juarez stated that Austin Water had the applicant disconnect the well because it was no longer in use and the City requires the disconnection because of the potential cross-connection with the City's water system. Mr. Jennings also noted that TCEQ had become involved [in the past] because they did not want any cross-contamination between the groundwater from the well and the potable water [from Austin Water]. Mr. Jennings noted that nothing prevents the applicants from drilling a well to be used for irrigation purposes but noted that appropriate backflow prevention would have to be in place if they wanted to use the well for potable water. Council Member Zimmerman and Mr. Jennings then had brief discussion about how many wells are in Austin and the number of backflow preventers.

Council Member Kitchen noted that she did not understand what the disagreement was between staff and the applicant and clarified the three requirements that staff had requested of the applicant, and whether the applicant was in agreement with those. As part of that discussion, staff clarified that

- The City/Austin Water Utility will allow the temporary connection to continue to exist unless there is nonpayment with the bill or there is some other type of violation with City Code related to water service
- Second is that upon any kind of redevelopment of Lot 12 or Lot 14-15, whatever the appropriate requirements are for that proposed development, that the standard metering requirements and the standard SER requirements will all be invoked, which means the temporary connection goes away.
- The third condition is that the existing easement where the existing temporary meter is from the fire hydrant will remain a permanent easement to the City of Austin in perpetuity.

Council Member Zimmerman raised concerns about the provision that would allow the City to cut off service to the temporary connection if a violation was found since the determination of whether something was a violation was subject to staff's interpretation. The applicant concurred. Council Member Kitchen suggested that some specificity could be worked out in a written agreement between the City and applicant to give the applicant some certainty. She also noted that this would mean that the Council would not have to consider an ordinance to address this issue. Council Member Zimmerman restated his concern about the existing well and clarified that if the applicant had installed all the necessary backflow prevention the well was compliant. Mr. Jennings concurred but noted

that the violation discussed before was the TCEQ violation related to the mixing of groundwater and potable water.

Council Member Troxclair asked what the cost would be to the property owner to comply with the City's preferred solution of extending a 12-inch main. Mr. Jennings stated that Austin Water generally sees estimates/costs of \$200 per linear feet and this line would be 250 feet in length.

Mr. Juarez noted that [with the temporary connection], there is still a risk associated with the property being without water. He stated that if the transmission main needs to be repaired, there is no guarantee of how long it would take to be repaired. Mr. Meszaros also noted that this is a sensitive land use being that there are day cares on the property and there is a risk of being without water.

Council Member Troxclair noted that she is not supportive of making this temporary connection permanent or setting a precedent [by doing so].

In response to a previous comment made by Council Member Zimmerman that it appeared that the Committee agreed that a written agreement should come back to the Committee, Council Member Kitchen stated that she did not think this agreement should come back to the Committee.