

# City Council Special Called Meeting Transcript – 12/03/2015

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[1:31 PM]

>> Tovo: Okay. Good afternoon. I'm mayor pro tem Kathie Tovo and I will be filling in for the mayor in his absence today at today's special called meeting. It's 1:31 P.M. And we're meeting in city hall chambers. We have a very short agenda here today. Our first item, authorize negotiation and execution of a contract with oxford advisors LLC for independent consumer advocate services for residential and small commercial electric utility customers. Because the protest process is still pending we are not going to take action on this item today. Our second item is -- I also should announced I was filling in for mayor Adler out on city business with councilmember pool and because we were not originally scheduled to meet as ace full council on this day, councilmember troxclair, announced at our last meeting is out due to prior commitment as well so the three them will be off the dais for the remainder of our meeting. Our second item is a resolution I have brought forward for council consideration. Given that I'm going to be turning over the meeting to councilmember Houston.

>> Houston: I'm sorry.

>> Tovo: Sorry about that.

>> Houston: Faster than we thought. So where are we? Right here.

>> Tovo: So, chair?

>> Houston: So we're -- item number 2, approve resolution affirming the city council's commitment to a fair and equitable appraisal system and support of legal actions related to the level of appraisals of commercial property taxes. There are four sponsors and I'd ask mayor pro tem tovo to lay this out for us.

>> Tovo: Thank you very much. I would like to move approval of this item, and if I get a second I'd like to speak to it.

>> Zimmerman: I'll speak to it.

>> Tovo: Thank you, councilmember Zimmerman.

So this is -- as you all know, this is an item related to the resolution that we passed as a council back in June that directed our city manager to move forward with a challenge petition regarding the appraisal process. I want to be very clear that today's resolution is not initiating any new action. We already initiated that action back in June. This is simply a resolution intended to restate our position and offer an explanation of our intent and purposes, which I believe have not changed since we initiated the legal action last June. I want to express that I know the timing on a day where several of our colleagues are off the dais isn't ideal, but we do have some legal deadlines coming up and it seemed appropriate, given the public attention to those deadlines and the media attention to those deadlines it seemed appropriate to reiterate our reasoning prior to those actions rather than after. But, again, I just want to

underscore this resolution -- with or without this resolution those actions will take place based on prior council action. So and I also want to, as you know, the mayor is a cosponsor on this item. He was comfortable with our moving forward in his absence and took a very active role in contributing some of the language, some of the really important pieces of the resolution, some of the whereases in particular, emphasizing that we are not -- we are not -- this is not an attempt to increase revenue. That was something that came directly out of the mayor's office in an interest in responding to some of the concerns that had been heard in the public in the months since we filed the challenge petition. And so, you know, we've had a lot of discussion about this issue. Just as a summary, I would say there certainly are issues within our appraisal system that I believe need attention and that our custom has taken a position on that need attention. The constitution requires property being appraised at market value yet our appraisal districts lack information they need to assess those commercial properties at accurate market values, and the research and the evidence that our city has compiled along with the actual evidence and the evidence in the media I believe show there's a real disparity in terms of how commercial properties are valued with regard to that constitutional requirement to appraise at market value, and so I am very committed to making sure that our city's legal challenge moves forward.

I think we've got a sound evidence-based case illustrating that commercial properties in our area are undervalued and I think it's critical that we continue to pursue this. And, again, today is just an effort to restate our commitment to that. And I have acknowledged some of these people in previous conversations but most of these issues take a long time and many people to continue to advance forward, and I just want to acknowledge a couple people, commissioner Shea, who advocated for this to Travis county several years ago and seconded this action and worked with community members to build support, so I appreciate her role in this, and councilmember Morrison played a critical role and we adopted an early version of this in June 2014, she was the one who suggested we include the direction to go forward and collect the evidence which has allowed us to really have that evidence and that data for our legal case. So I appreciate her involvement in that as well. And I want to thank our legal staff, Megan Reilly, Andrew, Mike satisfy gull, there are very few precedents with regard to this kind of case and I've done an excellent case in analyzing the law and precedents in representing the city so ably and I know they'll continue to do so. With that I'll conclude.

>> Houston: Thank you so much, mayor pro tem. Is there any discussion on the dais? Councilmember Gallo.

>> Gallo: I have some information that I passed out, and I just wanted all of us to refer to that because, as we started this process, was truly a process to make sure that we had a fair and equitable situation of assessing tax values with both the residential property owners and the commercial property owners, and that was -- owners and that was why I supported this from the beginning because the information we were given -- and I've passed out two pages from the tcad, analysis of tcad's commercial valuations.

On page 12, what I wanted to point out was that what this report indicated to us, which really was the basis of moving us -- us moving forward with this challenge, was this report's projected median undervaluation in initial 2015 tcad appraisals, f1, c1 is vacant land and f1 is commercial property. You can see what this report was indicating to us is that it was looking like that the commercial properties would be undervalued by 27% of their market. And that was the reason that we wanted to move forward, because we felt like that was such a substantial undervalue compared to residential and other areas that we really wanted to do everything we could to try to get the values of those commercial properties closer to market values. And in that next paragraph, it says if the city should choose to challenge the 2015 initial tcad appraised values we recommend that the city seeks increases in the initial appraised values of c1 parcels by parcels by 76 and that's the vacant land and f1, commercial properties, by 27%. So our goal in doing this appeared to be trying to get the commercial properties up the

additional 27%, which this report showed they were undervalued. The other thing that I passed out was we asked -- so part of my -- part of my understanding of this process and part of my desire with this process, which is trying to get all the appraised values in the city equal and fair, both residential and commercial, was to try to find out, well, actually know that the roles have been -- rolls have been certified, where are we? What did the commercial values increase this year? And did the increase in values meet our initial goal? And so we asked for a breakdown, which we've passed out. The 2014 Numbers were obviously from last year. The 2015 Numbers, excuse me, those are all, as of today, they are representing the actual certified rolls.

They are post-protest, so the deadline for protest has now expired so there are no more allowed but it is prelitigation of any of the protests actually filed in court for litigation. What I would refer to is the percent change, the last group of columns, the percent of the market, if you look at the commercial apartment industrial office and retail, you will show that those have gone up 24%, 27%, 30% and 20%. So what this says to me is at this point we have already, whether it was through our efforts with the tax challenge or whether it was because of appraisal districts cooperation with us as we work together on a change in -- or a change in their way-doing things, which allowed for changes in the valuation of these commercial properties to more truly reflect the actual market values of this property, it looks like we've reached that goal that we set out to do. So a question that I have, if we have already reached that goal in the report that we talked about early in this year and that was the basis of moving forward with the challenge, that the goal would be to increase the commercial properties by 27 -- and I think this percent change indicates that we have gotten there on most of these, some a little under, some a little over -- is what would be the reason to continue forward with the challenge? So that would be a staff question. So if staff could address that question, please.

>> Houston: Thank you.

>> Go ahead.

>> Houston: Is there a staff person here that could answer that?

>> Kitchen: I don't know that we have a staff person here.

>> Houston: There's a lawyer here.

>> Kitchen: I think that's a policy question.

>> Gallo: Moving forward --

>> Houston: Hold on a moment, councilmember Zimmerman, one person at a time.

>> Gallo: My question is if we are looking at continuing to move forward on the challenge and the basis of the challenge was to help ensure that commercial properties are as equally appraised in value as residential properties and the goal as part of the report that we based off challenge off of was to try to impact this so we would see a 27% increase in commercial, my question is, it looks like we're there with the 2015 values.

So the question is, is there any reason to proceed Ford and use more staff time to continue this process if we've already accomplished what I think was told to us was the goal early on.

>> Houston: Let's have a couple more -- councilmember kitchen.

>> Kitchen: Well, I would just say that I don't think that the question you're asking is answerable without proceeding through the lawsuit. First off, it's a huge assumption to assume that these Numbers are the same as what we could get increases through going through this process. Yes, it's good that we got some increases, but you cannot assume, because you don't have any data behind that, you cannot assume it's not -- first off, there's no causal relationship here. There's just a, you know -- it's just -- it could be coincidence, it could be many other factors, and we don't know that if we don't go through this process. So from my perspective, I think that the reason that we started was not to hit 27% or 26% or

even 28%. It was to hit the number that was the appropriate number going through the appropriate process. And I don't think that we've completed that process.

>> Houston: Councilmember Zimmerman.

>> Zimmerman: Thank you. So I could simply answer -- very simply answer the question. I see nothing that would stop -- let's say that we do have good Numbers for this year, and I think there's a reasonable presumption that our action did lead to these Numbers, and I agree with you that we're in better shape. I see nothing that would stop next year's appraisals to going back to exactly the same problem we started with. Right? These Numbers come in year after year after year, and I see nothing so far, with what we've done, that would prevent the problem from happening next year. So that's why I want to move ahead. The second reason is we had some interesting legal questions and some questions about process and interpretation of, you know, some of these complex rules and calendar schedules and we wanted a judge to offer some rulings or opinions or some clarifications on what some of these deadlines mean and how it's possible to navigate this complex process.

We learned, if nothing else, it's a pretty complex process. So we wanted a judge to give an opinion on some interpretation of the constitutes regarding this complex process -- statutes regarding this complex process. I have basically two issues. One, if we don't move ahead I don't see how we don't get right back in the same position next year within balances and, number 2, I think the questions we asked were legitimate and I'd like to have a court answer those questions and help us understand the law.

>> Houston: Councilmember Garza.

>> Garza: I just wanted to understand these Numbers because that's why I went to law school because I don't understand Numbers.

[ Laughter ] No stereotypes about women. Sew the market -- so I market -- I thought our problem was that people don't have to disclose the sale price. So there's never a way to know exactly what the market is. So how do we -- how did whoever -- I guess from tcad, how did they come up with this market column? Do you know, councilmember Gallo?

>> Gallo: That would probably be a better tcad question. My guess is that the market value is the value that -- that the market sales information indicates.

>> Garza: Okay.

>> Gallo: Then your assessed value is the value assessed on the taxable value would take into consideration homestead exemption, senior exemptions, disabled exemptions, so your taxable value can be reduced from the assessed value because of that.

>> Garza: And why are commercial -- do commercials get some kind of exemptions? Because some of these that that are strictly commercial, why is there taxable lower than their assessed?

>> Gallo: It may be -- I seem to remember when we were talking -- we had a similar form to this that we talked about earlier that was helping us make some of these discussions. It seems like when we asked tcad that before, that the protest amounts were indicated in the taxable and the assessed was actually the initial value that went out.

I may be wrong. I mean, it's been a while since we've talked about that.

>> Garza: Then just that 27% change, is that --

>> Gallo: Maybe legal can help us with that. Y'all have been so engrained in this whole discussion you may know the answers to all of these.

>> Garza: I don't know if they would be helpful on tcad Numbers. I'm sure y'all are very smart. The 27%, my assumption is that's from the previous year, but that's not strictly -- if where we're going with this is, look, they appraised them at 27% higher, that looks like that's 27% higher from the year before, which the market values were lower. So if we're comparing -- basically what I'm saying, if we're comparing column taxable 2014 to column taxable tweak I don't think we can say that that's a 27% overall change.

>> Gallo: And I think you make a really good point. So I think in that process, thought process, it's important to drop down to the residential that shows a 16% increase. So everything -- we know everything appreciated this year just because of our robust economy and what prices are doing. So the good news, had been we look at what's happened this -- when we looked at what's happened this year because our concern was commercial was lagging so far behind in the percentage of value to market, that residential went up escape%, but all of the commercial categories have gone up more substantially than that. So I think that indicates that something in the process worked. We want to take -- claim as much of that as possible and the challenge being part of that, but something in the process worked to pull the residential values and the commercial values closer together as far as the percentage of market.

>> Garza: Okay. I guess I'll add that I do -- I do think that's an assumption that -- I don't know if we can make, that these Numbers are a direct effect of our challenge and I'm supportive of us going forward because I don't know what's going to happen in years to come so I would like to see us continue with this, on this course.

>> Houston: Any other comments? Is there a motion? One more comment.

>> Tovo: Yeah, I think these are interesting Numbers and certainly shows a percentage increase, but I think the -- you know, what our data and our analysis showed was not that property valuations in the commercial categorizations and the residential weren't increasing in value each year, just that there was a very big delta between the market value and the assessed value, and as councilmember kitchen said, I don't believe -- this chart does not show us -- does not prove that the commercial properties are now being assessed at 100% of their market value because we know from the other work we've discussed here that our appraisal districts throughout the state have great difficulty finding access to real sales data. But I do want to acknowledge the work that T cad has done and in fact our report that we got back acknowledged that the value -- that the gap they were finding for 2015 was slightly smaller than those previous years because of the additional resources that T cad had been able to bring to bear in assessing that market value though it did find that just with the initial values they were looking at at the time of the report they did find that most of the historical undervaluation continues into 2015 and just as it broke down for those very limited 2015 values at the time it was 76% undervaluation for vacant land, which is that second to last category on here. And 27% for f1 commercial real properties, which I think justing those industrial office and retail on the sheet here. So, you know, again, we're not debating here today whether or not to move forward because we've already provided action action -- or provided guidance to our legal staff with regard to that you, but in terms of stating whether there are still -- whether there's -- you know, what our rationale is for continuing this, I believe we still have really, as councilmember Zimmerman said, I think we have a sound case and question still to resolve and changes that remain before we have a property tax system that I feel is really equitable with regard to how it values residential and commercial properties.

And I should say, also, because councilmember Garza mentioned, sales tax disclosure, I believe all of this discussion in the public is prompting some good discussions that are beginning to happen at the state level and I'm encouraged to hear that sales disclosure is something that some of our state representatives are discussing, and I'm really hopeful that we might see some changes in that area that would make a difference as well.

>> Houston: Councilmember Gallo.

>> Gallo: Thank you for mentioning the mandatory sales disclosure because I think that's really important. Could I ask legal, we've talked about the two things we're doing in this, and one of them was the constitutionality change of one of the protest options. Is that still part of this, moving forward?

>> Yes, there was a constitutional question that was part of the original lawsuit.

>> Gallo: Could you explain a little bit more? I just want to make sure that the public understands what we're doing as we're moving forward on this. So could you explain a little bit about what that is?

>> Sure. I can certainly do so. The courts issued a ruling -- and, again, the ruling from the court was not a substantive discussion of what you were having here. The question on the court's opinion was, number 1, as a city, like the city of Austin, do we have the ability to challenge the constitutionality of some of the tax code provisions. The court took the position that that was not the case and moving forward those would be one of the questions we would ask an appellate court. The second piece to that is the court indicated that the city of Austin had not exhausted its administrative remedies at the review hearing before the appraisal review board. We -- I believe that that is contrary to the case law so you that the second question we would be seeking a review from an appellate court on.

>> Gallo: Thank you. What were the tax code provisions we were challenging?

>> We were challenging the implementation of the tax code that relates to equal and uniform. In other words if there is a discrepancy between market value and appraised value that implementation results in a non-constitutional appraised value system.

>> Gallo: I just want to make some comments from that, and this is from my experience of being a tax arbitrator, the equal and uniform protest option is an option that I would say would be used by a lot of residential homeowners and what that actually means is that if you have a house that is exactly like your neighbor's house and your neighbor's house is appraised at 300,000 and your appraisal came in at 350,000, then you could actually go in, do a protest on the appraised value that T cad or whatever appraisal district had put on the house and said this is not fair and equitable because you've appraised my neighbor's house \$50,000 lower than mine and our houses are exactly alike. And what we're talking about as we move this forward is we're talking about us thriving to remove that provision for the ability of people to protest their appraisals. And that would impact both residential and commercial, but it does have a major impact on residential homeowners and protests protests and I think until we get a mandatory sales disclosure in in the state of Texas, that we are going to have those unequal appraisals. So if we are successful in doing this, then we will be part of removing that ability for a homeowner to protest their taxes because their house is appraised for more than their neighbor's house or surrounding houses that are exactly the same. I just want to make sure that we understand that, and I want to make sure that the public understands that, that that's part of what we're moving forward.

>> Houston: Any other comments? Mayor pro tem.

>> Tovo: I just -- I appreciate those thoughts. I just want to say, it's my understanding that the constitution requires that it be both equal and uniform and market value and that the point we're trying to make is that the market value piece is not -- is not adhering -- is that our current appraisal system is not adhering to that constitutional requirement of the market value.

>> Houston: Mr. Zimmerman.

>> Zimmerman: Thank you, councilmember Houston. I'd like to be recognized to make an amendment, very brief, straightforward amendment. This is from councilmember troxclair. It was posted on the council message board on December 1, on Tuesday, and I'll read it quickly. It says, therefore, be it resolved that the Austin city council will use all additional tax revenue generated as a result of the appraisal challenge as a revenue neutral tool to lower the property tax rate for all taxpayers. Is there a.

>> Houston: Is there a second?

>> Zimmerman: Thank you. That is on the council message board by the way in its entirety,ing and it's been posted for a couple days.

>> Houston: Okay. There's been a motion and a second. Councilmember kitchen.

>> Kitchen: Well, while I support.

>> Houston: Can you put your mic on?

>> Kitchen: I do support the goal of using any additional dollars that we may identify to lower taxes, if at all possible. I don't want -- I don't think that we're in a position at this point to use the language as definitively as you have laid out. I would like to point to language that's in the resolution, which I think captures the intent, because it says -- it makes it clear our intentions with regard to lowering taxes. It states that the Austin city council believes that a successful challenge of undervalued commercial properties could result in lower taxes for Austin homeowners and renters.

The council is not seeking more tax revenue through this challenge and has recently lowered the tax bill for the average homestead property owner. So while I support the intention and certainly would make that a top priority to use any additional -- any additional dollars that might become available to lower taxes, at this point in time, I think, there's too many unknowns to make that a required part of the resolution.

>> Houston: Thank you. Any other comments? Councilmember Garza.

>> Garza: Yeah, I would just concur that I don't want us to tie our hands with such specific language, and I think that the current resolution does address that -- the goal that we're not -- we're not looking for more money to -- to spend more money, necessarily, we're just trying to make sure it's a fair appraisal process and I don't want to tie our hands with language that's specific. Nye.

>> Houston: Seeing no further comments, we're going to vote on the amendment to the motion. The moment says, therefore, be it resolved that the Austin city council will use all additional tax revenue generated as a result of the appraisal change as a revenue neutral tool to lower the property tax rates for all taxpayers. All in favor of that amendment, please, let it be known by raising your hand. All opposed? There -- one, two, three, four -- oh, five. Five against, two for, and councilmember troxclair, pool and the mayor and Casar are off the dais. So now we will vote on the main motion, which is as laid out and in your backup.

>> Zimmerman: Point of order. It was -- glow and Zimmerman in favor and the rest here that were opposed.

>> Houston: I'm sorry.

>> Zimmerman: Thank you.

>> Houston: Thank you for making that clarification.

Ms. Reyes, got it? So we're now on the main motion. All in favor on the main motion as presented in backup, please let it be known by raising your hands.

>> I don't know if you got a second on your original motion.

>> Houston: Yes, councilmember Zimmerman. All in favor is one, two, three, four, five, six, seven in favor. Councilmembers troxclair, pool, and the mayor and Casar are off the dais. So the resolution passes.

>> Tovo: Thank you so very much, councilmember Houston. Seeing no other business before the council, we stand adjourned at 2:00 P.M., just in time for councilmember Garza's committee meeting.

[ Laughter ]

>> Tovo: Thank you.

[ Adjourned ]