



City of Hutto

Agenda

**Cottonwood Development Corporation Meeting
Thursday, November 19, 2020 at 11:00 AM
City Council Chambers**

In accordance with the Texas Open Meetings Act this meeting agenda is posted for public information, continuously, for at least 72 hours prior to the scheduled time of the meeting on the bulletin board located on the exterior wall of the City Hall building at 500 West Live Oak, Hutto, Texas. This meeting agenda is also accessible via the Internet at www.huttotx.gov

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1. CALL SESSION TO ORDER

2. ROLL CALL

3. PUBLIC COMMENT

- 3.1. Any citizen wishing to speak during public comment may do so after completing the required registration form. The purpose of this item is to allow the residents of Hutto and other interested persons an opportunity to address the Cottonwood Development Corporation on agenda issues and on non-agenda issues (i.e., City policy or legislative issues). Non-agenda issues regarding daily operational or administrative matters should be first dealt with at the administrative level by calling City Hall at (512) 759-4839 during business hours. Each person providing public comment will be limited to 3 minutes.

Comments for this meeting may also be sent to comments@huttotx.gov PRIOR to 9:00 AM on November 19, 2020. The email must include name, address, phone # and email to be recognized properly. Citizens wishing to comment by phone may call:

Toll Free Call In: 1-800-717-4201

Conference ID: 242-3288

Once you are in the conference call press *5 to signal that you are requesting to speak during public comment.

[Note: The Texas Open Meetings Act, Texas Government Code, Chapter 551, prohibits advisory boards, commissions and committees created by local governmental bodies from fully discussing, debating, or considering subjects for which public notice has not been given on the agenda. Issues that cannot be referred to the City Staff for action may be placed on the agenda of a future meeting.]

4. AGENDA ITEMS

- 4.1. Consideration and possible action on approval of November 12, 2020 Cottonwood Development Corporation meeting minutes.

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4.2. Consideration and possible action on a Resolution by the Board of Directors of the Cottonwood Development Corporation acknowledging it contractually borrowed funds, in an apparently defective transaction, from Preston Hollow Capital, LLC; authorizing its legal counsel to bring suit on the corporation’s behalf for any claims that to the best of the attorney’s knowledge, information, and belief, formed after reasonable inquiry, are not groundless and brought in bad faith or groundless and brought for the purpose of harassment against any persons or corporations who may be liable to the corporation for any act or omission against the corporation, arising out of agreements and conduct related to the Project Expansion economic development project.

[2020.11.12 Cottonwood- resolution authorizing suit](#)

5. ADJOURNMENT

6. CERTIFICATION

I certify that this notice of the **November 19, 2020** Cottonwood Development Corporation meeting was posted on the City of Hutto website and the City Hall bulletin board of the City of Hutto on **November 16, 2020** at **9 A.M.**



Holly Nagy

The City of Hutto is committed to comply with the Americans Disability Act. The Hutto City Council Chamber is wheelchair accessible. Request for reasonable special accommodations must be made 48 hours prior to the meeting. Please email the City Secretary's office at City.Secretary@huttox.gov or call (512) 759-4033 for assistance.

RESOLUTION NO. R-2020-123

**RESOLUTION BY THE BOARD OF DIRECTORS OF THE
COTTONWOOD DEVELOPMENT CORPORATION
ACKNOWLEDGING IT CONTRACTUALLY BORROWED FUNDS, IN
AN APPARENTLY DEFECTIVE TRANSACTION, FROM PRESTON
HOLLOW CAPITAL, LLC; AUTHORIZING ITS LEGAL COUNSEL TO
BRING SUIT ON THE CORPORATION'S BEHALF FOR ANY CLAIMS
THAT TO THE BEST OF THE ATTORNEY'S KNOWLEDGE,
INFORMATION, AND BELIEF, FORMED AFTER REASONABLE
INQUIRY, ARE NOT GROUNDLESS AND BROUGHT IN BAD FAITH
OR GROUNDLESS AND BROUGHT FOR THE PURPOSE OF
HARASSMENT AGAINST ANY PERSONS OR CORPORATIONS WHO
MAY BE LIABLE TO THE CORPORATION FOR ANY ACT OR
OMISSION AGAINST THE CORPORATION, ARISING OUT OF
AGREEMENTS AND CONDUCT RELATED TO THE PROJECT
EXPANSION ECONOMIC DEVELOPMENT PROJECT.**

WHEREAS, the Board of Director's find that the law firm of Winstead, PC and its attorneys represented Preston Hollow Capital, LLC in connection with a February 2020 loan transaction between Preston Hollow Capital, LLC and the Cottonwood Development Corporation, who were the only parties to the Loan Agreement; and,

WHEREAS, the Board of Director's find and hereby acknowledges that it contractually borrowed, through what appears to be a legally defective transaction, \$35,000,000, with certain conditions, which included an "Initial Advance" of \$15,000,000, but Preston Hollow Capital, LLC only disbursed \$12,445,038.24 at the closing, which took place on February 13, 2020 because Preston Hollow Capital, LLC refused to disburse the remaining \$2,554,961.76, which was held in trust and believed to remain held in trust by the title company handling the transaction to this day; and,

WHEREAS, the Board of Director's find that the City of Hutto, Texas a home-rule municipality pursuant to the laws of Texas, was and is not a party to the Loan Transaction; and

WHEREAS, the Board of Director's find that the borrowed funds appear to have been obtained without meeting all the legal requirements pertaining to such a transaction applicable to a Texas Local Government Corporation pursuant to Texas law, or with facially inconsistent provisions significantly impairing the contract's validity pursuant to Texas common law; and,

WHEREAS, the Board of Director's find that the transactional documents provided for that transaction were prepared by Winstead, P.C. and its attorneys, and are subject to being determined void or voidable, which includes a provision describing the obligations of the Lender before payments of expenses are to be performed by the Borrower, as provided by Section 5.12 of the Loan Agreement; and,

WHEREAS, the Board of Director's find that the Settlement Statement reveals that Preston Hollow Capital, LLC and Winstead, PC, either individually or in cooperation with one another, ignored Section 5.12 "Payment of Expenses" and the related obligations and conditions therein, and instead obtained payment of exactly \$60,000, at the closing without performing the obligations and conditions provided for in Section 5.12 to obtain payment from the Corporation; and,

WHEREAS, the Board of Director's find that the Settlement Statement reveals that only \$12,445,038.24 was disbursed (including exactly \$60,000 paid to Winstead, PC) to or on behalf of the Cottonwood Development Corporation from the initial \$15,000,000 Preston Hollow Capital, LLC agreed to lend pursuant to the Loan Agreement and agreed to disburse to the Corporation as the "Initial Advance"; and,

WHEREAS, the Board of Director's find that Preston Hollow Capital, LLC has sued the Corporation in federal court seeking the return of all funds whether disbursed to the Corporation or not, in connection with the February 2020 loan transaction; and,

THEREFORE, BE IT RESOLVED:

- 1) The above recitals are hereby found true and shall be incorporated herein as if recited verbatim.
- 2) The Corporation acknowledges that it contractually borrowed, through what appears to be a legally defective transaction, \$35,000,000, with certain conditions, which included an "Initial Advance" of \$15,000,000, but Preston Hollow Capital, LLC only disbursed \$12,445,038.24 at the closing, which took place on February 13, 2020 because Preston Hollow Capital, LLC refused to disburse the remaining \$2,554,961.76, which was held in trust and believed to remain held in trust by the title company handling the transaction to this day; and,
- 3) The Corporation authorizes its legal counsel, to bring claims as necessary to recover the funds misappropriated by Winstead, PC and any other claims that to the best of their knowledge, information, and belief formed after reasonable inquiry are not groundless and brought in bad faith or groundless and brought for the purpose of harassment against Winstead, P.C., any attorneys of the firm that were involved in the loan transaction and any other party who may be liable for any act or omission which is found to be against the Corporation arising out of agreements and conduct related to the Project Expansion economic development project.
- 4) The action performed herein is hereby ratified to the date Preston Hollow Corporation lawsuit was filed against the Corporation and shall continue until repealed or otherwise amended by the Board of Directors.

Dated this ____ day of November 2020.

**COTTONWOOD DEVELOPMENT
CORPORATION**

By: _____
Tanner Rose, Chair

ATTEST:

By: _____
Patti Martinez, Secretary/Treasurer

Resolution by the Board of Directors of the Cottonwood Development Corporation acknowledging it contractually borrowed funds, in an apparently defective transaction, from Preston Hollow Capital, LLC; authorizing its legal counsel to bring suit on the corporation's behalf for any claims that to the best of the attorney's knowledge, information, and belief, formed after reasonable inquiry, are not groundless and brought in bad faith or groundless and brought for the purpose of harassment against any persons or corporations who may be liable to the corporation for any act or omission against the corporation, arising out of agreements and conduct related to the Project Expansion economic development project.