AGENDA
CHARTER REVIEW COMMISSION
MAY 12, 2016
FLOWER MOUND TOWN HALL
2121 CROSS TIMBERS
FLOWER MOUND, TEXAS
6:00 P.M.

A. CALL MEETING TO ORDER

B. SELECTION OF VICE CHAIR
The purpose of this item is to select a vice chair who would preside over the meeting(s) in the unexpected absence of the chair.

C. MINUTES
1. Consider approval of April 28, 2016, Minutes

D. REVIEW ITEMS OUTLINED IN RESOLUTION NO. 08-16 (COUNCIL CHARGE):
1. Review and discuss any provisions that conflict with state law or any of the Town’s Ordinances (Item #3 in Resolution)
   a) Eminent domain protection levels
   b) Filing of budget with the State Comptroller - Charter Section 9.10
2. Review and discuss any provisions that would improve efficiencies and/or result in a cost savings for the Town (Item #4 in Resolution)
   a) Publication of ordinance captions in the newspaper - Charter Section 3.07(w)
3. Discuss options for processing charter violations (Item #5 in Resolution)
4. Review and discuss provisions relating to term limits and consecutive terms for elected officials (Item #6 in Resolution)
5. Review and discuss removal of the provisions relating to the Parks, Arts, and Library Services Board (Item #7 in Resolution)
6. Identify a process for public review of proposed Charter amendments (Item #8 in Resolution)

E. ITEMS INITIATED BY CHARTER REVIEW COMMISSION MEMBERS
The purpose of this item is to allow commission members an opportunity to bring forward any items for consideration relative to proposed Charter amendments.
F. PUBLIC PARTICIPATION

The purpose of this item is to allow the public an opportunity to address the Commission by providing comments on any of the agenda items or provide input relative to potential Charter amendments for future consideration.

G. PUBLIC COMMENTS

1. Discuss and review any correspondence received from the public via charter@flower-mound.com or otherwise.

H. ADDITIONAL FUTURE AGENDA ITEMS FOR CONSIDERATION

The purpose of this item is for the Commission to bring forward any agenda items for future discussion, such as any that were initiated by the public during public participation, via other communication such as charter@flower-mound.com, or otherwise.

I. COORDINATION OF CALENDARS

1. Next meeting date: Thursday, May 26, 6pm, Public Library, Community Room, 3030 Broadmoor

2. Consider setting future meeting dates in June:
   a) Town Hall/Council Chambers Availability -
      • Thursdays: June 9, 30
      • Wednesdays: June 15, 22, 29
      • Tuesdays: June 21, 28
   b) Public Library community room available any day except 6/8, 6/15, or 6/21

3. Discuss and consider providing an interim update report to Council at the June 6th regular meeting.

J. ADJOURNMENT

I do hereby certify that the Notice of Meeting was posted on the bulletin board in Town Hall of the Town of Flower Mound, Texas, a place convenient and readily accessible to the general public at all times and said Notice was posted on the following date and time: May 9, 2016, at 9:30 a.m.

Theresa Scott, Town Secretary

Pursuant to Section 551.071 of the Texas Government Code, the Charter Review Commission reserves the right to consult in closed session with its attorney and to receive legal advice regarding any item listed on this agenda.

The Flower Mound Town Hall and Council Chambers are wheelchair accessible. Request for accommodations or interpretive services must be made at least 48 hours prior to this meeting by contacting the Town Secretary’s Office at (972) 874-6070.
A. CALL MEETING TO ORDER

Chair Smith called the meeting to order at 6:06 p.m.

B. CONSENT ITEMS

1. Minutes from April 7, 2016

Commissioner Rawson moved to approve the April 7, 2016 minutes. Commissioner Smith seconded the motion.

VOTE ON THE MOTION:
AYES: MASTEY, RAWSON, SMITH, TROTTER, WALLACE
NAYS: NONE

C. REVIEW OF THE FOLLOWING ITEMS AS OUTLINED IN RESOLUTION NO. 08-16:

1. (Item #3 in Resolution) – Review and discuss any provisions that conflict with state law or any of the Town’s Ordinances
   a) 5.04 - Filing for office as it relates to employees as candidates for office (2013 Legislative changes)

   Staff Presentation

   Ms. Scott gave a presentation identifying or noting:

   • 2013 legislative changes and Town Charter section 5.04 regarding filing for office as it relates to Town employment, and an opportunity for clarification with respect to 3.02.01

   Ms. Scott or Ms. Dierker responded to questions from Commission members as follows:

   • Clarification regarding change recommendations versus text clarifications
Clarification regarding candidate versus Councilmember

Chair Smith summarized that this item is more on the lines of a housekeeping item.

Commissioner Smith moved to recommend that Section 3.02.01 of the Town Charter be amended to clarify that if a Town employee is elected as a Councilmember they cannot be employed by the Town. Commissioner Rawson seconded the motion.

VOTE ON THE MOTION:
AYES: MASTEY, RAWSON, SMITH, TROTTER, WALLACE
NAYS: NONE

Commissioner Trotter moved to recommend that Section 5.04 of the Town Charter be amended by deleting the portion of the text as follows: “If a Town employee shall announce candidacy or becomes a candidate for election to any public office, he shall immediately forfeit employment held under the Town”. Commissioner Rawson seconded the motion.

VOTE ON THE MOTION:
AYES: MASTEY, RAWSON, SMITH, TROTTER, WALLACE
NAYS: NONE

1. (b) Eminent domain protection levels

Ms. Scott indicated that this is an item brought up by a member of the public.

Ms. Dierker clarified state regulations with respect to eminent domain, along with associated requirements by a municipality. She further added that there is no conflict with respect to the Town Charter and state law for this item.

Chair Smith reported having received an email on the topic and the core of the issue has to do with public versus private use.

There was discussion by the Commission regarding:

• Legal definitions of private versus public use
• Should there be greater protection or more specific definitions than what the state allows
• Interest in hearing the example presented in the email from a resident to understand the circumstances
• Interest in knowing if there are historical cases where eminent domain was used in Flower Mound for private property
• Interest in having clarification on Property Code, Chapter 21 (where Senate Bill 18 is codified)

Chair Smith opened public participation for this item.

Sharon Gentry, 2750 Bob White Ln, Flower Mound

Ms. Gentry provided background information regarding an experience the family had relative to the Town acquiring some of their property.
Ms. Dierker or Ms. Scott responded to questions or comments from the Commission regarding:

- Clarification regarding Chapter 21 of the property code
- Dates in which the Bob White item was heard by Council for the purpose of background information
- Required language relative to the type of public use
- Clarification regarding notification procedures for posted agenda items on the matter, as defined in state law, when requesting private property for public use

Chair Smith summarized that the Commission would like clarification on the definitions of public purposes, and historical data on eminent domain in the past.

Commissioner Trotter moved to continue the discussion regarding eminent domain at the May 12th meeting, with a request for staff to provide specific wording on the case in question and also previous instances when the Town might have used eminent domain for taking properties in recent history. Commissioner Smith seconded the motion.

VOTE ON THE MOTION:
AYES: MASTEY, RAWSON, SMITH, TROTTER, WALLACE
NAYS: NONE

2. (Item #5 in Resolution) – Discuss options for processing charter violations

Chair Smith provided background information noting there is currently not a clear method in which to process potential or alleged Charter violations.

Ms. Dierker pointed out the language in the Charter (Section 3.02.2) relative to forfeiture and the Commission could consider a procedure for the Council to hold a hearing and vote on the forfeiture.

Ms. Dierker or Ms. Scott responded to questions from the Commission as follows:

- Council’s decision making authority regarding the individual that committed the alleged violation
- The due process involved
- Any provision in state law dealing with Charter violations for Home Rule cities
- How an office can be forfeited as defined in the Charter and clarification considerations
- What is the legal definition of moral turpitude
- Ethics Ordinance violation language and the difference associated with fines versus removal of office
- What is the percentage of voters required for a recall petition and what is the average voter turnout

There was discussion by the Commission as follows:

- If the Charter is clear as to what constitutes Charter violations
- What type of Charter violations are commonly processed in other communities
- Interest in having the public weigh in on any hearing related to any alleged violations so it’s not used as a way to remove any individuals that have been elected
If there is a warning initially for any violations

Chair Smith opened public participation for this item.

Paul Stone, 709 Lake Bluff Dr, Flower Mound

Mr. Stone offered his comments regarding options that could be used regarding a process in handling violations of the Charter. He also shared with the Commission some research he conducted relative to procedures associated with handling violations of the Town Charter, and more specifically from the cities of Addison and Carrollton.

Sharon Gentry, 2750 Bob White Ln, Flower Mound

Ms. Gentry pointed out a recall petition allows the voters to participate instead of Council having the option to remove someone. She cautioned the Commission that any procedures would have to be very detailed to not result in the appearance of undoing an election.

Chair Smith summarized that the Commission has the option to simply present it as something to look into, or to be more specific regarding the scope.

Ms. Scott offered to provide the Commission with feedback relative to if the Town’s benchmark cities address the issue of a process in handling alleged violations of their Charters.

There was consensus to continue the discussion regarding processing charter violations at the May 12th meeting.

3. (Item #7 in Resolution) – Review and discuss removal of the provisions relating to the Parks, Arts, and Library Services Board

Ms. Scott provided background information regarding the reference to the PALS Board in the Charter and how there are duplicate duties as defined by Ordinance for the PALS Board as well as the Cultural Arts Commission.

Ms. Scott or Ms. Dierker responded to questions from the Commission as follows:

- Would funding be impacted relative to tax revenues if there is a Charter change in removing the arts and library text
- Clarification that there still would be a Parks Board and that it would be just a change in the name

Commissioner Trotter suggested the Commission hold off on making any recommendations at this time.

Chair Smith summarized the accomplishments of the meeting as follows:

- reviewed item # 3 and suggested a change to the verbiage in Section 3.02.1
- sending a recommendation forward to delete the last sentence of section 5.04
- reviewed and analyzed eminent domain protection levels
- discussed options for processing Charter violations
- discussed removing the provisions associated with the arts and library functions of the PALS board
D. **PUBLIC PARTICIPATION**

Chair Smith opened the floor for any comments from the public.

No one spoke.

E. **PUBLIC COMMENTS**

Chair Smith indicated that the Commission did receive one email from the public and it was addressed during when the topic of eminent domain was discussed.

F. **ADDITIONAL FUTURE AGENDA ITEMS FOR CONSIDERATION**

Chair Smith outlined the remaining items from the charge that have not been discussed. There was consensus of the Commission to bring forward those items at the next meeting of May 12th (items #4 & 6 of the charge), in addition to continuing the discussion on the other pending items.

There was consensus to have an agenda item for the selection of a vice chair.

G. **COORDINATION OF CALENDARS**

Chair Smith announced that the next meeting is scheduled for May 12th, 6pm, at Town Hall.

H. **ADJOURN MEETING**

Chair Smith adjourned the meeting at 8:04 p.m. and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

JODY SMITH, CHAIR

ATTEST:

THERESA SCOTT, TOWN SECRETARY
This is a report of past council action as it relates to condemnation proceedings and the subsequent outcome.

<table>
<thead>
<tr>
<th>Date</th>
<th>Council Action: Open/Closed Session</th>
<th>Caption/Motion</th>
<th>Outcome/Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 08.21.2006</td>
<td>Closed</td>
<td>Discuss and consider acquisition and/or lease of real property for municipal purposes and all matters incident and related thereto.</td>
<td>Negotiated.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Councilmember Stone moved to approve the purchase of right-of-way, in association with the Spinks Road II Project, from Gilbert and Hazel Colwell, USA Corp. of Engineers, Curt and Peggy Pool, DALDAV Associates, L.P., Reginald D. and Karen Smith, RBI Concepts, Charles A. Daniels, Darrel and Tammy Rundus, and Tracy Edgemon/Wood Concepts, Inc., or current property owners, not to exceed the settlement amount, plus closing costs; authorized the Town Engineer, or his designee, to execute all documents at closing on behalf of the Town; and authorized initiation of all actions incident and related thereto, including authorization for the Town Attorney or his designee to file condemnation proceedings against the property owner(s) to acquire the property in the event a settlement cannot be reached. Deputy Mayor Pro Tem Tasker seconded the motion.</td>
<td></td>
</tr>
<tr>
<td>2. 06.04.2007</td>
<td>Closed</td>
<td>Discuss and consider acquisition and/or lease of real property for municipal purposes and all matters incident and related thereto.</td>
<td>Negotiated.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Councilmember Stone moved to approve the purchase of easements, in association with the FM 1171 to US 377 Water Line Phase I Project, from Old WR Ranch I LP, Patricia Long Burns, and Don H. Hanvey, not to exceed the settlement amount, plus closing costs and authorize the Town Engineer, or his designee, to execute all documents at closing on behalf of the town, and authorize to initiate all actions incident and related thereto, including authorization for the Town Attorney or his designee to file condemnation proceedings against the property owner(s) to acquire the property in the event a settlement cannot be reached. Mayor Pro Tem Tasker seconded the motion.</td>
<td></td>
</tr>
<tr>
<td>3. 07.16.2007</td>
<td>Closed</td>
<td>Discuss and consider acquisition and/or lease of real property for municipal purposes and all matters incident and related thereto.</td>
<td>Negotiated.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Councilmember Stone moved to approve the purchase of an easement, in association with the FM 1171 to US 377 Water Line Phase I Project, from Presbyterian Children’s Homes &amp; Services not to exceed the settlement amount, plus closing costs; authorization for the Town Engineer, or his designee, to execute all documents at closing on behalf of the Town; and authorization to initiate all actions incident and related thereto, including authorization for the Town Attorney or his designee to file condemnation proceedings against the property owner to acquire the easement in the event a settlement cannot be reached. Mayor Pro Tem Tasker seconded the motion.</td>
<td></td>
</tr>
<tr>
<td>4. 10.15.2007</td>
<td>Closed</td>
<td>Discuss and consider acquisition and/or lease of real property for municipal purposes and all matters incident and related thereto.</td>
<td>Negotiated.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Councilmember Lindsey moved to approve the purchase of easements, in association with Hwy. 377/UPRR Water Line Phase I Project, from Old WR Ranch I LP and O&amp;C Freeman Family, LTD, not to exceed the settlement amount, plus closing costs; authorization for the Town Engineer, or his designee, to execute all documents at closing on behalf of the Town; and authorization to initiate all actions incident and related thereto, including authorization for the Town Attorney or his designee to file condemnation proceedings against the property owner(s) to acquire the property in the event a settlement cannot be reached. Mayor Pro Tem Tasker seconded the motion.</td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>Council Action: Open/Closed Session</td>
<td>Caption/Motion</td>
<td>Outcome/Comments</td>
</tr>
<tr>
<td>------------</td>
<td>-----------------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>5. 06.02.2008 Closed</td>
<td>Discuss and consider acquisition and/or lease of real property for municipal purposes and all matters incident and related thereto. Councilmember Tasker moved to approve the purchase of right-of-way, in association with the Dixon Lane project, west of FM 2499, from West Revocable Trust, William L. Weller, Vanita K. Barnes, Jack and Jamie Tompkins, Gary F. Schones and David Lansing, and Dale and Yonda Andrews, not to exceed the settlement amount, plus closing costs; authorize the Town Engineer, or his designee, to execute all documents at closing on behalf of the Town; and authorize initiation of all actions incident and related thereto, including authorizing the Town Attorney or his designee to file condemnation proceedings against the property owner(s) to acquire the property in the event a settlement cannot be reached. Councilmember Filidoro seconded the motion.</td>
<td>Negotiated.</td>
<td></td>
</tr>
<tr>
<td>6. 02.16.2009 Closed</td>
<td>Discuss and consider acquisition and/or lease of real property for municipal purposes and all matters incident and related thereto. Councilmember Tasker moved to grant authority to negotiate and purchase the Janet F. Bunn Tract right-of-way property, to abandon existing Flower Mound Road prescriptive right-of-way and all rights to the existing Flower Mound Road property in association with the Flower Mound Road project, plus closing costs and for the Assistant Town Manager, or his designee, to execute all documents at closing on behalf of the Town and authorization for the Town Attorney or his designee to file condemnation proceedings against the property owner(s) in the event a settlement cannot be reached. Mayor Pro-Tem Trotter seconded the motion.</td>
<td>Negotiated.</td>
<td></td>
</tr>
<tr>
<td>7. 03.02.2009 Closed</td>
<td>Discuss and consider acquisition and/or lease of real property for municipal purposes and all matters incident and related thereto. Councilmember Tasker moved to approve the purchase of easements, in association with the Assimilation of Water Supply Corporations project for Roanoke Hills Water Line Improvement, from Edward Zimlich, Robert Dowell, William Kravitz, Timothy Earl Lee, Jeffery &amp; Angela Douglas, Betty Webb, and William &amp; Karrie Piper, not to exceed the settlement amount, plus closing costs; authorize the Assistant Town Manager, or his designee, to execute all documents at closing on behalf of the Town; and authorize to initiate all actions incident and related thereto, including authorization for the Town Attorney or his designee to file condemnation proceedings against the property owner(s) to acquire the property in the event a settlement cannot be reached. Councilmember Levenick seconded the motion.</td>
<td>Negotiated.</td>
<td></td>
</tr>
<tr>
<td>8. 07.20.2009 Closed</td>
<td>Discuss and consider acquisition and/or lease of real property for municipal purposes and all matters incident and related thereto. Councilmember Wallace moved to approve the purchase of right-of-way, in association with the Wichita Trail Ph. II (Simmons to Skillern) project, west of Simmons and east of Skillern, and the Wichita Trail Phase 1 Lift Station and Force Main project, from Deacon Investment Company, Thomas Rayburn Denver, Stanley and Bonnie Pace, and Michael and Lisa McBride, not to exceed the settlement amount, plus closing costs, authorize the Assistant Town Manager, or his designee, to execute all documents at closing on behalf of the Town; and authorize to initiate all actions incident and related thereto, including authorization for the Town Attorney or his designee to file condemnation proceedings against the property owner(s) in the event a settlement cannot be reached. Mayor Pro-Tem Trotter seconded the motion.</td>
<td>Negotiated.</td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>Council Action: Open/Closed Session</td>
<td>Caption/Motion</td>
<td>Outcome/Comments</td>
</tr>
<tr>
<td>-----------</td>
<td>----------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>------------------</td>
</tr>
<tr>
<td>9.11.02.2009</td>
<td>Closed</td>
<td><strong>Discuss and consider acquisition and/or lease of real property for municipal purposes and all matters incident and related thereto.</strong> Mayor Pro Tem Levenick moved to approve the purchase of right-of-way, in association with the Flower Mound Road Project, from Deacon Investments and Charles E. King, not to exceed the settlement amounts, plus closing costs, and authorize the Assistant Town Manager, or his designee, to execute all documents at closing on behalf of the Town; and authorize the Town Attorney, or his designee, to file condemnation proceedings against the property owner(s) in the event a settlement cannot be reached. The motion was seconded by Councilmember Filidoro.</td>
<td></td>
</tr>
<tr>
<td>10.12.07.2009</td>
<td>Closed</td>
<td><strong>Discuss and consider acquisition and/or lease of real property for municipal purposes and all matters incident and related thereto.</strong> Mayor Pro Tem Levenick moved to approve the purchase of water line easements, in association with the Waketon Road 16-inch Water Line project, from Bobby L. Engle, Wanda Dianne Furgerson, Teddy M. Jackson and Monte L. and Karen Boyd, not to exceed the settlement amounts, plus closing costs, and authorize the Assistant Town Manager, or his designee, to execute all documents at closing on behalf of the Town; and authorize the Town Attorney, or his designee, to file condemnation proceedings against the property owner(s) in the event a settlement cannot be reached. The motion was seconded by Councilmember Filidoro.</td>
<td>Negotiated.</td>
</tr>
<tr>
<td>11.12.17.2009</td>
<td>Closed</td>
<td><strong>Discuss and consider acquisition and/or lease of real property for municipal purposes and all matters incident and related thereto.</strong> Councilmember Wallace moved to approve the purchase of right-of-way, temporary construction easements and drainage easements, in association with the Garden Ridge III project, from Eddie &amp; Wynelle Parker Family LP, and Fallbrook Interests, Ltd., not to exceed the settlement amount, plus closing costs; authorize the Assistant Town Manager, or his designee, to execute all documents at closing on behalf of the Town; and authorize the Town Attorney or his designee to file condemnation proceedings against the property owner(s) to acquire the property in the event a settlement cannot be reached. The motion was seconded by Mayor Pro Tem Levenick.</td>
<td>This was for 2 properties 1)3040/Gerault intersection improvements (needed 12 feet) &amp; 2) Gerault flyover &amp; both went to commissioner hearings</td>
</tr>
<tr>
<td>Date</td>
<td>Council Action: Open/Closed Session</td>
<td>Caption/Motion</td>
<td>Outcome/Comments</td>
</tr>
<tr>
<td>------------</td>
<td>------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>------------------</td>
</tr>
<tr>
<td>01.21.2010</td>
<td>Closed</td>
<td>Discuss and consider acquisition and/or lease of real property for municipal purposes and all matters incident and related thereto. Mayor Pro Tem Levenick moved to approve the purchase of water line easements, in association with the FM 407 12-inch Water Line project, from Rodney Leasure, Justin/Dixon Properties Ltd., New S &amp; B Group Inc., J. Neuman Investments Ltd., M. P. Warren Family Partners Ltd., and Austin Wylie Realty Ltd., not to exceed the settlement amounts, plus closing costs; authorize the Assistant Town Manager, or his designee, to execute all documents at closing on behalf of the Town; and authorize the Town Attorney, or his designee, to file condemnation proceedings against the property owner(s) in the event a settlement cannot be reached. The motion was seconded by Councilmember Filidoro.</td>
<td>Negotiated.</td>
</tr>
<tr>
<td>02.15.2010</td>
<td>Closed</td>
<td>Discuss and consider acquisition and/or lease of real property for municipal purposes and all matters incident and related thereto. Deputy Mayor Pro Tem Dixon moved to approve the purchase of drainage easements, in association with the Morriss-Gerault Improvement project, from Icarus Investments III, Ltd., Verde Riverwalk Apartments II LP, 709 Enterprise Dr., LLC, and Flozell J. Adams, not to exceed the settlement amounts, plus closing costs; authorize the Assistant Town Manager, or his designee, to execute all documents at closing on behalf of the Town; and authorize the Town Attorney, or his designee, to file condemnation proceedings against the property owner(s) in the event a settlement cannot be reached. The motion was seconded by Councilmember Wallace.</td>
<td>Negotiated.</td>
</tr>
<tr>
<td>03.25.2010</td>
<td>Closed</td>
<td>Discuss and consider acquisition and/or lease of real property for municipal purposes and all matters incident and related thereto. Mayor Pro Tem Levenick moved to approve the purchase of right-of-way, a mutual access easement, drainage easements, and temporary construction easements, in association with the Dixon Lane project (east of FM 2499 to Crestside Drive), from Justin/Dixon Properties and Kenneth G. Whyburn, not to exceed the settlement amounts, plus closing costs; authorize the Assistant Town Manager, or his designee, to execute all documents at closing on behalf of the Town; and authorize the Town Attorney, or his designee, to file condemnation proceedings against the property owner(s) in the event a settlement cannot be reached. Councilmember Filidoro seconded the motion. Councilmember Hayden moved to approve the purchase of easements, in association with the Northlake Highlands II Water Line Improvement project, from Kathy Whitworth and Betty Odle and Anne Carroll O'Keefe, not to exceed the settlement amount, plus closing costs; authorize the Assistant Town Manager, or his designee, to execute all documents at closing on behalf of the Town; and authorize the Town Attorney, or his designee, to file condemnation proceedings against the property owner(s) in the event a settlement cannot be reached.</td>
<td>Negotiated.</td>
</tr>
<tr>
<td>Date</td>
<td>Council Action: Open/Closed Session</td>
<td>Caption/Motion</td>
<td>Outcome/Comments</td>
</tr>
<tr>
<td>-------------</td>
<td>------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>------------------</td>
</tr>
</tbody>
</table>
| 15. 04.05.2010 Closed | Discuss and consider acquisition and/or lease of real property for municipal purposes and all matters incident and related thereto.  
Mayor Pro Tem Levenick moved to remove the Michael and Lisa McBride property from the list of approved purchases, approve the purchase of a drainage easement from Clyde B. Carter III, and add to the Deacon Investment Company right-of-way purchase, in association with the Wichita Trail Phase II (Simmons to Skillern) project, west of Simmons and east of Skillern, not to exceed the settlement amount, plus closing costs; authorize the Assistant Town Manager, or his designee, to execute all documents at closing on behalf of the Town; and authorize initiation of all actions incident and related thereto, including the Town Attorney or his designee filing condemnation proceedings against the property owner(s) to acquire the property in the event a settlement cannot be reached. The motion was seconded by Deputy Mayor Pro Tem Dixon. | Negotiated.      |
| 16. 04.19.2010 Closed | Discuss and consider acquisition and/or lease of real property for municipal purposes and all matters incident and related thereto.  
Mayor Pro Tem Levenick moved to approve the purchase of right-of-way, in association with the Morriss-Gerault Improvement project, from Gator Flower Mound, LLC, BL Flower Mound, Ltd., and JPMorgan Chase Bank National Association, not to exceed the new settlement amounts, plus closing costs; authorize the Assistant Town Manager, or his designee, to execute all documents at closing on behalf of the Town; and authorize the Town Attorney, or his designee, to file condemnation proceedings against the property owner(s) in the event a settlement cannot be reached. The motion was seconded by Deputy Mayor Pro Tem Dixon.  
Mayor Pro Tem Levenick moved to approve the purchase of the easement, in association with the US 377/UPRR Water Line Phase I project, plus closing costs; authorize the Assistant Town Manager, or his designee, to execute all documents at closing on behalf of the Town; and authorize the Town Attorney, or his designee, to file condemnation proceedings against the property owner in the event a settlement cannot be reached. The motion was seconded by Councilmember Filidoro. | Negotiated.      |
| 17. 01.22.2009 Closed | Discuss and consider acquisition and/or lease of real property for municipal purposes and all matters incident and related thereto.  
Deputy Mayor Pro Tem Lindsey moved to approve the purchase of easements, in association with the Kirkpatrick Lift Station Force Main Project, from Miguel A. Novoa and Lorena A. Goodman, not to exceed the settlement amount, plus closing costs and authorization for the Town Engineer, or his designee, to execute all documents at closing on behalf of the Town and authorize to initiate all actions incident and related thereto, including authorization for the Town Attorney or this designee to file condemnation proceedings against the property owner(s) to acquire the property in the event a settlement cannot be reached. The motion was seconded by Councilmember Filidoro. | Negotiated.      |
<table>
<thead>
<tr>
<th>Date</th>
<th>Council Action: Open/Closed Session</th>
<th>Caption/Motion</th>
<th>Outcome/Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>05.15.2010</td>
<td>Closed</td>
<td>Discuss and consider acquisition and/or lease of real property for municipal purposes and all matters incident and related thereto. Councilmember Dixon moved to approve the purchase of right-of-way, in association with phase one of the Morriss-Gerault Improvement project, from JPMorgan Chase Bank National Association, not to exceed the new settlement amount, plus closing costs; authorize the Assistant Town Manager, or his designee, to execute all documents at closing on behalf of the Town; and authorize the Town Attorney, or his designee, to file condemnation proceedings against the property owner in the event a settlement cannot be reached. Councilmember Lyda seconded the motion.</td>
<td></td>
</tr>
<tr>
<td>06.17.2010</td>
<td>Closed</td>
<td>Discuss and consider acquisition and/or lease of real property for municipal purposes and all matters incident and related thereto. Councilmember Lyda moved to approve the purchase of property, in association with the Western Elevated Storage Tank project from Tom W. Kindred, not to exceed the settlement amount, plus closing costs; authorize the Assistant Town Manager, or his designee, to execute all documents at closing on behalf of the Town; and authorize the Town Attorney, or his designee, to file condemnation proceedings against the property owner in the event a settlement cannot be reached. The motion was seconded by Mayor Pro Tem Filidoro.</td>
<td>This was for land needed for the Western elevated storage tank near 1171 &amp; Freeman (water tower) &amp; went to Commissioner’s Court</td>
</tr>
<tr>
<td>06.21.2010</td>
<td>Closed</td>
<td>Discuss and consider acquisition and/or lease of real property for municipal purposes and all matters incident and related thereto. Mayor Pro Tem Filidoro moved to approve the purchase of water easements, in association with the Western Elevated Storage Tank project, from Robert P. Lafburrow and Joe B. and Teresa M. Freeman, not to exceed the settlement amounts, plus closing costs; authorize the Assistant Town Manager, or his designee, to execute all documents at closing on behalf of the Town; and authorize the Town Attorney, or his designee, to file condemnation proceedings against the property owner(s) in the event a settlement cannot be reached. Councilmember Lyda seconded the motion. Mayor Pro Tem Filidoro moved to approve the purchase of right-of-way, in association with the Dixon Lane (East of FM 2499 to Crestside Drive) project, from Justin/Dixon Properties, not to exceed the new settlement amount, plus closing costs; authorize the Assistant Town Manager, or his designee, to execute all documents at closing on behalf of the Town; and authorize the Town Attorney, or his designee, to file condemnation proceedings against the property owner in the event a settlement cannot be reached. Councilmember Lyda seconded the motion.</td>
<td>Negotiated.</td>
</tr>
<tr>
<td>09.20.2010</td>
<td>Closed</td>
<td>Discuss and consider acquisition and/or lease of real property for municipal purposes and all matters incident and related thereto. Deputy Mayor Pro Tem Hayden moved to approve the purchase of a water line easement, in association with the Waketon Road 16-inch Water Line project, from Raymond G. Kessler, not to exceed the settlement amounts, plus closing costs, and authorize the Assistant Town Manager, or his designee, to execute all documents at closing on behalf of the Town; and</td>
<td>Negotiated.</td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>Date</th>
<th>Council Action: Open/Closed Session</th>
<th>Caption/Motion</th>
<th>Outcome/Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>03.21.2011</td>
<td>Closed</td>
<td><strong>Discuss and consider acquisition and/or lease of real property for municipal purposes and all matters incident and related thereto.</strong>&lt;br&gt;<strong>Councilmember Lyda moved to approve the purchase of a water line easement in association with the FM 407 12-inch water line project from the M.P. Warren Family Partners Limited not to exceed the new settlement amounts plus closing costs and authorize the Assistant Town Manager or his designee to execute all documents at closing on behalf of the town; and authorize the Town Attorney or his designee to file condemnation proceedings against the property owners in the event a settlement cannot be reached. Deputy Mayor Pro Tem Hayden seconded the motion.</strong>&lt;br&gt;This was for land needed near the hospital due to an alignment change to sanitary sewer.</td>
<td>Negotiated.</td>
</tr>
<tr>
<td>05.02.2011</td>
<td>Closed</td>
<td><strong>Discuss and consider acquisition and/or lease of real property for municipal purposes and all matters incident and related thereto.</strong>&lt;br&gt;<strong>Councilmember Lyda moved to approve the purchase of the sanitary sewer easement in association with the Upper Timber Creek Interceptor Phase I project, from Inassian Properties L.C., not to exceed the settlement amount, plus closing costs; authorize the Assistant Town Manager, or his designee, to execute all documents at closing on behalf of the Town; and authorize the Town Attorney, or his designee, to file condemnation proceedings against the property owner in the event a settlement cannot be reached. Deputy Mayor Pro Tem Hayden seconded the motion.</strong>&lt;br&gt;<strong>Negotiated.</strong></td>
<td></td>
</tr>
<tr>
<td>01.19.2012</td>
<td>Closed</td>
<td><strong>Discuss and consider acquisition and/or lease of real property for municipal purposes and all matters incident and related thereto.</strong>&lt;br&gt;<strong>Deputy Mayor Pro Tem Lyda moved to approve the purchase of the Right-of-Way and drainage easements, in association with the Chinn Chapel Road Phase I project, from Mr. Kenneth and Josephine Anderson and Mr. Floyd Robertson, not to exceed the settlement amount, plus closing costs; authorize the Assistant Town Manager, or his designee, to execute all documents at closing on behalf of the Town; and authorize the Town Attorney, or his designee, to file condemnation proceedings against the property owners in the event a settlement cannot be reached. Councilmember Wise seconded the motion.</strong>&lt;br&gt;<strong>Negotiated.</strong></td>
<td></td>
</tr>
<tr>
<td>10.20.2014</td>
<td>Open (Consent)</td>
<td><strong>A resolution of the Town of Flower Mound, Texas authorizing the Town attorney to bring a condemnation action for the purpose of obtaining fee simple title to approximately 0.221 acres of property located at 6404 Stonecrest Road, Flower Mound, Denton County, Texas, as right-of-way necessary for construction and maintenance of</strong>&lt;br&gt;<strong>Negotiated.</strong></td>
<td></td>
</tr>
</tbody>
</table>
roadway improvements, and for other public purposes permitted by law.

Move that the Town Council of the Town of Flower Mound authorize the use of the power of eminent domain to acquire fee simple title to approximately .221 acres of the property located at 6404 Stonecrest Road, Flower Mound, Denton County, Texas, owned by Barry Whitworth, for the public use as public right-of-way for the Stonecrest Road project, and I further move to adopt Resolution Number 17-14 as presented.
MEMORANDUM

TO: Flower Mound Charter Review Commission

FROM: Bryn Meredith

DATE: May 5, 2016

RE: Limitations on Eminent Domain for Economic Development Purposes

The Town of Flower Mound (and all Texas municipalities) may exercise eminent domain for all of the public uses set forth in Chapter 251 of the Texas Local Government Code. Municipalities may not take private property for a private use. Unfortunately, neither the term “public use” nor “private use” are defined by statute. In each case, it is a question of fact.

Section 251.001 of the Texas Local Government Code describes the lawful purposes of eminent domain, as follows:

Sec. 251.001. RIGHT OF EMINENT DOMAIN. (a) When the governing body of a municipality considers it necessary, the municipality may exercise the right of eminent domain for a public use to acquire public or private property, whether located inside or outside the municipality, for any of the following uses:

(1) the providing, enlarging, or improving of a municipally owned city hall; police station; jail or other law enforcement detention facility; fire station; library; school or other educational facility; academy; auditorium; hospital; sanatorium; market house; slaughterhouse; warehouse; elevator; railroad terminal; airport; ferry; ferry landing; pier; wharf; dock or other shipping facility; loading or unloading facility; alley, street, or other roadway; park, playground, or other recreational facility; square; water works system, including reservoirs, other water supply sources, watersheds, and water storage, drainage, treatment, distribution, transmission, and emptying facilities; sewage system including sewage collection, drainage, treatment, disposal, and emptying facilities; electric or gas power system; cemetery; and crematory;

(2) the determining of riparian rights relative to the municipal water works;

(3) the straightening or improving of the channel of any stream, branch, or drain;

(4) the straightening, widening, or extending of any alley, street, or other roadway; and
any other municipal public use the governing body considers advisable.

(Emphasis added.)

In 2005, the U.S. Supreme Court in *Kelo v. City of New London*, 545 U.S. 468 (2005) held that “public use” included the right of government to take private property from one private owner (using eminent domain) and transfer it to another private owner, for economic development purposes.

In response to the *Kelo* decision, the Texas legislature adopted Chapter 2206 of the Texas Government Code¹, which, among other things, narrowed the term “public use:"

Sec. 2206.001. LIMITATION ON EMINENT DOMAIN FOR PRIVATE PARTIES OR ECONOMIC DEVELOPMENT PURPOSES.

* * *

(b) A governmental or private entity may not take private property through the use of eminent domain if the taking:

(1) confers a private benefit on a particular private party through the use of the property;

(2) is for a public use that is merely a pretext to confer a private benefit on a particular private party;

(3) is for economic development purposes, unless the economic development is a secondary purpose resulting from municipal community development or municipal urban renewal activities to eliminate an existing affirmative harm on society from slum or blighted areas under:

(A) Chapter 373 or 374, Local Government Code, other than an activity described by Section 373.002(b)(5), Local Government Code; or

(B) Section 311.005(a)(1)(I), Tax Code; or

(4) is not for a public use.

This language now prohibits the use of eminent domain if the purpose of the “take” is either intended to confer a private benefit to a private party or is for economic development purposes. However, this well publicized prohibition on taking property for economic development does not apply to the following subset of purposes:

¹ Senate Bill 7, effective November 18, 2005.
(1) transportation projects, including, but not limited to, railroads, airports, or public roads or highways;

(2) entities authorized under Section 59, Article XVI, Texas Constitution, including:
   (A) port authorities;
   (B) navigation districts; and
   (C) any other conservation or reclamation districts that act as ports;

(3) water supply, wastewater, flood control, and drainage projects;

(4) public buildings, hospitals, and parks;

(5) the provision of utility services;

(6) a sports and community venue project approved by voters at an election held on or before December 1, 2005, under Chapter 334 or 335, Local Government Code;\(^2\)

(7) the operations of:
    (A) a common carrier pipeline; or
    (B) an energy transporter, as that term is defined by Section 186.051, Utilities Code;

(8) a purpose authorized by Chapter 181, Utilities Code;\(^3\)

(9) underground storage operations subject to Chapter 91, Natural Resources Code;

(10) a waste disposal project; or

(11) a library, museum, or related facility and any infrastructure related to the facility.\(^4\)

This means that the Town and all Texas municipalities may use eminent domain to take property for economic development purposes, if the land is taken for this shorter list of purposes

\(^2\) This is the “Jerry Jones-Cowboys Stadium” exception.
\(^3\) Items 7 and 8 allow private for profit pipeline companies to take property in order to service oil and gas well sites.
\(^4\) Tex Gov’t Code §2206.001 (c).
above. With that said, the question then becomes, *are there any limitations that apply to this shorter list of purposes?* The answer is *yes.*

In addition to Chapter 2206, effective November 3, 2009, voters approved an amendment to the Texas Constitution, which governs the taking of private property for economic development purposes. The operative language in Section 17 of Article I of the Texas Constitution now reads:

Sec. 17. TAKING, DAMAGING, OR DESTROYING PROPERTY FOR PUBLIC USE; SPECIAL PRIVILEGES AND IMMUNITIES; CONTROL OF PRIVILEGES AND FRANCHISES.

* * *

(b) In this section, "public use" does not include the taking of property under Subsection (a) of this section for transfer to a private entity for the primary purpose of economic development or enhancement of tax revenues.

Note that this Constitutional limitation does not prohibit the use of eminent domain for economic development purposes. It only prohibits the transfer of title ownership of property (by the government) from one private party to another private party. As a result, if land is taken by the government for one of the short list of purposes in §2206.001(c) of the Texas Government Code for economic development (see page 3, above) and title to that land is *retained* by the government, the take is *entirely lawful.*

**EXAMPLES**

I have researched Texas case law post-November 2005 and have identified only one case that construes the new more narrow definition of "public use.” In *City of Austin v. Whittington,* the Texas Supreme Court evaluated whether the City of Austin lawfully exercised eminent domain to take private property for: 1) a parking garage to serve the city-owned convention center and 2) a facility to chill water to cool nearby buildings. The landowner in this case argued that the convention center parking garage was motivated by economic development. The Court rejected that argument finding that the garage was a “public building” (see paragraph (4) on page 3, above) and therefore could be taken for economic development purposes. The landowner also argued that the water chilling facility was also taken for economic development purposes and that it did not meet one of the narrow criteria in §2206.001(c) of the Government Code. The Court disagreed again and held that the use of chilled water to cool nearby buildings reduced the daytime energy load on the city-owned electricity provider and as a result it satisfied the “provision of utility services” exception of §2206.001(c) (see paragraph (5) on page 3, above).

Unfortunately, I have found no Texas cases concluding that the use of eminent domain (post-2005 amendment) violated the statutory and constitutional limitations on economic

---


6 The landowner argued that electricity was the “utility” and not the water but the Court allowed for a more broad reading of the term "utility service.”
development. With that said, I located a very recent Yale Law Review Article\(^7\), published in 2015 that discusses the impact of the *Kelo* case on state laws (around the country) dealing with eminent domain for economic development purposes. Evidently, all but five jurisdictions\(^8\) have made some form of change to their laws governing this issue. In discussing cases from these five jurisdictions, the author makes the argument that the following examples would likely be unlawful in states (like Texas) that have adopted new limitations:

According to the New York Courts, all of the following were valid public purposes for eminent domain: private development around a sports stadium,\(^9\) the expansion of Columbia University,\(^10\) the replacement of a CVS with a Walgreens,\(^11\) and the enhancement of a golf course.\(^12\) The District of Columbia, which is subject only to federal constitutional restrictions, has used eminent domain for an ill conceived shopping mall; it has taken almost a decade to land an anchor tenant.\(^13\) The Supreme Court of Guam approved the taking of private land for the benefit of the Mayor of a Guamanian city.\(^14\)


\(^8\) Arkansas, Massachusetts, and New York, the District of Columbia, and the U.S. territories.

\(^9\) See Goldstein v. Pataki, 516 F.3d 50, 55-60 (2d Cir. 2008) (finding public use despite a private purpose behind the Brooklyn Nets project while ignoring or excluding all evidence that the public purposes would not be realized), *cert. denied*, 554 U.S. 930 (2008); Goldstein v. N.Y. State Urban Dev. Corp., 921 N.E.2d 164, 170-71 (N.Y. 2009) (upholding the use of eminent domain to make way for the Brooklyn Nets basketball arena).


\(^11\) See Didden v. Vill. of Port Chester, 173 Fed. App'x 931, 933 (2d Cir. 2006) (developer demanded $800,000 in exchange for not condemning property; when the owner refused, condemnation papers were filed the following day), *cert. denied*, 549 U.S. 1166 (2007); *see also* Press Release, Inst. for Justice, U.S. Supreme Court Declines to Hear Eminent Domain Extortion Case (Jan. 16, 2007), [http://www.ij.org/didden-latest-release](http://www.ij.org/didden-latest-release) (discussing the case).

\(^12\) See Rocky Point Realty, LLC v. Town of Brookhaven, 828 N.Y.S.2d 197, 199 (App. Div. 2007) (holding, upon no factual development whatsoever, that “the Town's stated purpose for the proposed condemnation[,] to enhance the use of the golf course” was rationally related to a conceivable public purpose); *see also* GM Components Holdings, LLC v. Town of Lockport Indus. Dev. Agency, 977 N.Y.S.2d 836, 839 (App. Div. 2013) (permitting the condemnation of ninety-one acres to build an industrial park).


TOWN COUNCIL MEETING EXCERPTS
AND VIDEO LINKS
RELATED TO BOB WHITE LANE

1. February 2, 2015
2. April 20, 2015
4. August 17, 2015
5. October 5, 2015
J. REGULAR ITEMS

7. A resolution of the Town of Flower Mound, Texas authorizing the Town Attorney to bring a condemnation action for the purpose of obtaining fee simple title to approximately 0.585 acres of property located on the west side of FM 2499, south of Sagebrush Drive, Flower Mound, Denton County, Texas, as right-of-way necessary for construction and maintenance of roadway improvements, and for other public purposes permitted by law.

Administrative Note: .585 acres (noted in the agenda caption) is the distance from FM 2499 to the spine road dead-end end and the .966 acres (noted in the Resolution and survey in the agenda packet) reflects the entire tract from FM 2499 to an existing trail and past the current dead-end for the spine road.

Councilmember Wise announced he will be recusing himself for this item due to a conflict of interest.

Staff Presentation

Mr. Stathatos offered clarification regarding some misinformation associated with this item, as has been communicated either by emails or through social media.

Mr. Powell gave a presentation identifying or noting:
- Site location
- Land use and zoning
- Specific Planned Area (SPA) outline and an explanation about what a SPA is
- Aerial map of site location
- Historical review of the 1994 Master Plan – SPA 2, including page 43 of the text, area controls
- Master Plan 2001 – SPA 2, including the timeline and process
- Photographs of the site

Mr. Meredith clarified the legal action that could be taken by Council related to this item.

Mayor Pro Tem Levenick asked to consult with the Town Attorney regarding the item.

At 7:58 p.m. Mayor Hayden announced that per section 551.071 of the Texas Government Code, the Town Council is convening into closed session to discuss matters related to real property. The Town Council reconvened into open session at 8:15 p.m.

Mr. Powell or Mr. Stathatos responded to questions from Council related to:
- Actual purpose of the item
- Clarification regarding the access points
- What is the impact if the item is not approved
- Timing associated with considering other options

Mayor Hayden extended an invitation to Ms. Sharon Gentry and Ms. Janvier Scott (property
Ms. Scott and Ms. Gentry offered their comments related to the agenda item and after further discussion on the subject matter, they both indicated a willingness to enter into a discussion with Town staff regarding other options.

Various members of Council offered their comments related to:
- The safety issue that is a driver behind the item
- The need for a sidewalk in this area
- The need for a trail connection in this area
- Interest in taking the time to come to an agreement in the spirit of compromise; however, not to the point of kicking it down the road for two years, for safety reasons
- Reference to this item being on the Master Plan since 1994 (to have some type of spine road to connect Sagebrush and Firewheel)

There was general consensus of Town Council to proceed with postponing the item given Ms. Gentry and Ms. Scott indicated they would be willing to sit down with Town staff to discuss other options.

Councilmember Webb moved to postpone a resolution authorizing the use of the power of eminent domain to acquire fee simple title to approximately 0.966 acres of the property located at 2700 Bob White Lane, Flower Mound, Denton County, Texas, owned by Janvier Gentry Scott, for the public use as public right-of-way to April 20, 2015. Deputy Mayor Pro Tem Walker seconded the motion.

VOTE ON MOTION
AYES:  DIXON, LEVENICK, WALKER, WEBB
NAYS:  NONE
ABSTAIN:  WISE

EXCEPRT FROM APRIL 20, 2015 TOWN COUNCIL MEETING MINUTES:
VIDEO LINK:  http://flowermoundtx.swagit.com/play/04202015-937

17. Consider approval of the Contract of Sales Agreement for the acquisition of a 0.122 acre public access and utility easement and a 0.024 acre public access and sidewalk easement from Janvier Scott in the amount of $100,000.00.

Staff Presentation

Mr. Parr or Mr. Powell gave a presentation identifying or noting:
- Summary of meeting with the property owner, in which options were presented and discussed, resulting in an agreement
- Part of the agreement includes a gap in the sidewalk on FM 2499, and so the agreement also includes a 15 foot easement to make that connection

Mayor Hayden offered background information about the property and also offered a summary of the discussion from that same meeting regarding access, property ownership, and noted that the agreement clarifies that it’s the Town’s responsibility to maintain the road.
Mr. Parr or Mr. Powell responded to questions from Council regarding:
- Spine road connectivity and ultimately where is it going to end up
- What can be done in the future so this same situation doesn’t occur again

At 7:48 p.m. Mayor Hayden announced that per Chapter 551.071 of the Texas Government Code, the Town Council will convene into closed session for consultation with the Town Attorney. Town Council reconvened into open session at 7:55 p.m.

At the request of Councilmember Webb, Mr. Meredith provided clarification regarding discussions with the property owner and their legal counsel, and noted several of their requests have been incorporated into the contract.

Councilmember Webb moved to approve the Contract of Sales Agreement for the acquisition of a 0.122 acre public access and utility easement and a 0.024 acre public access and sidewalk easement from Janvier Scott in the amount of $100,000.00. Councilmember Dixon seconded the motion.

**VOTE ON THE MOTION**

**AYES:** DIXON, LEVENICK, WALKER, WEBB  
**NAYS:** NONE  
**ABSTAIN:** WISE

18. Consider approval of a resolution of the Town of Flower Mound, Texas authorizing the Town Attorney to bring a condemnation action for the purpose of obtaining fee simple title to approximately 0.966 acres of property located at 2700 Bob White Lane, Flower Mound, Denton County, Texas, as right-of-way necessary for construction and maintenance of roadway improvements, and for other public purposes permitted by law. *(The Town Council postponed this item until April 20, 2015, at its February 2, 2015, meeting)*

**Administrative Note:** Item 18 was not heard because an agreement was reached (see Item 17), therefore resulting in no action taken by Council on this item; and furthermore, it will not be included as a future agenda item.

### EXCERPT FROM JULY 20, 2015 TOWN COUNCIL MEETING MINUTES

**VIDEO LINK:** [http://flowermoundtx.swagit.com/play/07202015-1018](http://flowermoundtx.swagit.com/play/07202015-1018)

19. **Bob White Ln – MPA15-0008** - Consider a request for a Master Plan Amendment (MPA15-0008 – Specific Plan Area 2) to amend Section 3, Specific Plans, by modifying the access standards and map for Specific Plan Area 2 (SPA 2) to address the Bob White Lane public access, utility and sidewalk easements per the terms of the approved Contract of Sales Agreement, and to consider adopting an ordinance providing for said amendment. SPA 2 is generally located on both sides of Long Prairie Road (FM 2499) between Sagebrush Drive and Chaparral Lane. *(The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its May 11, 2015, meeting.)* *(The Town Council postponed this item at its June 15, 2015, meeting.)*

Mayor Hayden indicated that given this item is making progress in the efforts to save some of
the trees, and if there are no objections by Council, to have it postponed until August 17, 2015.

Mr. Meredith responded to questions from Council regarding:
  • is there a problem if Council takes action to postpone this item

Deputy Mayor Pro Tem Gelbman moved to postpone this item to August 17, 2015, and Mayor Pro Tem Dixon seconded the motion.

VOTE ON THE MOTION

AYES: GELBMAN, DIXON, BRYANT, ROUNTREE
NAYS: NONE
ABSENT: WEBB

EXCERPT FROM AUGUST 17, 2015 TOWN COUNCIL MEETING MINUTES
VIDEO LINK: http://flowermoundtx.swagit.com/play/08172015-966

J. REGULAR ITEMS
  6. Consider alignment options to the SPA 2 Spine Road Connection across Bob White Lane and provide direction to Town Staff.

Staff Presentation

Mr. Parr gave a presentation identifying or noting:
  • Background information about the alignment discussions
  • Gentry Tract map
  • Black Walnut site plan
  • Original layout (option 3)
  • Option 1 (road alignment)
  • Option 2 (road alignment)
  • Considerations (costs and scope of work)

Mr. Parr or Mr. Woods responded to questions from Council regarding:
  • Workability of the option 2 layout
  • If the small grove of trees could be transplanted to another location
  • How will drainage issues be addressed
  • Are the utilities underground or overhead, and if not, what would trigger them to be buried
  • Does the price tag include additional dollars needed to acquire any additional easements necessary
  • Confirmation regarding the condition of the tree
  • Would the tree maintenance be the responsibility of the Town if the easement changes
  • If a sidewalk in front was included

Property owner Janvier Scott responded to questions from Council as follows:
  • What is her preference regarding the options presented
Ms. Scott offered statements relative to the health of the trees, previously identified as being unhealthy.

Mayor Hayden summarized that the direction and consensus of Council is for option two. He also suggested taking it to a vote that would include the funding to complete the transaction to buy the easement. He later added that the financial allocations would come forward at a future meeting.

Mr. Meredith noted that in the event Council has interest in taking action by way of a vote to include the funding, he would have some concerns regarding additional right of way from a third party in order to make it work, as permission hasn’t been secured from any other property owner.

Mr. Parr noted that there are some unknowns related to easements at this point and that needs to be part of the next action Council takes. He also pointed out it will take longer than a month.

7. Public Hearing to consider a request for a Master Plan Amendment (MPA15-0008 – Specific Plan Area 2) to amend Section 3, Specific Plans, by modifying the access standards and map for Specific Plan Area 2 (SPA 2) to address the Bob White Lane public access, utility and sidewalk easements per the terms of the approved Contract of Sales Agreement, and to consider adopting an ordinance providing for said amendment. SPA 2 is generally located on both sides of Long Prairie Road (FM 2499) between Sagebrush Drive and Chaparral Lane. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its May 11, 2015, meeting.) (The Town Council postponed this item to its August 17, 2015, meeting.)

Mayor Hayden proposed postponing this item due to it being associated with the previous item that is scheduled at a later date, and Mr. Meredith clarified that it is legally acceptable to do so.

Mr. Parr responded to questions from Council as follows:
- Timing associated with coming to a resolution

There was Council discussion as follows:
- Interest in maintaining communication with Ms. Scott with respect to progress

Councilmember Bryant moved to postpone a request for a Master Plan Amendment (MPA15-0008 – Specific Plan Area 2) to amend Section 3, Specific Plans, by modifying the access standards and map for Specific Plan Area 2 (SPA 2) to address the Bob White Lane public access, utility and sidewalk easements per the terms of the approved Contract of Sales Agreement, and adopt an ordinance providing for said amendment to September 21, 2015, and Councilmember Webb seconded the motion.

VOTE ON THE MOTION

AYES: ROUNTREE, WEBB, BRYANT, DIXON, GELBMAN
NAYS: NAYS
EXCERPT FROM OCTOBER 5, 2015 TOWN COUNCIL MEETING MINUTES:

J. CONSENT ITEMS

1. Consider an amendment to the Contract of Sale Agreement for a public access and utility easement from Janvier Scott for Bob White Lane to extend the termination date. **RECOMMENDATION**: Move to authorize the Mayor to execute an extension to the Contract of Sale Agreement for a public access and utility easement from Janvier Scott for Bob White Lane to December 18, 2015.

**VOTE ON MOTION**

Motion passed.

AYES: GELBMAN, DIXON, BRYANT, WEBB, ROUNTREE

NAYS: NAYS

---

EXCERPT FROM JANUARY 21, 2016 TOWN COUNCIL MEETING MINUTES:


12. Discuss Consider Fourth Amendment to the Contract of Sales Agreement for a public access and utility easement from Janvier Scott; and authorize the Mayor to execute same on behalf of the Town. (Items 12 – 15 are related)

**Staff Presentation**

Mr. Powell gave a presentation for items 12 -15 identifying or noting:

- General location
- Photographs of the site
- Traffic concerns under the current situation
- Contract amendment
- Contract of sales agreement
- Bob White Ln and how it relates to the master plan
- SPA 2 language changes
- No comments received
- Options 1 and 2

Mr. Meredith responded to questions from Council as follows:

- If there was anything to add from a legal perspective

Mr. Powell responded to the following questions asked during the public hearing:

- Why weren’t minutes from the Planning and Zoning (P & Z) included as part of the Council packet
- What the vote was for this item when it was before P & Z

**Council Discussion**:

- Whether the negotiated amount of $100,000 for the property owner should remain the same given that was a negotiated amount under the condition that the trees would be removed (and now they are remaining)
- Response to a comment that was made during the public hearing regarding campaign contributions
Councilmember Bryant moved to approve Fourth Amendment to the Contract of Sale between Janvier Scott and The Town of Flower Mound, Texas, to acquire a public access and utility easement for the construction of the Spine Road across Bob White Lane. Mayor Pro Tem Dixon seconded the motion.

VOTE ON MOTION:

Motion passed
AYES: GELBMAN, DIXON, BRYANT
NAYS: WEBB
ABSTAIN: WISE

13. Consider a request for a Master Plan Amendment (MPA15-0008 – Specific Plan Area 2) to amend Section 3, Specific Plans, by modifying the access standards and map for Specific Plan Area 2 (SPA 2) to address the Bob White Lane public access, utility and sidewalk easements per the terms of the approved Contract of Sales Agreement, and to consider adopting an ordinance providing for said amendment. SPA 2 is generally located on both sides of Long Prairie Road (FM 2499) between Sagebrush Drive and Chaparral Lane. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its May 11, 2015, meeting.) (The Town Council tabled this item indefinitely at its November 2, 2015, meeting.) (The official Public Hearing was held on June 1, 2015)

Mayor Hayden opened the Public Hearing at 6:52 p.m.

The following individuals either spoke in support or opposition, or had questions / comments related to the item: Names listed below don’t necessarily reflect the order in which each person spoke and all addresses are located in Flower Mound unless otherwise indicated.

<table>
<thead>
<tr>
<th>Support: Comments/Questions</th>
<th>Opposition: Comments/Questions</th>
<th>Question(s)/Comments Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Janvier Scott, 2829 Bob White Lane</td>
<td>None</td>
<td>Marsha Gavitt, 6501 Meadowcrest Ln</td>
</tr>
<tr>
<td></td>
<td>Paul Stone, 709 Lake Bluff Dr</td>
<td>Patsy Mizeur, 1821 Castle Court</td>
</tr>
</tbody>
</table>

Mayor Hayden closed the Public Hearing at 7:02 p.m.

Councilmember Bryant moved to approve a request for a Master Plan Amendment (MPA15-0008 – Specific Plan Area 2) to amend Section 3, Specific Plans, by modifying the access standards and map for Specific Plan Area 2 (SPA 2) to address the Bob White Lane public access, utility and sidewalk easements per the terms of the approved Contract of Sales Agreement, and adopt an ordinance providing for said amendment. Councilmember Webb seconded the motion.

ORDINANCE NO. 01-16

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING SECTION 3.0, SPECIFIC PLANS, OF THE MASTER PLAN BY AMENDING ORDINANCE NO. 24-01, IN PART, WHICH ADOPTED THE MASTER PLAN, BY AMENDING SPECIFIC PLAN AREA #2 (SPA 2) BY REPLACING THE EXISTING MAP FOR THE DEVELOPMENT OF SPECIFIC PLAN AREA #2 (SPA 2) CONTAINED ON PAGE 3.9 OF THE MASTER PLAN WITH A NEW DEVELOPMENT CONTROL PLAN OF SPECIFIC PLAN AREA #2 (SPA 2) AND BY
AMENDING CERTAIN PORTIONS OF THE TEXTUAL PROVISIONS CONTAINED WITHIN
SPECIFIC PLAN AREA #2 (SPA 2) CONTROLLING THE DEVELOPMENT OF SAID AREA;
PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES;
PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL
NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON MOTION:  
AYES: WEBB, BRYANT, DIXON, GELBMAN  
NAYS: NONE  
ABSTAIN: WISE

14. Consider approval of the Memorandum of Agreement with Dirk Laukein; and authorization of Mayor to execute same on behalf of the Town.

Councilmember Bryant moved to approve the Memorandum of Agreement with Dirk Laukein; and authorize the Mayor to execute same on behalf of the Town. Councilmember Webb seconded the motion.

VOTE ON MOTION:  
AYES: GELBMAN, DIXON, BRYANT, WEBB  
NAYS: NONE  
ABSTAIN: WISE

15. Consider approval of the Addendum To Development Agreement with MRK Enterprises, LLC; and authorization for the Mayor to execute the same on behalf of the Town.

Councilmember Bryant moved to approve the Addendum To Development Agreement with MRK Enterprises, LLC; and authorize the Mayor to execute same on behalf of the Town. Councilmember Webb seconded the motion.

VOTE ON MOTION:  
AYES: WEBB, BRYANT, DIXON, GELBMAN  
NAYS: NONE  
ABSTAIN: WISE
Purpose:
The purpose of this item is for the CRC to discuss and consider whether to bring forward a recommendation to amend the Charter by removing the text of “and the State Comptroller of Public Accounts at Austin” and instead adding “and the Tarrant County Clerk’s office” from/to section 9.10 of the Town Charter.

Charter Reference:
§ 9.10. Effective Date of Budget; Certification of Copies; Copies Made Available.
Upon final adoption, the budget shall be in effect for the fiscal year. A copy of the budget, as finally adopted, shall be filed with the Town Secretary, the County Clerk of Denton County, and the State Comptroller of Public Accounts at Austin. The final budget shall be printed or otherwise reproduced and copies shall be made available for the use of all offices, departments and agencies and for the use of interested persons and organizations.
(Amend. of 5-15-2004)

Background Information:
There is currently not a state legal requirement to submit a copy of the Town’s budget to the state comptroller’s office. This was confirmed with both the Town Attorney and a representative from the state comptroller’s office. It is believed to simply be an old provision that was since rescinded.

Filing requirements for the budget are defined by Texas Local Government Code section 109.009(d) as indicated below:

Sec. 102.009. LEVY OF TAXES AND EXPENDITURE OF FUNDS UNDER BUDGET; EMERGENCY EXPENDITURE. (a) The governing body of the municipality may levy taxes only in accordance with the budget.
(b) After final approval of the budget, the governing body may spend municipal funds only in strict compliance with the budget, except in an emergency.
(c) The governing body may authorize an emergency expenditure as an amendment to the original budget only in a case of grave public necessity to meet an unusual and unforeseen condition that could not have been included in the original budget through the use of reasonably diligent thought and attention. If the governing body amends the original budget to meet an emergency, the governing body shall file a copy of its order or resolution amending the budget with the municipal clerk, and the clerk shall attach the copy to the original budget.
(d) After the adoption of the budget or a budget amendment, the budget officer shall provide for the filing of a true copy of the approved budget or amendment in the office of the county clerk of the county in which the municipality is located.
Purpose:
The purpose of this item is for the CRC to discuss and consider whether to bring forward a recommendation to amend the Charter by removing the text of “to cause only the caption of duly enacted ordinance to be published except as provided otherwise by law” from section 3.07 (w) of the Town Charter.

Charter Reference:


All powers of the Town and the determination of all matters of policy shall be vested in the Town Council. Without limitation of the foregoing and among the other powers that may be exercised by the Town Council, the following are hereby enumerated for greater certainty:

(w) To name and designate an Official Newspaper for the Town of Flower Mound, Texas and to cause only the caption of duly enacted ordinances to be published except as provided otherwise by law.

Removal of this text would not change the Town’s responsibilities as it relates to other legally required publications.

Background Information:
Currently the Town Secretary’s office submits the caption of enacted ordinances that contain a fine or penalty clause after every Council meeting to the Denton Record Chronical. By statute, given the Town is a Home Rule Municipality; there is not a legal requirement to publish these same captions in the newspaper of record.

Note, Section 4.03.1 (1) of the Town Charter requires the captions of enacted ordinances be recorded in the minutes. In addition, these same Ordinances are captured in their entirety on the Town’s website via the electronic MuniCode Book.

Removing this text (requirement) would equate to an average savings of $1,400 per year for the Town as indicated in the report below:
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Flower Mound</td>
<td>Yes</td>
<td>Yes (Limited)</td>
<td>Willful violation of the foregoing provisions of this Charter (Sec. 3.09 - Council not to interfere in town manager appointments and removals) by any member of the Council shall constitute misconduct and shall authorize the Council by a vote of the majority of its membership to expel such offending member of the Council if found guilty after public hearing, and thereby create a vacancy in the place held by such member.</td>
</tr>
<tr>
<td>Allen</td>
<td>Yes</td>
<td>Yes (Limited)</td>
<td>Any knowing violation of the foregoing provisions of this charter (Sec. 2.10 - Council direction of city staff appointments / removals) by any member of the council shall constitute official misconduct and shall authorize the council by a vote of a majority of its membership to expel such offending member from the council if found guilty after a public hearing, and thereby create a vacancy in the place held by such member.</td>
</tr>
</tbody>
</table>
| Carrollton   | Yes                                           | Yes                                     | • A written sworn complaint must be filed by another councilmember with the mayor, and the mayor shall file the complaint; cause the complaint to be served on the charged councilmember; set a date for trial of the case; and notify all councilmembers to appear that day.  
• When complaint is made against the mayor the above duties are performed by a councilmember.  
• The mayor & councilmembers, except the charged councilmember, constitute a court to try and determine the case.  
• When complaint is made against the mayor a majority of councilmembers constitutes a court and shall select one of their own number to preside during trial.  
• If two-thirds of this court find the charged councilmember guilty of the charges contained in the complaint and find the charges sufficient cause for removal from office, the presiding officer shall enter a judgement removing the charged councilmember and declaring the office vacant. If found not guilty, the judgment shall be entered accordingly. |
| Colleyville  | Yes                                           | Yes (Limited)                            | If any member of the City Council fails to maintain the foregoing qualifications (Section 3.02 - Qualifications of City Councilmembers), or shall fail to maintain the 75% attendance record for all regularly scheduled meetings during each elected year, or shall be convicted of a felony or offense involving moral turpitude, the City Council shall declare a vacancy in the office of that member of the City Council at its next regular meeting and shall fill the vacancy as set forth in this Charter. |
| Coppell      | Yes                                           | No                                      | No Removal Procedure |
| Denton       | No                                            | No                                      | No Removal Procedure |
| Frisco       | Yes                                           | Yes (Limited)                            | • If any member of the City Council is absent from three consecutive regular meetings, without explanation acceptable to a majority of the remaining Council Members, his / her office shall be declared vacant at the next regular meeting of the City Council by resolution.  
• Any person on the City Council who ceases to possess the required qualifications for office, is convicted of a felony or of a misdemeanor involving moral turpitude, or is convicted of violating any state laws regulating conflicts of interest of municipal officers shall forfeit his or her office. Every forfeiture shall be declared and enforced by the City Council. |
<p>| Grapevine    | Yes                                           | Yes (Limited)                            | If the Mayor or any Councilman fails to maintain the foregoing qualifications (Section 3.02 - Qualifications of City Councilmember), or shall be absent from three consecutive regularly scheduled meetings without valid excuse, the City Council shall have the power and authority to declare, and may, at its next regular meeting, declare a vacancy to exist |</p>
<table>
<thead>
<tr>
<th>Location</th>
<th>Council Type</th>
<th>Removal Process</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highland Village</td>
<td>Yes</td>
<td>Yes (Limited)</td>
<td>If the Mayor or any Council member fails to maintain the foregoing qualifications (Sec. 3.04 – Member Qualifications) or is convicted of a crime involving moral turpitude; holds any other public office other than a notary public, a member of the military or except as may be authorized by law or ordinance; shall move from the City; shall miss three consecutive regularly scheduled meetings, without valid excuse as determined by the Council; or violates this Charter, the Council shall at its next regular meeting declare a vacancy to exist and shall fill said vacancy as set forth in this Charter.</td>
</tr>
</tbody>
</table>
| Keller                  | Yes          | Yes (Limited)   | • Any member of the city council or mayor remaining absent for three consecutive regular meetings of the council may have his/her office declared vacated by a majority vote of all the remaining members of the governing body of the city.  
• Any councilmember violating the provisions of this section (Sec. 3.11(3) - Interference with administration) or voting for a resolution or ordinance in violation of this section shall be subject to removal by the council. |
| Lewisville              | Yes          | Yes (Limited)   | The city council shall also have the power and authority to declare, and may at its next regular meeting declare a vacancy to exist in the office of mayor or any councilman if such mayor or councilman lacks at any time during his term of office any qualifications for the office prescribed by this charter or by law; violates any expressed prohibition of this charter; is convicted of a crime involving moral turpitude or a felony; or fails to attend three (3) consecutive regular meetings of the council without being excused by the council. |
| McKinney                | Yes          | No              | No Removal Procedure                                                                                                                                                                                   |
| North Richland Hills    | Yes          | Yes (Limited)   | • A member of the Council ceasing to possess any of the qualifications specified in this section (Article 5 Sec. 2 - Qualifications of City Councilmember), or any other sections of this Charter, or convicted of a felony before or while in office, shall immediately forfeit his office.  
• Any Councilman violating the provisions of this Section (Article 6 Sec. 4 – Appointment or removal of city staff by council), shall be guilty of a misdemeanor and upon conviction thereof shall cease to be Councilman. |
<p>| Richardson              | Yes          | Yes             | Willful violation of any provision of this charter by any member of the council shall constitute official misconduct, and shall authorize the council, by a vote of two-thirds of the total membership, to expel such offending member from the council, if found guilty after a public hearing, and thereby create a vacancy in the place held by such member. |</p>
<table>
<thead>
<tr>
<th>City</th>
<th>Number (Including Mayor)</th>
<th>Election Type</th>
<th>Term of Office</th>
<th>Term Limits</th>
<th>Charter Provision: City Council Term Limits and Limit on Consecutive Terms</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flower Mound</td>
<td>6 members</td>
<td>At-large</td>
<td>2 years</td>
<td>Y</td>
<td>Neither the Mayor nor any member of the Town Council shall be elected for more than three full consecutive terms of two years each for any place or position on the Town Council.</td>
</tr>
<tr>
<td>Allen</td>
<td>7 members</td>
<td>At-large</td>
<td>3 years</td>
<td>N</td>
<td>No term limits or limits on consecutive terms.</td>
</tr>
<tr>
<td>Carrollton</td>
<td>8 members</td>
<td>Mayor &amp; 3 councilmembers at-large, 4 councilmembers from single-member districts</td>
<td>3 years</td>
<td>Y</td>
<td>A person who has served as a member of the city council in any place, other than mayor, for two consecutive terms, shall not again be eligible for election in any place as the city council except mayor, until at least one term (three years has elapsed). A person who has served two consecutive terms as mayor shall not again be eligible for election as mayor until at least one term (three years has elapsed), but shall be eligible for election as a member of the city council in any place, other than mayor. A mayor shall not be eligible for election in the same place as mayor until at least one term of the mayor shall have elapsed. A person who has served a consecutive term or terms as mayor shall be deemed to have served a full term of office for all purposes of term limits. Persons who have served terms of service at the same place, as used in this paragraph, is that period of time beginning with the taking of the oath of office and running through the oath of office following the most recent election for that office. Partial terms will not be counted when determining term limits.</td>
</tr>
<tr>
<td>Colleyville</td>
<td>7 members</td>
<td>At-large</td>
<td>3 years</td>
<td>N</td>
<td>No term limits or limits on consecutive terms.</td>
</tr>
<tr>
<td>Coppell</td>
<td>8 members</td>
<td>At-large</td>
<td>3 years</td>
<td>N</td>
<td>No term limits or limits on consecutive terms.</td>
</tr>
<tr>
<td>Denton</td>
<td>7 members</td>
<td>Mayor &amp; 3 councilmembers at-large, 4 councilmembers from single-member districts</td>
<td>2 years</td>
<td>Y</td>
<td>No member of the council or the mayor, who has been elected to three consecutive full terms in a place, shall be eligible to file for election for that same place (without having first been off the council for at least one annual council election cycle) without limits. Nothing herein shall be deemed to prohibit the council members or the mayor from being elected to other places on the council or as mayor, as long as otherwise eligible, except that no council member or the mayor shall be elected to serve for more than three consecutive years.</td>
</tr>
</tbody>
</table>
| Frisco           | 7 members                | At-large      | 3 years        | Y           | No person shall serve as Mayor for more than three consecutive elected terms, and no person shall serve as Council Member for more than three consecutive elected terms. No person shall serve as Mayor and Council Member (combined) for more than three consecutive years. For purposes of this section, the computation of the limitations on terms:

   (i) a Mayor or Council Member, who vacates or renounces (for any reason, other than death, or any legal incapacity) his office before the end of the term for which he was elected, shall be considered to have completed that term.

   (ii) if a Mayor or Council Member, who has served one term of office (of any length) in a place, shall have been re-elected to another term, the terms of that Mayor or Council Member shall be computed as follows: (A) if fifty percent (50%) or more of the term is remaining, it shall be included in the computation of term limits; or (B) if less than fifty percent (50%) of the term is remaining, it shall not be included in the computation of term limits.

Any Council Member or Mayor, who is ineligible to serve for the elected City office due to the limitations on terms as provided herein, shall remain ineligible to hold an elected City office for a period of one (1) full term following the expiration of the most recent term of City office for which he or she was elected with the exception of a Council Member seeking the office of Mayor or the Mayor seeking the office of a Council Member. |
| Grapevine        | 7 members                | At-large      | 3 years        | N           | No term limits or limits on consecutive terms.                                  |
| Highland Village | 7 members                | At-large      | 2 years        | Y           | No person shall serve for more than four consecutive terms in the same place on the Council, regardless of place. No person shall serve his/her full complement of consecutive terms more than twice during his/her lifetime. |
| Keller           | 7 members                | At-large      | 3 years        | N           | No term limits or limits on consecutive terms.                                  |
| Lewisville       | 6 members                | At-large      | 3 years        | N           | No term limits or limits on consecutive terms.                                  |
| McKinney         | 7 members                | Mayor & 3 councilmembers at-large, 4 councilmembers from single-member districts | 4 years | Y | Each person duly elected to the position of Mayor or Council Member shall be allowed to hold any one position for a limit of two consecutive terms per position. After serving two consecutive terms, a Council Member shall not be eligible to serve in another council seat until the passage of one year from the end of such two consecutive terms, however each member may serve as Mayor. |
| North Richland Hills | 8 members              | At-large      | 2 years        | N           | No term limits or limits on consecutive terms.                                  |
| Richardson       | 7 members                | At-large      | 2 years        | Y           | No person elected or appointed to the city council shall serve as a member of the city council in any place for more than six consecutive terms until at least one full term shall have elapsed from the expiration of each person’s last term of office. For purposes of this section and in computing term limits:

   (i) A member of the council, who resigns or vacates office prior to the expiration of the term for which such person was elected or appointed, shall be deemed to have served a full term.

   (ii) A person appointed to fill a vacancy, who is elected for an unexpired term, shall be deemed to have served a full term; or

   (iii) A person appointed to fill a vacancy, who is elected for an unexpired term, shall be deemed to have served a full term, if at least five years have elapsed from the date of his appointment. For purposes of this section, ‘term’ means two consecutive terms of office, as used in this paragraph, is that period of time beginning with the taking of the oath of office and running through the oath of office following the most recent election for that office. Partial terms will not be counted when determining term limits. |

This report compiles data from the Town’s benchmark cities with respect to length of terms, & consecutive terms for elected officials.
CRC MEETING 5/12/16
AGENDA ITEM 5

Purpose:
The purpose of this item is for the CRC to discuss and consider whether to bring forward a recommendation:
   a) To change the name in the Charter from Parks, Arts, and Library Services Board (PALS) to the Parks Board.
   b) To remove the reference to the PALS Board in the Charter in its entirety as there are no legal reasons to have a board referenced in a Charter.

Charter Reference:
§ 8.04. Parks, Arts, and Library Services Board.

The Town Council shall at its discretion appoint seven (7) citizens and qualified voters of the Town of Flower Mound, who shall constitute its Parks, Arts, and Library Services Board, and who shall serve at the pleasure of the Town Council for such term as may be established by ordinance. The Parks, Arts, and Library Services Board shall perform such duties as the Town Council may direct.
(Ord. No. 15-12, Prop. 10, approved at referendum 5/12/2012, and adopted 5/21/2012);
(Amend. of 5-15-2004)

Background Information:
In 2014 there was Council action to shift the responsibilities of the arts and library services duties from the PALS Board to the Cultural Arts Commission (previously known as the Public Arts Committee). This change was primarily due to park items dominating the agenda because of the level of activity. There were typically minimal or no items related to the art and library functions. This change allowed members of the PALS Board to shift to the CAC where their interests were more aligned, and also allowed library staff to utilize their time more efficiently.

Currently there are two governing documents that have the arts and library functions defined (PALS Ordinance No. 106-07 and CAC Resolution No. 19-14). In order to change the PALS Ordinance to reflect what is actually happening now, there would need to be a name change and an update of the duties and responsibilities (parks functions only). Council has indicated a preference not to make any changes to the Ordinance given the current reference of the PALS Board in the Charter, although legally there are no restrictions associated with making the changes to the Ordinance.
TOWN OF FLOWER MOUND, TEXAS

ORDINANCE NO. 07-07

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, REPEALING IN ITS ENTIRETY CHAPTER 2, ARTICLE III, DIVISION 2, ENTITLED "CULTURAL ARTS BOARD," AND DIVISION 3 ENTITLED "PARK BOARD" OF CHAPTER 2, ARTICLE III BOARDS, COMMITTEES, COMMISSIONS, OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, AND CREATING A NEW DIVISION 2 ENTITLED "PARKS, ARTS AND LIBRARY SERVICES (PALS) BOARD"; REPEALING IN ITS ENTIRETY CHAPTER 2, ARTICLE III, DIVISION 3, ENTITLED "PARK BOARD" OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS; CREATING A NEW CHAPTER 2, ARTICLE III, DIVISION 2, ENTITLED "PARKS, ARTS AND LIBRARY SERVICES (PALS) BOARD;" REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Flower Mound, Texas, has established certain Boards and Commissions that effectuate good government; and

WHEREAS, the Town Council has determined that the creation, organization, meetings, procedures, and powers and duties of a new board, the Parks, Arts and Library Services (PALS) Board, would best serve the interests of the citizens of Flower Mound; and

WHEREAS, the Town Council has determined that these changes are desirable to provide for the health, safety and welfare of the citizens of the Town of Flower Mound.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, THAT:

SECTION 1

All of the above premises are found to be true and correct factual and legislative determinations of the Town of Flower Mound and are hereby approved and are incorporated into the body of this Ordinance as if copied in their entirety.
SECTION 2

From and after the effective date of this Ordinance, Chapter 2, Article III, Division 2 entitled "Cultural Arts Board," and Chapter 2, Article III, Division 3 entitled "Park Board," are hereby repealed in their entirety and a new Chapter 2, Article III, Division 2 entitled "Parks, Arts, and Library Services (PALS) Board" is hereby created, to read as follows:

DIVISION 2. "PARKS, ARTS, AND LIBRARY SERVICES (PALS) BOARD

***

Sec. 2-111. Created.

There is hereby created an advisory board known as the Parks, Arts, and Library Services (PALS) Board.

Sec. 2-112. Organization.

(a) The PALS Board shall consist of eleven regular members appointed by a majority vote of the town council in accordance with established procedures.

(b) In addition to the eleven regular members of the PALS Board, three alternate members of the PALS Board, who shall serve in the absence of one or more regular members, shall be appointed by a majority vote of the town council in accordance with established procedures. In determining which of the three alternate members shall serve in the absence of a regular member, the alternate member with the longest tenure shall so serve. If for any reason the alternate member with the longest tenure is unable to serve, the second alternate member shall so serve. If for any reason the alternate member with the second longest tenure is unable to serve, the third alternate member shall so serve.

(c) Each member or alternate member of the board shall be a resident citizen and qualified voter of the town, at the time of his appointment. A member or alternate member who ceases to reside in the town during his term of office shall immediately forfeit his office.

(d) Regular members shall be designated as places number one through eleven and alternate members shall be designated as
alternate place number twelve, alternate place number thirteen, and alternate place number fourteen.

(e) The term of office of members and alternate members of the board shall be for two years. Places one, three, five, seven, nine, eleven and alternate place thirteen shall be appointed to two-year terms ending on September 30 in odd-numbered years. Places two, four, six, eight, ten, alternate place numbers twelve and fourteen shall be appointed to two-year terms ending on September 30 in even-numbered years. Members and alternate members of the board may be removed before their terms of office expire.

(f) Other qualifications for regular or alternate membership shall be a genuine interest in parks, library services and programs, cultural arts, programs for seniors, preservation of the town’s history, the community, the ability to work with the public, and time to devote to this service.

(g) Members and alternate members of the board shall serve without compensation.

Sec. 2-113. Officers and procedures.

(a) At the first scheduled board meeting in October of each year, or as soon thereafter as practicable, the first item of business shall be the selection of the board’s chairperson and vice-chairperson from among the membership of the board. The alternate members of the board are not eligible to serve as the board chairperson or the vice-chairperson or to participate in the selection of said chairperson or vice-chairperson.

(b) The chairperson shall preside over meetings and shall vote only in case of a tie. In the event a question over procedures arises, Robert’s Rules of Order, Newly Revised, shall prevail.

(c) The vice-chairperson shall assist the chairperson in directing the affairs of the PALS Board. In the absence of the chairperson, the vice-chairperson shall assume the duties of the chairperson. The vice-chairperson, when acting as chairperson, shall retain the right to vote.
(d) In the event of the absence of both the chairperson and vice-chairperson, any member of the board may be selected as acting chairperson for that particular meeting by majority vote of the members present. Any board member acting as chairperson shall retain the right to vote. No member shall be required to act as chairperson if the member so declines.

(e) The recording of minutes of all board meetings shall be the responsibility of town staff.

(f) A majority of the board, six members, shall constitute a quorum to do business and the affirmative vote of the majority of those attending shall be necessary to pass any motion.

(g) The board shall establish rules and procedures that govern its operation.

(h) All voting shall be by roll call.

Sec. 2-114. Powers and duties.

(a) The PALS Board shall have the following powers and duties:

(1) Advise the town council and staff in policy matters regarding parks and recreation, arts and library: goals, objectives and programs.

(2) Assist the town council and staff in the planning process: parks and recreation, arts and library facilities and programs.

(3) Promote parks and recreation, arts and library program participation.

(4) Assist the town council and staff in the recruitment of volunteers.

(5) Advise the town council and staff regarding policies, services and programs provided or sponsored by the Community Services Department. This includes, but is not limited to: parks and recreation programming, senior citizen activities, cultural arts, art in public places, library
programs, library collection development and fines, and fees for community services programs and activities.

(6) Advise the town council and staff regarding revenues and expenditures from dedicated funding sources including the special activities fund, park and library development funds and any similar fund created to support the community services department.

(7) Review and make final determination of any request for reconsideration for the removal of library materials.

(8) Promote the benefits of community services' facilities, programs and activities, and when necessary, solicit public volunteer assistance.

(9) Oversee and advise the town council and staff regarding any issues or updates to the recorded history of Flower Mound in the book Sweet Flower Mound Land.

(10) Consider, investigate, make findings, report and recommend upon any special matter or question coming before the board within the scope of its duties and responsibilities or referred to it by the town council or town manager.

SECTION 3

This Ordinance shall be cumulative of all provisions of ordinances of the Town of Flower Mound, Texas, except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

SECTION 4

It is hereby declared to be the intention of the Town Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance, since same would have been enacted by the Town Council without the
ORDINANCE NO. 106-07

incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section, and said remaining portions shall remain in full force and effect.

SECTION 5

This Ordinance shall take effect and be in full force from and after its passage.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS BY A VOTE OF 5 TO 0, ON THIS THE 17th DAY OF DECEMBER, 2007.

APPROVED:

Jody A. Smith, MAYOR

ATTEST:

Paula J. Paschal, TOWN SECRETARY

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, TOWN ATTORNEY
TOWN OF FLOWER MOUND, TEXAS

RESOLUTION NO. 19-14

A RESOLUTION AMENDING RESOLUTION NO. 06-10 TO AMEND THE PUBLIC ARTS POLICY TO CHANGE THE NAME OF THE PUBLIC ARTS COMMITTEE TO CULTURAL ARTS COMMISSION; EXPAND THE MEMBERSHIP TO SIX MEMBERS AND REVISE THE DUTIES OF THE CULTURAL ARTS COMMISSION; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Flower Mound previously adopted Resolution No. 06-10 that adopted a Public Arts Policy which included the creation of a Public Arts Committee; and,

WHEREAS, the Public Arts Committee is currently comprised of three members and provides recommendations to the Parks, Arts, and Libraries Services Board and the Town Council; and,

WHEREAS, the Town Council desires to expand the membership of the Public Arts Committee to six members; and,

WHEREAS, the Town Council further desires that the Public Arts Committee’s name shall be changed to “Cultural Arts Commission” which shall provide recommendations directly to the Town Council.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS:

SECTION 1

The “Definitions” section of the Public Arts Policy is hereby amended to amend the definition of “Public Arts Committee” to read as follows:

- Cultural Arts Commission – a committee appointed by the Town Council that makes recommendations to the Town Council and Town staff in policy matters regarding arts and library goals, objectives and programs.

SECTION 2

The “Public Arts Committee” section of the Public Arts Policy is hereby amended to read as follows:

Cultural Arts Commission

Commission Membership

- The Town Council will appoint members to serve on the Cultural Arts Commission.

- The Cultural Arts Commission will consist of six (6) members appointed by a majority vote of the Town Council in accordance with established procedures and designated as places number one through six.
At the first scheduled meeting in October of each year, or as soon thereafter as practicable, the first item of business shall be the selection of the commissions' chairperson and vice-chairperson from among the membership of the commission. The chairperson shall preside over meetings and shall vote only in case of a tie. The vice-chairperson shall assist the chairperson in directing the affairs of the commission. In the absence of the chairperson, the vice-chairperson shall assume the duties of the chairperson. The vice-chairperson, when acting as chairperson, shall retain the right to vote. In the event of the absence of both the chairperson and vice-chairperson, any member of the commission may be selected as the acting chairperson for that particular meeting by a majority vote of the members present. Any commission member acting as chairperson shall retain the right to vote.

Each member of the commission shall be a resident citizen and qualified voter of the Town at the time of his appointment. A member who ceases to reside in the Town during his term of office shall immediately forfeit his office.

Other qualifications for membership shall be a genuine interest in library services and programs, cultural arts, the community, the ability to work with the public, and time to devote to this service.

Members will serve for a term of two years. Places one, three, and five shall be appointed to two-year terms ending on September 30 in odd-numbered years. Places two, four, and six shall be appointed to two-year terms ending on September 30 in even-numbered years. Terms of service will begin on October 1st unless the appointment is to fill an unexpired term.

Members of the commission serve at the will and pleasure of the Town Council and may be removed from the commission before their terms expire.

Any members of the Cultural Arts Commission wanting to submit art for consideration by the commission will need to resign from the commission before submitting art for consideration.

Members shall serve without compensation.

**Commission Responsibilities**

Meetings of the Cultural Arts Commission will be held as needed to accomplish the goals of the commission.

The Cultural Arts Commission will advise the Town Council and Town staff regarding policies, services and programs, including but not limited to, cultural arts programs, art in public places, library programs, and library collection development and fines.
Resolution No. 9-14

- The Cultural Arts Commission will review and make a final determination of any request for reconsideration for the removal of library materials.

- The Cultural Arts Commission will guide the vision for public art in the Town of Flower Mound, maintain a roster of artists, solicit and recommend to the Town Council art for both permanent and temporary displays in the Town of Flower Mound.

- The Cultural Arts Commission will be responsible for identifying and securing funding for the purchase of art work or for the installation of donated art work.

- The Cultural Arts Commission will have those other responsibilities as outlined in the Public Arts Policy or as assigned by the Town Council.

- The recording of minutes of all commission meetings shall be the responsibility of the town staff.

SECTION 3

- All other references to the "Public Arts Committee" within the Public Arts Policy shall be changed to "Cultural Arts Commission." The remainder of the Public Arts Policy shall remain unchanged, with the exception of the creation of ad hoc members given the size of the committee has increased, and all revisions are incorporated and attached hereto as Exhibit A.

SECTION 4

This Resolution shall become effective on and after its date of adoption.


APPROVED:

Thomas E. Hayden, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

APPROVED AS TO FORM:

Bryn Meredith, TOWN ATTORNEY
Exhibit A

Public Arts Policy

The purpose of the Public Arts Policy is to define the guidelines and process that would encourage the placement of art in public places that will enrich the quality of life for residents and visitors of Flower Mound.

Goals of the Public Arts Program

- Encourages the selection of art that is accessible to the public and respects the cultural landscape of Flower Mound.
- Encourages the role of public art in enhancing economic development and cultural tourism.
- Encourages the role of public art in the functional design of eligible projects.
- Encourages the exhibition of art in designated facilities for the enjoyment of the public and to heighten awareness and an appreciation for art.

Definitions

- **Art in public places** - Any visual work of art displayed in Town parks, medians or rights-of-ways, or the interior/exterior of any Town facility.
- **Art/Artwork** – Includes, but is not limited to, a sculpture, monument, mural, painting, fountain, or stained glass. Works of art would not normally include landscaping, paving, architectural ornamentation, or signs.
- **Artist** - A practitioner in the visual arts, generally recognized by critics and peers as a professional of serious intent and recognized ability who produces art work.
- **Deaccessioning** – The removal, relocation, selling, auctioning, or trading of artworks owned by the Town.
- **Donations (and Gifts)** - Art donated to the Town from a private individual or institution and/or other outside sources.
- **Loan** - Works of art provided to the Town to display for a predetermined period of time and to be returned to the owner after the loan period has expired.
- **PALS Board** – Parks, Arts and Library Services Board.
- **Cultural Arts Commission** – a commission appointed by the Town Council that makes recommendations to the Town Council and Town staff in policy matters regarding arts and library goals, objectives and programs.
- **Public Art Collection** - Consists of all Town-owned or controlled fine works of art.
Cultural Arts Commission

- The Town Council will appoint members to serve on the Cultural Arts Commission.
- The Cultural Arts Commission will consist of six (6) members appointed by a majority vote of the Town Council in accordance with established procedures and designated as places number one through six.
- At the first scheduled meeting in October of each year, or as soon thereafter as practicable, the first item of business shall be the selection of the commissions' chairperson and vice-chairperson from among the membership of the commission. The chairperson shall preside over meetings and shall vote only in case of a tie. The vice-chairperson shall assist the chairperson in directing the affairs of the commission. In the absence of the chairperson, the vice-chairperson shall assume the duties of the chairperson. The vice-chairperson, when acting as chairperson, shall retain the right to vote. In the event of the absence of both the chairperson and vice-chairperson, any member of the commission may be selected as the acting chairperson for that particular meeting by a majority vote of the members present. Any commission member acting as chairperson shall retain the right to vote.
- Each member of the commission shall be a resident citizen and qualified voter of the Town at the time of his appointment. A member who ceases to reside in the Town during his term of office shall immediately forfeit his office.
- Other qualifications for membership shall be a genuine interest in library services and programs, cultural arts, the community, the ability to work with the public, and time to devote to this service.
- Members will serve for a term of two years. Places one, three, and five shall be appointed to two-year terms ending on September 30 in odd-numbered years. Places two, four, and six shall be appointed to two-year terms ending on September 30 in even-numbered years. Terms of service will begin on October 1st unless the appointment is to fill an unexpired term.
- Members of the commission serve at the will and pleasure of the Town Council and may be removed from the commission before their terms expire.
- Any members of the Cultural Arts Commission wanting to submit art for consideration by the commission will need to resign from the commission.
- Members shall serve without compensation.

Commission Responsibilities (as it relates to the Art Policy)

- Meetings of the Cultural Arts Commission will be held as needed to accomplish the goals of the commission.
The Cultural Arts Commission will advise the Town Council and Town staff regarding policies, services and programs, including art in public places.

The Cultural Arts Commission will guide the vision for public art in the Town of Flower Mound, maintain a roster of artists, solicit and recommend to the Town Council art for both permanent and temporary displays in the Town of Flower Mound.

The Cultural Arts Commission will be responsible for identifying and securing funding for the purchase of art work or for the installation of donated art work.

The Cultural Arts Commission will have those other responsibilities as outlined in the Public Arts Policy or as assigned by the Town Council.

The recording of minutes of all commission meetings shall be the responsibility of the town staff.

Policy Implementation

The Town Council shall have the ultimate authority to review, evaluate, accept, reject, and oversee all phases of the Public Arts Program.

The Cultural Arts Commission, appointed by the Town Council, will implement the Public Arts Policy.

The Cultural Arts Commission will develop forms and procedures as necessary to ensure the successful implementation of the Public Arts Program.

Roster of Artists

The Cultural Arts Commission will maintain a roster of area artists to be used to recruit art and as a resource for planning public art displays and public art events.

The Cultural Arts Commission will approve artists' inclusion on the roster through an application process. Commission decisions may be appealed to the Town Council.

The roster of artists will be used when soliciting art for public temporary and permanent displays.

Solicitation of art for public art displays and installations is not limited to the roster of artists maintained by the Cultural Arts Commission.

Temporary Art Displays

The Cultural Arts Commission will maintain a list of suitable locations for temporary art displays.

Solicitations for potential temporary art displays will be sent to those listed on the roster of artists and will include the application form for temporary displays.
• All requests for a temporary art display must include a completed application form and photos of a representative sample of work to be displayed.

• Art work for temporary displays must be original and the creator must be an affiliate of an art or artist association, art professional, art educator, public, private or college art student, member of the roster of artists, or an invited artist.

• The Cultural Arts Commission will review applications for temporary art displays and will determine the logistics for the display such as location, installation, and length of time for the display.

• The Cultural Arts Commission will then refer the application for a temporary art display to the Town Council for approval.

• A temporary art display agreement and waiver of liability must be signed before any art may be displayed. All insurance related to temporary art displays is the responsibility of the artist.

**Permanent Art Displays**

• The Cultural Arts Commission will maintain a list of suitable locations for permanent art displays.

• The full Commission will develop a vision for the project and create a set of criteria for selection of the permanent display.

• The full Commission will solicit applications through a Request for Proposal process that would meet the vision and criteria for the project.

• The full Commission will review applications and make a recommendation for Town Council approval.

• A formal agreement will then be executed to outline the entire project.

• When an artist and/or art work has been selected and approved by Town Council, the full commission will work with the artist and the location until the project has been completed.

**Art Work Donations or Acquisitions**

• The Cultural Arts Commission will maintain a list of suitable locations for installation of art.

• When a need for art work has been identified and necessary funding for purchase, or for installation of donated art, has been secured, the Cultural Arts Commission will request that the Town release a request for proposal to solicit proposals from artists.

• Donations or acquisitions must come from an artist who is an affiliate of an art or artist association, art professional, art educator, public, private or college art student, member of the roster of artists, or an invited artist.
• Donated or acquired art must be original and not manufactured solely for sale.
• The Town Council will consider accepting donated art works based on the following criteria: suitable location available, dimensions, media, suitability for public viewing, security of the art work, well crafted, relevant to the Flower Mound community and the location and its mission.
• The Town reserves the right to reject any part of or all of an art proposal.
• Donors who wish to receive a tax credit for their donation are responsible for getting a valid appraisal of the art work.
• Art accepted by the Town Council shall become property of the Town of Flower Mound and the Town will be responsible for maintenance, security, insurance, and lighting, as needed.
• The Town will be responsible for obtaining a valuation of the art work for insurance and inventory purposes.
• The Town Council may, at their discretion, deaccession Town-owned artworks by selling, trading, donating, removing and storing, returning to the artist, or disposing by other means.

Applicability of Art

• This policy applies to all art commissioned by, acquired by, loaned to, or donated to the Town for the purpose of public exhibition or use.
• Art selected or acquired should be compatible with design, location, and character of the site and reflect local tastes, culture, history, and sensibilities.
• Art selected or acquired should preserve and integrate natural features for the project where appropriate and contain appropriate media, materials, textures, colors, and design to the expression of the design concept.
• Art selected or acquired should be designed with consideration of minimum maintenance requirements and maximum resistance to vandalism.