

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 1st DAY OF NOVEMBER, 2010 IN THE FLOWER MOUND TOWN HALL, LOCATED AT 2121 CROSS TIMBERS ROAD IN THE TOWN OF FLOWER MOUND, COUNTY OF DENTON, TEXAS AT 6:00 P.M.

The Town Council met in a regular meeting with the following members present:

Melissa Northern	Mayor
Al Filidoro	Mayor Pro Tem
Tom Hayden	Deputy Mayor Pro Tem
Steve Dixon	Councilmember Place 1
Steve Lyda	Councilmember Place 4

with the following member of Town Council absent:

Mike Wallace	Councilmember Place 3
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constituting a quorum with the following members of the Town Staff participating:

Harlan Jefferson	Town Manager
Joy Franklin	Executive Assistant
Terry Welch	Town Attorney
Chuck Springer	Assistant Town Manager/Chief Financial Officer
Kent Collins	Assistant Town Manager
Gary Sims	Executive Director of Community Services
Doug Powell	Executive Director of Development Service

A. CALL BRIEFING SESSION TO ORDER

Mayor Northern called the briefing session to order at 6:04 p.m.

B. BRIEFING SESSION

1. Town Council Boards and Commissions Subcommittee Reports

Deputy Mayor Pro Tem Hayden attended the Planning and Zoning Commission meeting. The main topics of discussion were SMARTGrowth and the Rainier and Toll Brothers projects.

Councilmember Lyda announced that the Environmental Conservation Commission (ECC) would be meeting on November 2, 2010, and the Transportation Commission would be meeting on November 9, 2010.

Mayor Pro Tem Filidoro announced that the Property Standards Committee was looking at having their first meeting on November 4, 2010, which would be an organizational meeting.

Mayor Northern hosted the Denton County Mayor's meeting where Tom Diggs of the Environmental Protection Agency spoke about air quality in Denton County. Mayor Northern attended the Precinct 4 meeting where she was informed that there was funding for the I-35W Interchange project. Mayor Northern met with some of the PALS Board

members that were on the Art Committee. Mayor Northern attended the Precinct 3 meeting, the Chamber luncheon, and the FM 2499 Ribbon Cutting.

2. Discuss Consent and Regular Items

Deputy Mayor Pro Tem Hayden asked to pull Item 1 from the Consent Agenda for discussion.

3. Discuss Future Agenda Items

Mr. Jefferson stated that the Denton County Days were scheduled to be held on February 21 and February 22 which would conflict with the Town Council meeting scheduled for February 21.

Mayor Northern stated that the Council would hold a Special Town Council Meeting on February 17.

4. Discuss Council Communications

Mr. Jefferson stated that there was a Council Communication regarding the solid waste franchise agreement which would expire October 2011. He stated that he had provided the Council with a resident survey from 2006 and 2009. Mr. Jefferson stated that in response to a request they would be taking the solid waste franchise agreement to the ECC for input and then to a Town Council work session for discussion.

Mayor Pro Tem Filidoro asked staff to inform the ECC of the work session to discuss the waste franchise agreement and allow them to attend. He asked staff to do a survey of the surrounding cities on the services provided.

C./D. ADJOURN BRIEFING SESSION AND CALL REGULAR MEETING TO ORDER

Mayor Northern adjourned the briefing session and called the regular meeting to order at 6:13 p.m.

E. INVOCATION

Chaplain Don Cone gave the invocation.

F. PLEDGE OF ALLEGIANCE TO THE AMERICAN FLAG AND THE TEXAS FLAG

Mayor Northern led the pledges.

G. PRESENTATIONS

- **Certificates of Appreciation – Micah Henderson and Aimee Erb**

Jyotisana Dhawan shared the story of how Micah Henderson and Aimee Erb saved her life when she went into cardiac arrest in the Community Activity Center pool.

Mayor Northern presented Micah Henderson and Aimee Erb with certificates of appreciation for recognition of outstanding service to the Town of Flower Mound.

- **American Red Cross Lifesaving Award**

Todd Sinclair with the American Red Cross presented the Lifesaving Award to Micah Henderson and Aimee Erb.

- **Proclamation - Arts Week (November 12-14, 2010)**

Mayor Northern presented a proclamation for Arts Week (November 12-14, 2010) to Sweetie Bowman who was with the Cross Timbers Artist Guild and serves on the PALS Board and Arts Committee.

- **Presentation of National Night Out Neighborhood of the Year**

Mayor Northern and Officer Coldwell presented the Forums Subdivision with the National Night Out Neighborhood of the Year award.

H. PUBLIC PARTICIPATION

John Todd, 5600 Wichita Trail, Flower Mound

Mr. Todd stated that there was a new street light on Skillern and Flower Mound Road that had not been turned on. Mr. Todd stated that there had been many accidents caused by cut through traffic. He stated that there needed to be an ordinance established to prevent cut through traffic. Mr. Todd asked how much money the Town had spent on the law suit and asked what the Town was doing to recover the costs.

Sean Dunne, 2010 California Crossing, Dallas

Mr. Dunne, a representative of Community Waste Disposal requested that the Town include their company in the RFP process. He stated that he had provided the Town Council with information about his company.

Gerrick Palmer, 4971 Red Rock Lane, Flower Mound

Mr. Palmer thanked the Council for their service. Mr. Palmer asked if the Police Department could be trained to enforce the Oil & Gas ordinance. He stated that the Williams Cummings C West compressors were exceeding the noise ordinance and that truck traffic was violating the allowable hours. Mr. Palmer stated that companies currently working in Flower Mound should abide by the ordinances when driving to sites outside the town limits.

Mary Kay Walker, 3229 Oak Meadow, Flower Mound

Ms. Walker thanked the Town for the support for the Senior program. Ms. Walker stated that the SIM Auxiliary would be hosting an event to help the Town in its efforts to refurbish the Town facility to be used for the interim Senior Center. Ms. Walker stated that the event would be held on Saturday, November 13, 2010, at 7:00 p.m. at Pine Wood Hills Retirement Community.

I. MAYOR AND TOWN COUNCILMEMBER ANNOUNCEMENTS

- **Announcements and brief discussion regarding recent and upcoming civic and social events, traffic issues, informational updates on Town projects, capital improvement projects, reports about contacts with other groups and/or individuals about Town issues and projects, Town legislative and regulatory issues, informational responses to questions, and information sharing.**

Councilmember Dixon stated that November 2, 2010, was Election Day.

Mayor Pro Tem Filidoro stated that he gave a proclamation to James Polser on behalf of the Mayor and Town Council at his retirement party. He stated that James Polser was the owner of the Lewisville Feed Mill which had been in continuous operation for 124 years.

Councilmember Lyda stated that he attended the FM 2499 opening.

Deputy Mayor Pro Tem Hayden stated that he and the Mayor attended the party for Doug Brown's 85th birthday where they presented a proclamation.

Mayor Northern stated that November 2, 2010, was Election Day. She stated that the Veterans Day Celebration was on Sunday, November 7, 2010, at Flower Mound High School. She stated that also on Sunday, November 7, 2010, was the Lewisville Lake Symphony Gala fundraiser. Mayor Northern stated that the Artist Studio Tour was November 12 – November 14. Mayor Northern stated that Jason Isakson a violinist would be performing on Friday, November 12, 2010, at the Lake Baptist Church. Mayor Northern stated that the 7th Annual Dorothy's Dash would be held on Saturday, November 6, 2010, at Flower Mound High School.

J. TOWN MANAGER'S REPORT

- **Update and status report related to operational issues, capital improvement projects, budget projections, grants, legislation, and regulatory activities.**

Harlan Jefferson, Town Manager stated that the Town had executed an agreement with Flower Mound Youth Sports Association (FMYSA) to refurbish two fields at Bakersfield Park. He stated that the Town had received the check from FMYSA for the improvements. Mr. Jefferson thanked LISD for hosting a medication disposal event where they collected over 500 pounds of medication. Mr. Jefferson stated that the air monitoring station had been installed at Fire Station #2 and was scheduled to be operational in December.

Deputy Mayor Pro Tem Hayden asked what was the Town was doing near the Hilliard well in terms of air testing.

Mr. Jefferson stated that the Town had previously done quarterly testing and had begun doing monthly testing. He stated that there were originally eight sites that were tested and due to concerns about the Hilliard site it was added to the testing as the ninth

site. Mr. Jefferson stated that the Town ordinances required base line water testing. He stated that another water test would be required after drilling began.

Deputy Mayor Pro Tem Hayden asked what the Town had done to address the citizens concerns with the flooding concerns near Timber Creek.

Mr. Jefferson showed a map of the flooded area which showed the flooded properties and their relation to the floodway and floodplain. He stated that the properties were located in the floodway and could anticipate their property flooding. He stated that the current town ordinances did not allow properties to be developed in the floodway and in the 100-year floodplain. Mr. Jefferson stated that the residents were concerned with Mr. Perkins building up his property. Mr. Jefferson stated that he was allowed to build up the portion of his property that was outside the floodplain and that staff was verifying that he was in compliance. Mr. Jefferson stated that debris in the creek was another concern of the residents. He stated that staff was in the process of removing some debris that was found in Timber Creek. Mr. Jefferson stated that a Council Communication would be provided to the Council.

Councilmember Dixon asked if the Town had received a report from TCEQ on the test that was done at the Wilson site.

Mr. Jefferson stated that the results from the test conducted on September 3, 2010, were on the website.

Councilmember Dixon stated that he was referring to an October study.

Deputy Mayor Pro Tem Hayden stated that there was a test done at the request of a resident. He stated that he had the results and could provide them.

Matthew Woods, Director of Environmental Services stated that staff did not have a copy of the report that Councilmember Hayden had referred to. He stated that they had requested the results of all testing that had been done in October.

Deputy Mayor Pro Tem Hayden stated that the report he was referencing was done at the end of August.

Councilmember Dixon stated that they were talking about two different reports.

Mr. Jefferson stated that staff would put the reports they received on the Town's website. He stated that the gas well status report would begin being updated weekly.

Mayor Northern thanked FMYSA for the work that they had done in the community.

Mayor Pro Tem Filidoro asked if the air monitoring could be shown on FMTV.

K. CONSENT ITEMS

Mayor Pro Tem Filidoro made a motion to approve by consent Items 2, 3, and 4. Councilmember Lyda seconded the motion. Each item, as approved by consent, is restated below along with the approved recommendation for each, for the record.

- 1. **Consider approval of a resolution declaring expectation to reimburse expenditures with proceeds of future certificates of obligation and authorizing the preparation of the documents associated with the issuance, sale and delivery of the debt obligations.**

This item was removed from the Consent Agenda by Deputy Mayor Pro Tem Hayden

- 2. **Consider approval of the purchase of automotive tires from Blagg Tire & Service, through an interlocal agreement with the The Cooperative Purchasing Network (TCPN), in the estimated annual amount of \$100,000.**

RECOMMENDATION: Approve the purchase of automotive tires from Blagg Tire & Service, through an interlocal agreement with the The Cooperative Purchasing Network (TCPN), in the estimated annual amount of \$100,000.

- 3. **Consider approval of a Professional Services Agreement with Fugro Consultants, Inc., to provide geotechnical and material testing services associated with the construction of the FM 1171 to HWY 377 Water Line Phase I project (Tour 18 to Roanoke Hills), in the amount of \$16,071.00, and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Approve a Professional Services Agreement with Fugro Consultants, Inc., to provide geotechnical and material testing services associated with the construction of the FM1171 to HWY 377 Water Line Phase I project (Tour 18 to Roanoke Hills), in the amount of \$16,071.00, and authorize the Mayor to execute same on behalf of the Town.

- 4. **Consider approval of Bid No. 82-10-B, for the construction of the Timber Creek Park - Creek Crossing Sewer Stabilization project, to North Texas Contracting, Inc., in the amount of \$111,560.00, and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Approve the award of Bid No. 82-10-B, for the construction of the Timber Creek Park - Creek Crossing Sewer Stabilization project, to North Texas Contracting, Inc., in the amount of \$111,560.00, and authorize the Mayor to execute same on behalf of the Town.

VOTE ON THE MOTION

AYES: Lyda, Filidoro, Hayden, Dixon
NAYS: None

L. REGULAR ITEMS

1. Consider approval of a resolution declaring expectation to reimburse expenditures with proceeds of future certificates of obligation and authorizing the preparation of the documents associated with the issuance, sale and delivery of the debt obligations. *(This item was removed from the Consent Agenda by Deputy Mayor Pro Tem Hayden)*

Mr. Jefferson stated that during the mid 80's the Federal Government credit was referred to as the Arbitrage Laws which were designed to stop government entities from issuing debt and setting the money aside to earn interest income. He stated that there were restrictions that the Town had to abide by. Mr. Jefferson stated that the Town started using reimbursement resolutions which allowed the Town to borrow from its reserves and later issue the debt within 18-24 months. Mr. Jefferson stated that the Town typically approved a reimbursement resolution in the early part of the fiscal year which covered items in the first year of the Capital Improvement Program and then issue debt sometime between June and August. He stated that this practice allowed the Town to better manage the cash flow and in some cases would reduce costs by not having multiple debt issues throughout the year.

Deputy Mayor Pro Tem Hayden asked if the money would be coming out of the General Fund.

Mr. Jefferson stated that it was the Utility Fund.

Deputy Mayor Pro Tem Hayden asked what would happen if there was a draw down in the Utility Fund.

Mr. Jefferson stated that the Town stayed within the amount of funding that was available to borrow. He stated that the Town wouldn't borrow 14.5 million dollars from another fund to get all the projects started. He stated that it would be around 2 million dollars before debt was issued. Mr. Jefferson stated the Town's bond attorneys recommended identifying the maximum amount that the Town would issue. He stated that was what was listed in the reimbursement resolution. Mr. Jefferson gave the example of the Fire Station #5 project in which the Town used reimbursement resolutions and by the time the debt was issued the facility was ready to be opened and the Town knew the exact dollar amount that needed to be issued.

Councilmember Lyda moved to approve a resolution declaring expectation to reimburse expenditures with proceeds of future certificates of obligation and authorize the preparation of the documents associated with the issuance, sale and delivery of the debt obligations. Deputy Mayor Pro Tem Hayden seconded the motion. The caption of the resolution reads as follows:

RESOLUTION NO. 25-10

A RESOLUTION BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, DECLARING EXPECTATION TO REIMBURSE EXPENDITURES WITH PROCEEDS OF FUTURE CERTIFICATES OF OBLIGATION, AND AUTHORIZING THE PREPARATION OF THE

DOCUMENTS ASSOCIATED WITH THE ISSUANCE, SALE AND DELIVERY OF THE DEBT OBLIGATIONS.

VOTE ON THE MOTION

AYES: Dixon, Hayden, Filidoro, Lyda
NAYS: None

5. **Discuss and consider the possible appointment and replacement of members serving on the Oil and Gas Advisory Board.**

Mathew Woods, Director of Environmental Services introduced the item.

Councilmember Lyda stated that earlier in the year two board members were removed after taking legal action against the Town. He stated that the Williams had taken legal action against the Town and board member Deborah Medina was an employee of Williams. He stated that he recommended removal of Deborah Median from the board because of the conflict of her company and the Town.

Councilmember Dixon asked Dennis McKaige, Chair of the Oil and Gas advisory Board to come forward and talk about board member Deborah Medina.

Dennis McKaige, Oil and Gas Advisory Board Chair stated that Ms. Medina was an outstanding member of the board that had attended every meeting. Mr. McKaige stated that she put her industry biases aside, considered facts, and verified information brought before the board. Mr. McKaige read the following quote from the acknowledgement the board members signed "I understand and agree that I serve at the pleasure of the Town Council and that I am subject to removal from the Oil and Gas Advisory Board at the Town Council's discretion."

Councilmember Dixon stated that he spoke with Ms. Medina and asked if she was part of the legal team suing the Town and she answered "no." He stated that she was an employee of the Williams and he did not agree that created the adversarial relationship that many were portraying. Councilmember Dixon also asked if she was financially supporting the lawsuit against the Town in which she answered "no." He stated that he didn't feel that her employment with Williams was a valid cause for removal. He stated that she created balance on the board.

Councilmember Lyda stated that Ms. Medina did a fine job on the board. He stated that it had been practice of the Council to remove those members that may be perceived as having conflict.

Mayor Pro Tem Filidoro stated that the chair of the board and her adversaries had respectful things to say about Ms. Medina. He stated that the issue was not with Ms. Medina it was with Williams. He stated that the seat Ms. Medina held was an industry representative seat. He stated that he felt the lawsuit by Williams was malicious. He stated that he supported the removal of Ms. Medina from the board.

Deputy Mayor Pro Tem Hayden stated that the removal was not about Ms. Medina but about consistency. He stated that Jennifer Rogers didn't have a direct litigation against the Town but she was perceived to have an indirect involvement. He stated that the perception was that Ms. Medina had an indirect involvement with the Williams lawsuit.

Deputy Mayor Pro Tem Hayden moved to appoint Craig Bromley to the regular position held by Deborah Medina on the Oil & Gas Advisory Board.

Councilmember Lyda thanked Ms. Medina for her service to the Town.

Mayor Northern stated that she agreed that Ms. Medina was very professional. She stated that Ms. Medina reported to the Williams Corporation who had been very litigious.

Mayor Pro Tem Filidoro requested to amend the motion to accept the resignation of Frankie Arthur. Mayor Pro Tem Filidoro stated that the board had been working for three months and were in the final stages and for that reason he felt it would be difficult for the board to appoint a new member to the industry seat. He stated that there were other industry representatives serving on the board.

Deputy Mayor Pro Tem Hayden moved to appoint Craig Bromley to the regular position held by Deborah Medina on the Oil & Gas Advisory Board and to accept the resignation of Frankie Arthur Mayor Pro Tem Filidoro seconded the motion.

VOTE ON THE MOTION

AYES: Lyda, Filidoro, Hayden
NAYS: Dixon

6. **SP 05-10 – The River Walk at Central Park – Medical Village, Building 1**
Consider a request for a Site Plan (SP 05-10 - The River Walk at Central Park - Medical Village, Building 1) to develop a medical office building with an exception to the access management policy and criteria, regarding driveway spacing, contained in the Town's Engineering Design Criteria and Construction Standards adopted through Chapter 32 of the Code of Ordinances, subject to the terms and conditions in the attached development agreement and authorization for Mayor to execute same on behalf of the Town. The property is located at 4300 Long Prairie Road. (The Planning and Zoning Commission recommended approval by a vote of 5 to 0 at its October 25, 2010, meeting.)

Doug Powell, Executive Director of Development Service gave a presentation. The presentation is on file with the Town Secretary's Office.

Tim Lavender, President of Rainier Medical Investments gave a presentation.

Deputy Mayor Pro Tem Hayden asked Mr. Lavender when Rainier Medical was founded and how many construction projects they had performed.

Mr. Lavender stated that Rainier Medical was formed in November of 2009 as a medical division of Rainier Capital Management which was founded in 2001. He stated that at that time Rainier Capital Management held 136 properties. He stated that the Riverwalk Medical Office Building was the first development project of Rainier Medical. He stated that this project would be the 24th project he and his partner Daryn Eudaly had worked on together.

Deputy Mayor Pro Tem Hayden asked if Rainier had 100% financing available for the project.

Mr. Lavender stated that they had secured a commitment for 90% financing by one of the major healthcare Real Estate Investment Trusts (REITs) in the country. He stated that the project was a fully attached medical office building to a system hospital which was one of the rarest medical office buildings and had the highest investment rating. Mr. Lavender stated that the remainder of the financing was a combination of Rainier and Physicians.

Deputy Mayor Pro Tem Hayden asked how much of the building was pre-leased.

Mr. Lavender stated that the threshold was 40% pre-leased. He stated that there were leases at that time out for signature that would approach 50,000 square feet. He stated that the building was 82,923 square feet. He stated that there was an oncology center that would consume most of the first floor and there were two external radiation oncology vaults that brought the total square feet to 84,000 square feet.

Deputy Mayor Pro Tem Hayden asked if the building would be used only for medical purposes.

Mr. Lavender answered yes.

Mayor Pro Tem Filidoro stated that when the project was first put together it was envisioned that the MOB would be opened at the same time as the hospital. He stated that he knew of several specialists waiting to get into the hospital.

Deputy Mayor Pro Tem Hayden asked if the utilities would be underground.

Bill Resch of Rainier Medical answered yes.

Deputy Mayor Pro Tem Hayden asked when the other medical office and retail buildings would move forward.

Mr. Resch stated that they were working on the other buildings and talking to tenants about occupying them. He stated that some of the future buildings would be more in line with general practitioners. He stated that in accordance with the Riverwalk standards the buildings along Central Park Avenue would be a combination of retail and medical uses.

Deputy Mayor Pro Tem Hayden asked if they had done any market studies to identify the amount of medical office the area could absorb.

Mr. Lavender stated that their ability to study a market and understand the needs had been the hallmark of their success. He stated that there was 200,000 square feet of medical office that could be absorbed in the current market. He stated that there was a deficiency of approximately 74 physicians of different specialties in the market. He stated that they would like to see the Town embrace the subject site as a medical community that would drive all of the services to that campus.

Deputy Mayor Pro Tem Hayden asked what the Town could do to help build it into a medical community.

Mr. Lavender stated that their goal was to have building 105 ready to bring back during the first quarter of 2011. He stated that the Town could adopt the philosophy to drive their focus to develop a medical campus.

Deputy Mayor Pro Tem Hayden asked when they anticipated groundbreaking and completion.

Mr. Lavender stated that he would come up with proposed dates.

Mayor Northern asked what the triggers were for building the parking lot structure.

Mr. Powell stated that the triggers were the need for parking. He stated that as each building came forward they would be looked at under the Town's code and would have to provide sufficient parking and the timing of the parking structures being built would depend on the proposed buildings.

Mayor Northern asked if they would put the infrastructure for the parking structures in at the beginning.

Mr. Powell stated that it was determined that it would be easier to put the infrastructure in when the parking structures were needed.

Mayor Northern asked about the parking during the construction of the parking structure.

Mr. Powell stated that that they had talked about phasing and what would need to be done. He stated that under the Town's standards they would have to provide temporary parking.

Deputy Mayor Pro Tem Hayden asked what the resolution was during the discussion of a turn lane during the Planning and Zoning Commission meeting.

Mr. Powell stated that he didn't recall discussion of a turn lane. He stated that there was an issue of making the barricades more esthetically pleasing than the typical Type 3

barricade. He stated that they would work with staff to both meet the safety standards and make it esthetically pleasing.

Councilmember Lyda asked for Mr. Powell to highlight the exception being brought forward.

Mr. Powell stated that the exception was spacing. He stated that it was on the original concept plan for the Riverwalk but didn't meet the Town's typical standards for spacing.

Mayor Northern asked what building 106 would be.

Daryn Eudaly, Executive Vice President of Rainier Medical referenced the site plan and explained that there would be a second medical office building and potentially a hotel. He stated that depending on the need and number of physicians that relocate, building 106 would be medical with retail or retail with convention components. He also discussed their plan and phasing for parking.

Deputy Mayor Pro Tem Hayden asked what type of hotel they were proposing.

Mr. Eudaly stated that the preliminary plans for the hotel would be similar to the Hilton of Southlake. He stated that they had not done a market study and it would be sized to the market need. He stated that it could be built up to five stories.

Mayor Pro Tem Filidoro moved to approve Site Plan (SP 05-10 - The River Walk at Central Park - Medical Village, Building 1) to develop a medical office building with an exception to the access management policy and criteria, regarding driveway spacing, contained in the Town's Engineering Design Criteria and Construction Standards adopted through Chapter 32 of the Code of Ordinances, subject to the terms and conditions in the attached development agreement and authorize the Mayor to execute same on behalf of the Town. Councilmember Lyda seconded the motion.

VOTE ON THE MOTION

AYES: Dixon, Hayden, Filidoro, Lyda

NAYS: None

Mayor Northern opened Items 7, 8, and 9 together.

- 7. **MPA 02-10 - The Preserve at Flower Mound** **Public Hearing**
Public Hearing to consider a request to amend Section 1.0, Land Use Plan (MPA 02-10 - The Preserve at Flower Mound) of Master Plan 2001, from Estate Residential and Specific Plan Area 3 (SPA 3) with Estate Residential, to Medium Density Residential, and Specific Plan Area 3 (SPA 3) with Medium Density Residential, and to consider adopting an ordinance providing for said amendment. The property is located on the northwest corner of Chaparral Lane and Long Prairie Road. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its October 11, 2010, meeting.)

8. **ZPD 02-10 - The Preserve at Flower Mound** **Public Hearing**
Public Hearing to consider a request for rezoning (ZPD 02-10 - The Preserve at Flower Mound) from Agricultural District (A) with Specific Use Permit 115 (SUP 115) and Single-Family Estate (SF-E) to Planned Development District-113 (PD-113) with Single-Family District-10 (SF-10) and Retail District-2 (R-2) and an exception to Section 98-147, Topographical slope protection, as authorized by Section 98-147(b) of the Code of Ordinances, and to consider adopting an ordinance providing for said amendment, subject to the terms and conditions in the attached Development Agreement and authorization for Mayor to execute same on behalf of the Town. The property is located at the northwest corner of Chaparral Lane and Long Prairie Road. (The Planning and Zoning Commission recommended approval by a vote of 5 to 1 at its October 11, 2010, meeting.)
9. **Public Hearing**
Public Hearing to consider an application for a tree removal permit for the removal of eight specimen trees on property proposed for development as The Preserve at Flower Mound. The property is generally located west of Long Prairie Road and north of Chaparral. (The Environmental Conservation Commission recommended approval by a vote of 5 to 0 at their July 8, 2010, meeting).

Staff Presentation

Doug Powell, gave a presentation. The presentation is on file with the Town Secretary's Office.

Rob Paul, Toll Brothers

Mr. Paul stated that Toll Brothers worked hard to develop quality locations, communities, and homes in the Town of Flower Mound. He stated that during the early stages of the project he reached out the boarding Homeowner's Associations and residents within 400 feet. Mr. Paul stated that he held multiple meetings for residents to get feedback and overcome any concerns. Mr. Paul stated that he had individual meetings with the property owners to the north, Ms. Gentry, to alleviate drainage and fencing concerns.

Mathew Alexander, Dowdey Anderson & Associates

Mr. Alexander gave a presentation.

Questions from the Governing Body and Answers

Deputy Mayor Pro Tem Hayden asked what the process would be to remove additional specimen trees.

Jared Martin, Environmental Review Analyst stated that they would have to go to ECC and then to Council for approval to remove additional specimen trees.

Mayor Northern thanked Toll Brothers for communicating with the homeowners.

Deputy Mayor Pro Tem Hayden stated that Ms. Gentry was concerned about drainage from the development coming onto her property.

Mr. Alexander showed on the exhibit how they had re-worked the drainage to prevent water from the development getting to the creek and impacting her site.

Mr. Paul stated that he offered to place tubular steel fencing along the north border except for the portion in the floodplain.

Deputy Mayor Pro Tem Hayden asked how staff felt about the fence along north border.

Mr. Powell stated that there was no requirement for the fence but that the fence as proposed would meet the Town's standards.

Deputy Mayor Pro Tem Hayden stated the Toll Brothers agreed to put the installation of the fence along the north border into the development agreement. Deputy Mayor Pro Tem Hayden asked if a culvert would be placed across the dry ditch.

Mr. Paul answered yes.

Deputy Mayor Pro Tem Hayden asked if a box culvert could be made to look like an arched top culvert.

Mr. Paul stated that with the right application on the box it could look arched.

Deputy Mayor Pro Tem Hayden asked if there was a price differential with box and arched culverts.

Mr. Paul stated that there was a 20% premium for an arched top versus a boxed culvert.

Councilmember Lyda wanted to verify that tubular steel fencing was being recommended in the amenity area.

Mr. Paul stated that anywhere a lot backed to floodplain tubular steel fencing was required. He stated that he had offered to place tubular steel along the north property line for the homeowners.

Councilmember Lyda asked about the access to the open area. He stated that they had said there would be an eight foot drop off where it entered the creek.

Mr. Paul stated that they planned to leave the dry creek bed in its natural state. He stated that they planned to put a trail around the amenity pond and from that area it would be a more gradual slope.

Mayor Northern asked if there would be sidewalks along Long Prairie Road.

Mr. Paul answered yes.

Public Comments

Carol Kohanki, 4312 Lauren Way, Flower Mound

Ms. Kohanki requested that road on the property retain the name Merryglen Lane. She stated that Merry and Glen Webb were the producers, directors, and creators of the play Sweet Flower Mound Land.

David Wright, 2316 Ash Leaf Lane, Flower Mound

Mr. Wright stated that he was the President of the Forest Park Estates Homeowners Association which was to the south and southeast of the proposed development. He stated that he spoke in favor of the development on behalf of the homeowners and the Homeowner's Association. He stated that the traffic on FM 2499 and Chaparral was already burdened and needed a traffic signal.

Janvier Scott, 2829 Bob White Lane, Flower Mound

Ms. Scott asked if the fence that Toll Brothers offered to place on the northern property line could be included in the development agreement.

Mr. Paul stated that the development agreement had already been signed but was willing to modify the agreement. He stated that another option would be to put the offer in writing.

Ms. Scott stated that each time the Master Plan was amended the country feel was lost. She stated that she was not against the development. She stated that she was concerned with the distance between the homes and the size of the lots.

Sharon Gentry, 2750 Bob White Lane, Flower Mound

Ms. Gentry asked if the slope changes on Merryglen Lane and the changes to drain away from her property could be put into the development agreement. Ms. Gentry stated that she didn't have a problem with the development. She stated that she was not happy about changing the Master Plan. Ms. Gentry stated that at the Planning and Zoning Commission meeting they said that changing the Master Plan for that development was ok because the proposed density fit the development that had already occurred. She stated that they were talking about the development to the south and to the west. Ms. Gentry stated that the master planners looked at the development that had occurred on the subject property as well as the property to the north and saw that the development from Chaparral to Sagebrush had families and homes on acreage and had designated that area in the Master Plan to preserve that estate development. She stated that it was because they saw the advantage of the low density in terms of keeping the trees and the low impact on city services, schools, and roads. Ms. Gentry asked the Council not to think of the area as being undeveloped. She asked the Council to consider the intent of the planners when making their decisions. She stated that she had heard the cost of the land put acreage lots out of reach. She stated that there were people willing to pay the price for that lifestyle. Ms. Gentry stated that she had heard that the taxes coming from the potential development were important and possibly a deciding factor. She asked the Council to consider the impact on water, sewer, schools, roads, and air quality.

Steve Metarelis, 4224 West Creek, Dallas

Mr. Metarelis spoke in favor of the development. He stated that Toll Brothers developments were top quality.

Cleveland Basinger, 7319 Hill Forest Drive, Flower Mound

Mr. Basinger spoke on behalf of his father who was one of the subject property owners. He stated that he was in favor of the development and felt it was the right time and use for the property.

David Ogletree, 3004 Yale Drive, Flower Mound

Mr. Ogletree stated that he lived directly south of the pond. He stated that he was in favor of the development.

Neil Gaige, 3000 Merryglen Lane, Flower Mound

Mr. Gaige stated that Toll Brothers had addressed all of their concerns. Mr. Gaige was in favor of the development.

Dustin Rubeck, 2900 Chaparral, Flower Mound

Mr. Rubeck spoke in favor of the project.

Close Public Hearing

Council Deliberation

Councilmember Lyda asked Mr. Wright if he had received feedback from his subdivision on the traffic as it would be the primary route to the schools from the development.

Mr. Wright stated that a signal at the intersection of Chaparral and FM 2499 would ease traffic and reduce cut through traffic on Sycamore Leaf.

Deputy Mayor Pro Tem Hayden stated a signal at the intersection of Chaparral and FM 2499 would be TxDOT's responsibility. He stated that surveys had been complete that didn't show a need for the signal even with the addition of the development. Deputy Mayor Pro Tem Hayden stated that rather than putting the grade issue in the development agreement he requested that the Town's Engineering Department review paving and grading plan to ensure the best solution was being done. Deputy Mayor Pro Tem Hayden requested that the development agreement be amended to include the fencing along the north property line.

Mr. Welch asked if the fence would be placed on the developer's property or the Gentry's property. He stated that if the fence was going to be placed on the Gentry's property the Town could not enforce that agreement.

Mr. Paul stated that he would agree in a letter to the Gentrys to place the fence on their property. He stated that if the fence was placed on the developers side the HOA would have control over it.

Deputy Mayor Pro Tem Hayden asked if the HOA would be responsible for the maintenance of the fence.

Mr. Paul stated that if he placed the fence on the development side the future HOA would have control of the fence. He stated if he placed it on the Gentry's property the fence would be theirs and would not rely on the HOA to take care of it.

Deputy Mayor Pro Tem Hayden asked Mr. Welch if he recommended the fence being placed on the developer's side or on the Gentry's side.

Mr. Welch stated that if it was placed on the developer's side it would be the HOA's fence and would have control of it. He stated if it is on the Gentry's side they would own the fence but have to maintain it.

Deputy Mayor Pro Tem Hayden stated that he felt it would be better to place it on the developer's property so the HOA would maintain it.

Mr. Paul stated that the property owners to the north should make the decision.

Mr. Jefferson stated that the Council would have another opportunity to review the resolution of the drainage issues when the development plan was brought back for approval.

Deputy Mayor Pro Tem Hayden stated that he was concerned with altering the Master Plan as it would have implications. He stated that the proposed development was the best proposal that he had seen for that location. He stated that he supported the project.

Mayor Northern stated that it was difficult to consider a Master Plan Amendment and Zoning change. She stated that she was happy with the quality Toll Brothers previous properties throughout the Town. Mayor Northern asked Mr. Paul, if the project was approved, when he would begin turning dirt on the project.

Mr. Paul stated that it would take between six and eight months to get everything in place to being turning dirt.

Mayor Northern stated that she had an issue with developers land banking and was glad Toll Brothers was intending to start work as soon as possible.

Mr. Paul stated that he was sensitive to that issue. He stated that what set them apart was that they were the developer and the home builder.

Councilmember Dixon stated that he was comfortable with Toll Brothers. He stated that he had served on Planning and Zoning and Council since 2004 and the subject properties had come before them many time. He stated that he was happy to see the neighbors come together. Councilmember Dixon stated that a Master Plan was a guide not the end all. He stated that he supported the development.

Council Deliberation Item 7

Councilmember Lyda moved to approve a request to amend Section 1.0, Land Use Plan (MPA 02-10 - The Preserve at Flower Mound) of Master Plan 2001, from Estate Residential and Specific Plan Area 3 (SPA 3) with Estate Residential to Medium Density Residential and Specific Plan Area 3 (SPA 3) with Medium Density Residential, and to adopt an ordinance providing for said amendment. Mayor Pro Tem Filidoro seconded the motion. The caption of the ordinance reads as follows:

ORDINANCE NO. 67-10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING SECTION 1.0 LAND USE PLAN AND SECTION 3.0 SPECIFIC PLANS OF MASTER PLAN 2001, BY AMENDING ORDINANCE NO. 24-01 IN PART, WHICH ADOPTED MASTER PLAN 2001, SPECIFICALLY TO CHANGE THE CURRENT LAND USES REFLECTED ON THE LAND USE PLAN MAP FROM ESTATE DENSITY RESIDENTIAL USES TO MEDIUM DENSITY RESIDENTIAL USES AND SPECIFIC PLAN AREA #3 (SPA 3) WITH ESTATE DENSITY RESIDENTIAL USES TO SPECIFIC AREA PLAN AREA #3 (SPA 3) WITH MEDIUM DENSITY RESIDENTIAL USES ON APPROXIMATELY 41.5 ACRES OF LAND SITUATED IN THE JOHN WIZWELL SURVEY, ABSTRACT NO. 1346A, TRACT 29; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON THE MOTION

AYES: Lyda, Filidoro, Hayden, Dixon
NAYS: None

Council Deliberation Item 8

Mayor Pro Tem Filidoro moved to approve a request for rezoning (ZPD 02-10 - The Preserve at Flower Mound) from Agricultural District (A) with Specific Use Permit 115 (SUP 115) and Single-Family Estate (SF-E) to Planned Development District-113 (PD-113) with Single-Family District-10 (SF-10) and Retail District-2 (R-2) and an exception to Section 98-147, Topographical slope protection, as authorized by Section 98-147(b) of the Code of Ordinances, and acceptance of Park Development Fees in the amount of \$215,339.57, and cash in lieu of land in the amount of \$127,696.00 to satisfy the requirements of the Park Land Dedication Ordinance, and to consider adopting an ordinance providing for said amendment, subject to the terms and conditions in the attached Development Agreement and authorization for Mayor to execute same on behalf of the Town. Councilmember Lyda seconded the motion. The caption of the ordinance reads as follows:

ORDINANCE NO. 68-10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE OFFICIAL ZONING MAP, EXHIBIT "A" OF SUBPART B, LAND DEVELOPMENT REGULATIONS, OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY CHANGING THE ZONING FROM AGRICULTURAL DISTRICT

(A) USES WITH SPECIFIC USE PERMIT 115 (SUP 115) AND SINGLE-FAMILY ESTATE (SF-E) USES TO PLANNED DEVELOPMENT DISTRICT NO. 113 (PD-113) WITH SINGLE-FAMILY DISTRICT-10 (SF-10) AND RETAIL DISTRICT-2 (R-2) USES AND GRANTING AN EXCEPTION TO THE REQUIREMENTS OF SECTION 98-147, TOPOGRAPHICAL SLOPE PROTECTION, AS AUTHORIZED BY SECTION 98-147(B) OF THE CODE OF ORDINANCES, ON APPROXIMATELY 45 ACRES OF LAND IN THE JOHN WIZWELL SURVEY ABSTRACT 1346A, TRACT 29, IN ACCORDANCE WITH THE TOWN'S MASTER PLAN 2001 AND SPECIFIC REQUIREMENTS STATED HEREIN AND EXHIBITS ATTACHED HERETO; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON THE MOTION

AYES: Dixon, Hayden, Filidoro, Lyda

NAYS: None

Council Deliberation Item 9

Deputy Mayor Pro Tem Hayden moved to approve a tree removal permit for the removal of eight specimen trees on property proposed for development as The Preserve at Flower Mound. Councilmember Dixon seconded the motion.

VOTE ON THE MOTION

AYES: Lyda, Filidoro, Hayden, Dixon

NAYS: None

M. COORDINATION OF CALENDARS AND FUTURE AGENDAS/MEETINGS

- December 20 – canceled regular meeting.
- December 16 – special meeting and work session.
- February 21 – canceled regular meeting due to the conflict with the Denton County Days.
- February 17 – special meeting and work session.

N./O. CLOSED/OPEN MEETING

The Town Council convened into a closed meeting at 10:01 p.m. on November 1, 2010 pursuant to Texas Government Code Sections 551.071, 551.072, 551.074, and 551.087 to discuss matters relating to consultation with Town Attorney, pending litigation, real property, personnel, and economic development negotiations and reconvened into an open meeting at 10:41 p.m. on November 1, 2010 to take action on the items as follows:

- a. Discuss and consider economic development incentives.

No action taken.

- b. Discuss and consider acquisition and/or lease of real property for municipal purposes and all matters incident and related thereto.

No action taken.

- c. Discuss selection of and applications for Town Secretary position, and all matters incident and related thereto.

No action taken.

- d. Discuss and consider appointment of a Presiding Municipal Judge for the Municipal Court of Record No. 1 in the Town of Flower Mound, Texas.

No action taken.

- e. Consultation with Town Attorney regarding legal issues associated with a contract between the Town and the Flower Mound Chamber of Commerce.

No action taken.

- f. Consultation with Town Attorney regarding legal issues associated with Mockingbird Pipeline, L.P. v. Town of Flower Mound and Town of Bartonville, Cause No. 2010-30336-211, pending in the 211th Judicial District Court of Denton County, Texas, and all matters incident and related thereto.

No action taken.

- g. Discuss and consider appointments to the Animal Services Board, Board of Adjustment, Community Development Corporation, Environmental Conservation Commission, LISD Liaison, Parks, Arts and Library Services Board, Planning and Zoning Commission, TIRZ #1 Board, and Transportation Commission.

No action taken.

P. ADJOURN REGULAR MEETING

Mayor Northern adjourned the regular meeting at 10:43 p.m. on Monday, November 1, 2010, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS


MELISSA D. NORTHERN, MAYOR

ATTEST:



Tracy Knierim

TRACY KNIERIM, INTERIM TOWN SECRETARY

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