

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING AND WORK SESSION HELD ON THE 20TH DAY OF JUNE, 2011 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 and work session with the following members present:

Melissa Northern	Mayor
Al Filidoro	Mayor Pro Tem
Steve Lyda	Deputy Mayor Pro Tem
Kendra Stephenson	Councilmember Place 1
Mark Wise	Councilmember Place 3
Tom Hayden	Councilmember Place 5

constituting a quorum with the following members of the Town Staff participating:

Harlan Jefferson	Town Manager
Theresa Fawcett	Interim Town Secretary
Terrence Welch	Town Attorney
Kent Collins	Assistant Town Manager
Chuck Springer	Assistant Town Manager/CFO
Gary Sims	Executive Director of Community Services
Doug Powell	Executive Director of Development Services

A. CALL BRIEFING SESSION TO ORDER

Mayor Northern called the briefing session to order at 6:02 p.m.

B. BRIEFING SESSION

1. Town Council Boards and Commissions Subcommittee Reports

Councilmember Hayden reported attending the PALS Board meeting in which they discussed trail proposals. The sub-committee visited about names for the new Wilson-Carmel park area. They came up with three names which will go before the PALS Board and then Town Council in the future.

Councilmember Wise reported attending the Planning & Zoning Commission meetings in which there were four items discussed. Three of which are included in tonight's Agenda.

Deputy Mayor Pro Tem Lyda reported attending the Environmental Conservation Commission meeting and they considered one tree removal permit which was approved for the senior signature living project. They also voted on and moved forward with a new draft of their powers and duties which will later come forward to Council.

Mayor Pro Tem Filidoro reported attending the unveiling of the A-train on Saturday, which included riding the A-train from Lewisville to Denton and back. He indicated the train will be an asset for the area and it will connect from Denton to Carrollton where riders can take DART to continue into downtown Dallas and beyond. Future plans include a connection at the DFW Airport.

2. Discuss Consent and Regular Items

No discussion.

3. Discuss Future Agenda Items

Councilmember Stephenson requested to have a discussion in the future regarding the Town's Tree Ordinance, given one of the items that came up during the Oil & Gas Ordinance discussions is that there is a small item related to the agricultural exemption and how that plays into an active application. For that reason she would like to see that put on a future agenda to open the topic up for discussion.

Mayor Northern asked for clarification as to whether she is requesting to look at the Tree Ordinance as it relates to the Oil & Gas Ordinances or how it related to the agriculture exemption.

Councilmember Stephenson indicated that under the Tree Ordinance, currently an applicant for a pad site is allowed to use the ag exemption to remove trees, which would effect the variances that would be needed for that pad site. For that reason she suggested having a separate discussion regarding the Tree Ordinance to make that a little tighter.

Mayor Northern indicated there should be a discussion about that and requested she forward that request to her for review.

4. Discuss Council Communications

None outstanding.

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 6:08 p.m.

E. INVOCATION

Deputy Mayor Pro Tem Lyda gave the invocation.

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

Deputy Mayor Pro Tem Lyda led the pledges.

G. PRESENTATIONS

National Parks and Recreation Month – July (Proclamation).

Mayor Northern presented Chuck Jennings, Recreation Superintendent, with a Proclamation for National Parks and Recreation Month (July).

Lewisville Independent School District Update – Tony Gepner.

Tony Gepner, Lewisville Independent School District (LISD) Liaison, provided an update on the Lewisville Independent School District. He offered the following updates:

- Dr. Waddell came on board as a new superintendent.
- Board of Trustees update.
- LISD is facing budget concerns and as a result Dr. Waddell has initiated staff reorganization.
- In relation to Oil & Gas drilling and possible changes, he noted there aren't any changes planned with the current policy to date that he is aware of.
- There are some challenges with regard to overpopulation at both Shadow Ridge Elementary and Middle School. There is also under population in some schools such as Forestwood Middle and Forest Vista Elementary. Perhaps there may be some suggestions coming forward on that topic.

Mayor Pro Tem Filidoro inquired, with regards to their budget, how far apart are they based on the reorganization and things being done. Are they looking at class sizes and will they be able to bridge that.

Mr. Gepner indicated they are looking at all opportunities to offer a financial gain. There may be some implemental increases and Dr. Waddell is making sure teachers have all the resources needed.

Mayor Pro Tem Filidoro asked if LISD had a large amount of teachers or support staff layoffs.

Mr. Gepner replied they have not and they have chosen to approach this more from a volunteer effort. They voted to extend the offer to allow voluntary retirement where they had up to 500 people and they set aside \$3M in their budget to pay for those people and their packages as they leave. He stated last he heard it was up to 144, however, he believes that has increased since they extended it past April.

Deputy Mayor Pro Tem Lyda requested Mr. Gepner convey the Town's congratulations to newly elected President Gregg and extended an invitation for her to contact the Town should she wish to do so.

Presentation on Delinquent Tax Collections by Sawko & Burroughs, Attorneys at Law.

Mr. Burroughs indicated he has represented the Town since 1985. He provided an overview of the property tax collection process handled by his office. He also

provided a handout identifying delinquency collections.

Deputy Mayor Pro Tem Lyda pointed out that within the report provided, it seems the more recent the year, the higher the balance. He asked if it's the economy that's causing the rise.

Mr. Burroughs commented that starting about two years ago, Denton County was impacted. He noted there were new names that were going delinquent. This suggested that some folks that could have received financing to pay the taxes were having difficulty in doing that. In other cases, it could include individuals trying to sell their homes and were unsuccessful in doing so.

Councilmember Hayden stated it's his understanding that his firm is compensated based on a percentage of what is collected. He asked Mr. Burroughs to inform the Council what that percentage is.

Mr. Burroughs stated it's twenty percent over and above the base tax penalty and interest that is due.

Councilmember Hayden asked how many cities he does this same work for.

Mr. Burroughs replied twenty three, and all in Denton County.

Councilmember Hayden asked if it causes complications being an elected official in his line of work.

Mr. Burroughs replied given the respectful line of communication he has with the public it has not been a significant issue.

H. PUBLIC PARTICIPATION

Virginia Simonson, 3104 Native Oak Dr, Flower Mound, Tx

Ms. Simonson reminded Council why the Moratorium was originally put in place and if Council felt the proposed ordinance addresses all of the areas of concern, then there is not a need to extend it and the ordinance can be adopted as written. However, if it does not then there is a need to continue the Moratorium and revise the proposed ordinance.

Virginia Jellison, 2705 Lakeville Ln, Flower Mound, Tx

Ms. Jellison offered thanks for the sound wall on FM 2499 as it reflects a beautiful entrance into the community and increases safety because of its solid construction.

Patty Mizeur, 1821 Castle Ct, Flower Mound, TX 75028

Ms. Mizeur noted she was the President of Flower Mound Voters for Conservative Spending. She spoke against the Town f having a VIP tent at the Independence Fest event.

Mary Kay Walker, 3229 Oak Meadow Dr, Flower Mound, Tx

Ms. Walker thanked Council, Town staff, and the business community for support of the senior community with the upcoming Shirley Voirin Senior Center, along with a new bus.

I. MAYOR AND TOWN COUNCILMEMBER ANNOUNCEMENTS

Deputy Mayor Pro Tem Lyda reported:

- Attending the Phase I ribbon cutting for FM 1171
- Attended the A-Train launch
- He noted the passing of Dave Henderson and how he was missed at the FM 1171 ribbon cutting. He also summarized other community accomplishments by Mr. Henderson.

Councilmember Wise congratulated police and fire for their response times based on a report he recently read as they came in under the threshold in many categories.

Councilmember Hayden had the following announcements:

- also expressed appreciation for the work of Dave Henderson and commented that he will definitely be missed.
- American Amateur Youth Baseball Association coming to Flower Mound in July with over 200 teams (which equates to approximately 5,000 – 10,000 people coming to Flower Mound). He indicated this demonstrates the Town needs an economic center for the Town.

Mayor Northern had the following announcements:

- Expressed appreciation for Dave Henderson and also stated he will be greatly missed.
- She attended the FM 1171 ribbon cutting and noted the benefits to be gained include air quality (as vehicles will be moving and not stationary), safety improvements, as well as economic development, given the access gained from 35W to the remainder of the community.

She also commented that the purpose of the VIP tent is to say thanks to major employers for being in the community and to showcase Flower Mound to developers and site selectors. This event will substitute the Town's Allies Day.

J. TOWN MANAGER'S REPORT

2499 Sound Wall

This project was complete a number of years ago, however, it is coming forward to Council for acceptance.

Seniors Bus Update:

Mr. Jefferson indicated staff explored three options based on Council's recommendation:

1. purchase a 25-passenger vehicle similar to what they currently have for a purchase price of \$60,000.
2. purchase a 25-passenger bus with a wheelchair lift, which would take 90-120 days to have that vehicle delivered and the cost would be between \$80,000 - \$90,000.
3. purchase the same bus with a kneeling feature in which the bus could be lowered, which would take 90-120 days to be delivered at a cost of \$120,000.

He stated the needs expressed by the seniors were liability issues, as well as a climate-controlled environment. Staff is pursuing option one, with the goal of having the bus available at the time of the opening of the Shirley Voirin Social Senior Center. This item would be brought forward at the July 18th meeting.

Mayor Northern inquired about the \$60,000 and if it would come out of the vehicle replacement fund and other sources mentioned at a previous meeting. She wanted to make sure none of the emergency response vehicles would be impacted from the purchase of this vehicle.

Mr. Jefferson indicated those vehicles would not be impacted.

Deputy Mayor Pro Tem Lyda asked what are the seniors currently using, given the bus is currently out of commission.

Mr. Jefferson replied currently they are contracting with bus service vendors.

Deputy Mayor Pro Tem Lyda indicated he was comfortable with staff's recommendation.

Mayor Pro Tem Filidoro inquired how much of a problem has the current configuration been that would warrant spending almost double for that unit, and if this was an ongoing or occasional issue.

Mr. Jefferson indicated he was not aware of any complaints or concerns where any of those features were needed to date.

Councilmember Hayden and Mayor Pro Tem Filidoro commented they believe it's not necessary to spend money on the additional features based on that information.

Budget and Communication Meeting:

Mr. Jefferson reported this meeting was held last week, and they are provided annually to give residents an opportunity to learn about the budget process, and to learn about the Town's current economic and financial status, along with providing them an opportunity to offer input on priorities the Town is focusing on.

This meeting also provided residents information regarding ways they can communicate with the Town. He offered appreciation to the residents that came out.

Mr. Jefferson provided the following road project updates:

Flower Mound Rd

Between Skillern & 1171 should be available this August.

Garden Ridge

Between FM 3040 and Spinks should be available and open to the public by September of this year.

Morriss/Gerault

Capacity improvements by May 2012.

Dixon

Capacity Improvements by June 2012.

Chinn Chapel Rd

Construction for capacity improvements from FM 407 to Waketon scheduled to start this fall.

Windsor Rd

By next spring construction will start.

FM 1171

Phase II and III - TxDOT said they would let that project by February 2012 (from Shiloh Rd to 35W).

Wichita Trail

This project has been designed, and staff is waiting on responses from regional partners to identify where funds can be freed up to allocate toward that project. There is no set date at this time, however, it is hoped that it would be sometime in 2012.

K. CONSENT ITEMS

Mayor Pro Tem Filidoro made a motion to approve by consent Items 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13. Deputy Mayor Pro Tem Lyda seconded the motion. Each item, as approved by consent, is restated below along with the approved recommendation, and if applicable, the Ordinance or Resolution caption for each, for the record.

- 1. Consider approval of the minutes from a special meeting and work session of the Town Council held on May 24, 2011.**

RECOMMENDATION: Move to approve the minutes from a special meeting and

work session of the Town Council held on May 24, 2011.

2. **Consider approval of the minutes from a strategic planning session of the Town Council held on June 3, 2011.**

RECOMMENDATION: Move to approve the minutes from a strategic planning session of the Town Council held on June 3, 2011.

3. **Consider approval of the minutes from a strategic planning session of the Town Council held on June 4, 2011.**

RECOMMENDATION: Move to approve the minutes from a strategic planning session of the Town Council held on June 4, 2011.

4. **Consider approval of cancelling the September 5, 2011, regular meeting of the Town Council and calling a special meeting on September 6, 2011.**

RECOMMENDATION: Move to approve cancelling the September 5, 2011, regular meeting of the Town Council and calling a special meeting on September 6, 2011.

5. **Consider approval of Change Order No. 2 for phase two of the FM 2499 Section 2 & 3 Sound Wall project, for a decrease of \$3,470.00, final acceptance of the project, authorization for final payment to the contractor, Aber Fence and Supply Company, Inc., in the amount of \$38,043.50; and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Move to approve Change Order No. 2 for phase two of the FM 2499 Section 2 & 3 Sound Wall project, for a decrease of \$3,470.00, final acceptance of the project, authorization for final payment to the contractor, Aber Fence and Supply Company, Inc., in the amount of \$38,043.50; and authorization for the Mayor to execute same on behalf of the Town.

6. **Consider approval of Amendment No. 1 to the Professional Services Agreement with Kimley-Horn and Associates, Inc., to provide additional professional engineering services for the Upper Timber Interceptor Phase I project, for an increase of \$16,900.00; and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Move to approve Amendment No. 1 to the Professional Services Agreement with Kimley-Horn and Associates, Inc., to provide additional professional engineering services for the Upper Timber Interceptor Phase I project, for an increase of \$16,900.00; and authorization for the Mayor to execute same on behalf of the Town.

7. **Consider approval of a participation letter with Emergicon, LLC, for EMS billing services, through a City of Port Isabel agreement, in the estimated annual amount of \$49,500; a related subscription agreement with ESO Solutions, Inc.; related and separate business associate contracts with ESO Solutions, Inc. and Emergicon, LLC; and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Move to approve participation letter with Emergicon, LLC, for EMS billing services, through a City of Port Isabel agreement, in the estimated annual amount of \$49,500; a related subscription agreement with ESO Solutions, Inc.; related and separate business associate contracts with ESO Solutions, Inc. and Emergicon, LLC; and authorization for the Mayor to execute same on behalf of the Town.

8. **Consider approval of the engagement letter with Pattillo, Brown & Hill, L.L.P., to perform external auditing services for the fiscal year ending September 30, 2011, and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Move to approve engagement letter with Pattillo, Brown & Hill, L.L.P., to perform external auditing services for the fiscal year ending September 30, 2011, and authorization for the Mayor to execute same on behalf of the Town.

9. **Consider approval of Bid No. 33-11-B for the purchase of a 4-wheel drive wheel loader to Hi-Way Equipment Co., in the amount of \$124,425.**

RECOMMENDATION: Move to approve Bid No. 33-11-B for the purchase of a 4-wheel drive wheel loader to Hi-Way Equipment Co., in the amount of \$124,425.

10. **Consider approval of the purchase of firefighter bunker gear, in the estimated annual amount of \$50,000, from NAFECO Inc., through a City of Lewisville contract.**

RECOMMENDATION: Move to approve the purchase of firefighter bunker gear, in the estimated annual amount of \$50,000, from NAFECO Inc., through a City of Lewisville contract.

11. **Consider approval of the purchase of slurry seal services, in the estimated amount of \$65,000, from Viking Construction, Inc., through a City of Euless contract.**

RECOMMENDATION: Move to approve the purchase of slurry seal services, in the estimated amount of \$65,000, from Viking Construction, Inc., through a City of Euless contract.

12. Consider a request for a Plan for Development (MISC 02-11) to develop a residential subdivision. The property is generally located south of Cross Timbers Road, east of Shiloh Road, and west of Scenic Drive. *(The Planning and Zoning Commission recommended denial by a vote of 7 to 0 at its June 13, 2011, meeting.)*

RECOMMENDATION: Move to approve a request for a Plan for Development (MISC 02-11) to develop a residential subdivision. The property is generally located south of Cross Timbers Road, east of Shiloh Road, and west of Scenic Drive. *(The Planning and Zoning Commission recommended denial by a vote of 7 to 0 at its June 13, 2011, meeting.)*

13. Consider a request for a Plan for Development or Plat (MISC 01-11) to develop a residential subdivision. The property is located at 1500 Long Prairie Road. *(The Planning and Zoning Commission recommended denial by a vote of 7 to 0 at its June 13, 2011, meeting.)*

RECOMMENDATION: Move to approve a request for a Plan for Development or Plat (MISC 01-11) to develop a residential subdivision. The property is located at 1500 Long Prairie Road. *(The Planning and Zoning Commission recommended denial by a vote of 7 to 0 at its June 13, 2011, meeting.)*

VOTE ON MOTION

AYES: Wise, Stephenson, Lyda, Filidoro

NAYS: None

ABSENT: Hayden

L. REGULAR ITEMS

14. DP 01-11 – Suncrest Ph II

Consider a request for a Development Plan (DP 01-11 - Suncrest, Phase II) to develop a residential subdivision. The property is located at the northeast corner of Timber Creek Road and Kirkpatrick Lane. *(The Planning and Zoning Commission recommended approval by a vote of 7 to 0 at its June 13, 2011, meeting.)*

Staff Presentation

Mr. Doug Powell provided a presentation of the project identifying the location, available zoning, land use, and the flood plain areas.

His presentation is on file in the Town Secretary's office.

Kyle Hogue, G & A Consultants, 111 Hillside Drive, Lewisville.

Mr. Hogue, representing the applicant, provided a history of the property and development in the vicinity. He also provided a site plan, including the flood plain. He stated the development plan encompasses 18.9 acres and includes 18 lots (10.4 acres) on the east side with a minimum 10,000 sf lots, and 24 lots on the other side (8.5 acres) with a minimum of 5,000 sf lots, with a minimum of 7,500 sf lots along the frontage of Kirkpatrick.

Councilmember Hayden asked who is building the project and what is the price point.

Mr. Hogue replied neither of those items have been decided yet.

Councilmember Stephenson inquired about the potential of connecting the two neighboring developments.

Mr. Hogue replied they reviewed that option and in order to accomplish such they would have to lose a lot. The other option is to go through the flood plain, however, he has been informed that nothing can be built in the flood plain.

Councilmember Stephenson recollected that she thought this might have been done at the Bella Largo development.

Mr. Powell indicated the Town's regulations and standard practice is to not allow improvements in the flood plain, however, there are some exceptions which include road crossings, however, with the understanding the area be left in its natural state. He indicated he was not familiar with this being done at Bella Largo and would have to check into that.

Mayor Northern identified LISD's response regarding the impact on the school with this development. She pointed out LISD's response is that they allow up to 110% capacity for residential developments. With 42 residential units there will be a gross increase of 33 students (17 students for elementary, 8 students for middle school, and 8 students for high school).

Deputy Mayor Pro Tem Lyda inquired if the road construction on Kirkpatrick goes up to this development.

Mr. Powell confirmed that it does extend that far.

Deputy Mayor Pro Tem Lyda moved to approve Development Plan (DP 01-11 - Suncrest, Phase II) to develop a residential subdivision, and acceptance of Park Development Fees in the amount of \$58,296.00, and cash in lieu of land in the amount of \$98,274.42 to satisfy the requirements of the Park Land Dedication Ordinance. Councilmember Wise seconded the motion.

VOTE ON THE MOTION

AYES: Stephenson, Lyda, Filidoro, Hayden, Wise

NAYS: None.

Mayor Northern opened items 15 and 16 together.

15. **Public Hearing to review and discuss an ordinance amending Chapter 34 of the Code of Ordinances by repealing existing Article VII, "Oil and Natural Gas Well Drilling and Production Operations," and adopting a new Article VII, "Oil and Natural Gas Well Drilling and Production Operations."**

Staff Presentation

Matthew Woods, Director of Environmental Services, provided a summary of:

- oil and gas ordinance review
- studies and concerns addressed
- administrative approvals
- noise monitoring
- setbacks and variances
- traffic impact analysis
- additional provisions

His presentation is as follows:

Oil and Gas Advisory Board Review

- June 7, 2010, adoption of Ordinance 38-10 established the Oil and Gas Advisory Board (OGAB)
- OGAB was established to conduct a review of the Town's oil and natural gas well drilling and production regulations and conduct public hearings
- Multiple meetings and site visits were conducted by the Board and public hearings were held
- OGAB's draft recommendations were presented at a Council work session on January 20, 2011

Oil and Gas Ordinance Review

- Public hearings were held on February 10 and 12 to solicit feedback on the recommendations
- OGAB held a follow up meeting on February 22 to discuss the feedback and comments received
- Items remaining for additional review/discussion were provided to the Town Council in March
- Additional public comment sought:
 - Public comment period April 1 - 18
 - Two public meetings held on April 7 and 12

Studies and Concerns

- Integra Well Site Impact Study
- Kleinfelder Ambient Air Quality Evaluations
- EPA Concerns about Hydraulic Fracturing and Drinking Water Resources and Quality
- Soil Contamination Issues
- Federal Government/USACE Infrastructure
- Insurance Issues
- SMARTGrowth Program—Similar Purposes related to SMARTGrowth and Gas Drilling

Notice - Administrative Approvals

Current: No public hearing/notice requirements for administrative approvals of permits

Proposed: Public meetings and notice on possible pad sites that may qualify for administrative approvals

- Once oil & gas inspector determines application meets all ordinance requirements for administrative approval, within 30 days, notice of pending permit approval delivered to all property owners within 1,500 feet

Notice - Administrative Approvals

- Notice based on tax rolls (similar to zoning cases)
- Property owners informed of meeting open to the public
- Property owners may ask questions about and discuss the pending permit
- All costs of property owner notification borne by applicant/operator
- Meeting shall occur within 21 days after the date of mailing of property owner notification

Emergency Plans

Current:

- Prior to drilling, operator submits emergency response plan establishing written procedures to minimize any hazard
- Plan must be current with any additions, modifications and/or amendments concerning all construction-related activities, operations and production
- Updated plans must be submitted within 2 business days after any additions, modifications, and/or amendments to the plan
- Copy of the plan must be kept on site
- Plan must provide for: prompt and effective response to emergencies regarding leaks or releases; fire, explosions or natural disasters; effective means to notify and communicate to local fire, police and public officials during an emergency; availability of personnel, equipment, tools, and materials as necessary at the scene of an emergency; measures to be taken to reduce public exposure to injury; emergency shut down of well; safe restoration of service and operations following an emergency or incident; follow-up incident investigation and the implementation of corrective measures

Emergency Plans

Proposed: Add provisions regarding evacuation plans for residents within ½ mile; require operator to utilize a hazardous materials cleanup service company; on-site emergency drill every 2 years; audible automated alarm system for drops in pressure, release of gas, or fire; school district(s) to receive copy of emergency plan for comment

Insurance

Current: Certain general requirements for all policies, such as naming the Town as an additional insured, policies to be written on an occurrence basis, deductibles listed, non-cancellation properly endorsed, etc.

- General liability policy: \$1 million per occurrence
- Excess or umbrella liability: \$5 million excess and if no environmental pollution liability policy, \$10 million excess
- Environmental pollution liability policy: \$1 million per loss with annual aggregate of at least \$10 million
- Well control coverage: \$5 million per occurrence with no aggregate, if available, otherwise \$10 million
- Workers' compensation/employers liability: statutory limits, employers' liability with a minimum of \$500,000 per accident
- Automobile liability: \$1 million per occurrence

Insurance

Proposed: Amend \$1 million/\$5 million to \$25 million/\$50 million

- General liability policy: \$25 million per occurrence
- Excess or umbrella liability: \$50 million excess and if no environmental pollution liability policy, \$75 million excess
- Environmental pollution liability policy: \$25 million
- Well control coverage: \$5 million per occurrence with no aggregate, if available, otherwise \$10 million
- Workers' compensation/employers liability: statutory limits, employers' liability with a minimum of \$500,000 per accident
- Automobile liability: \$1 million per occurrence

LANDSCAPING REQUIREMENTS

Current:

- Combination of shrubs, trees, ect. required after 45 days of production
- Within 3 years, 50% of the structures landscaped shall be screened from view of adjacent property owners and public right-of-way
- At least 40% of the vegetation must be evergreen, with emphasis on preservation of existing vegetation and transplanting
- Native, drought tolerant plant list provided in ordinance for direction
- Planting of vegetation screen may be deferred, through an escrow agreement with a cash deposit, until a plat is submitted for the subject property within 1,000 feet, or a public right-of-way is constructed within 500 feet of the well
- Town may enter onto the property in the event of failure to comply with the escrow agreement and Town may plant and install required vegetation screen and operator must reimburse the Town

LANDSCAPING REQUIREMENTS

Proposed: Eliminate escrow process; landscaping and vegetation complete within 45 days of completion of drilling of first permitted well; tree list in O&G ordinance should be same as in pipeline ordinance; screening installed completely around perimeter of pad site; within 45 days of drilling of first gas well, fencing/walls should be installed around perimeter of pad site unless sound mitigation walls are in place, then 45 days after removal of sound mitigation walls

Monitoring

Current: The Town performs monthly air quality monitoring; pre- and post-drilling fresh water well analysis; soil sampling for pits (if contamination is suspected)

Proposed: Establish baseline data for air, water and soil monitoring

- Continue air quality monitoring (Town function, not operator function)
- Increase frequency of post-drilling fresh water well analysis
- Continue soil sampling for pits
- Pre- and post-drilling soil sampling and periodic soil sampling (samples to be taken at the location of any proposed drill site equipment) and sampling by third party
- Venting or open flame restrictions: 1,000 feet, 72 hours notice
- Emissions compliance plan required if 2 notices of violation by TCEQ or EPA within 6 months, 24-hour on-site monitoring and periodic reporting to Town Council; installation of appropriate equipment to meet compliance plan

Noise Monitoring

Current: Daytime fracking—70 db at distance of 300'; drilling—70 db for daytime and 56 db for nighttime; compression facilities—3 db over ambient at nighttime and 5 db over ambient during daytime.

Proposed: Address ambient standards; add low frequency noise requirements

- Noise mitigation required for drilling, fracking and production operations
- Require establishment of daytime and nighttime ambient noise levels for the noise management plan
- Compression/production operations shall not exceed 3 db over ambient level
- No drilling, production or other operations shall produce a low frequency sound level that exceeds the following decibel levels: 16 Hz octave band: 65 db; 32 Hz octave band: 65 db; 64 Hz octave band: 65 db

Setbacks and Variances

OGAB setback recommendations adopted in the proposed ordinance

- All references to mineral ownership eliminated (including OGAB recommendation for residence setback)
- Setback distances measured from edge of construction
- Setbacks may be subject to variance of up to 25% of setback distance (ex. 1,500 feet down to 1,125 feet)
- Public park definition retained (excludes equestrian trails)
- Habitable structure definition (excludes gazebos and porches)
- No permit issued unless USACE verifies to Town that pad site is not located within 3,000 feet of any federal public work

Setbacks and Variances

■ Residence

- **Current:** 1,000' without mineral interest with variance possible to 500'; 500' with mineral interest with variance possible to 300'
- **Proposed:** 1,500' from any residence; maximum 25% reduction with variance

■ Schools, Religious Institutions, Hospitals

- **Current:** 1,000'; variance possible to 500'
- **Proposed:** 1,500' from any property line with school, etc.; maximum 25% reduction with variance

Setbacks and Variances

■ ESAs, Floodplain

- Current:** 500'; no variance minimum
- Proposed:** 750'; maximum 25% reduction with variance

■ Public Road or ROW

- Current:** 500'; no variance minimum
- Proposed:** 750' with no variance

Setbacks and Variances

■ Property Line

- Current:** 500'; no variance minimum
- Proposed:** 750'; maximum 25% reduction with variance

■ Public Park

- Current:** 1,000'; no variance minimum
- Proposed:** 1,500'; maximum 25% reduction with variance

Setbacks and Variances

■ Fresh Water Wells

- **Current:** 1,000'; no variance minimum
- **Proposed:** 1,500'; maximum 25% reduction with variance

■ New Construction

- **Current:** 500'; variance possible to 300'
- **Proposed:** All new construction shall comply with applicable operation site setbacks/variances (*Exception: pad sites permitted prior to ordinance effective date*)

SMARTGrowth

Current: Not referenced in ordinance except for ESAs

Proposed: Address gas drilling as it impacts the values encompassed by SMARTGrowth

■ SMARTGrowth's values addressed in the preamble to proposed ordinance

Traffic

Current: Site plans for gas well sites reviewed by Town

Proposed: Traffic impact analysis to be added to approval process

- A traffic impact analysis in accordance with Section 82—183-185 is required

Additional Proposed Ordinance Provisions

- Permit and fee required for seismic activities, 10 business days prior to seismic survey activities; addition of insurance requirement (\$1 million general liability policy; map showing vibration/geophone points)
- Notice of fracking 3 business days in advance; posting of sign with white letters on red background
- Elimination of “materially different” language in section dealing with amended permits
- Town may issue stop work order in event of serious health threat

Additional Proposed Ordinance Provisions

- Addition of non-radioactive tracing or tagging additives into frack fluid
- Private roads shall be 20' from adjacent property lines (for property not under common ownership)
- Green completions: After fracking, operator must utilize appropriate equipment and processes to connect to a pipeline or shut the well in
- Secondary containment system: Lining of pad site with impervious material to prevent harmful impacts to adjoining property and surface water

Additional Proposed Ordinance Provisions

- Restoration bond of \$100,000 per acre of operation site part of required application documents: bond is valid for 1 year following expiration of an oil & gas permit, for purpose of restoring proper grading and vegetation, and is returned after drilling of a permitted well
- Expiration date added to all existing permits (2 years)
- Daytime hours changed from 7 a.m.—9 p.m. to 7 a.m.—7 p.m.

Mr. Woods, as well as Town Attorney Terry Welch, responded to multiple questions from Mayor Northern and Councilmembers during the presentation.

Mr. Woods clarified that the majority of recommendations from the Oil and Gas Advisory Board are included in the draft ordinance.

Councilmember Stephenson had the following questions in which she indicated was not covered in the presentation.

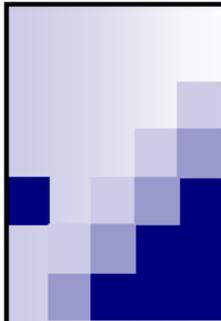
- Regarding the definition of tanks, in which it states covered or uncovered tanks are allowed. She questioned why uncovered tanks were allowed.
 - Mr. Woods indicated it's basically to account for all tanks. Ms. Stephenson requested he follow up with her later as to why that language is needed.
- Does the Town have the ability to limit the use of municipal water in drought conditions?
 - Mr. Woods indicated that is currently being done as part of the Town's conservation plan. The Town would not sell water to an operator or others that would want to use Town hydrants in drought conditions.
- The term best practice is used in the ordinance; however, there is never really a definition for best practice.
 - Mr. Woods indicated that is correct and that they could include EPA Gas Star practices for emission control, for example.
 - Mr. Welch indicated it was referenced twice and they can look at an API or EPA definition as it relates to those issues.
- There is a technical requirement 34-427 A27 that has to do with emissions coming off of equipment used during drilling and asked for clarification if that would include equipment used during fracking.
 - Mr. Woods indicated he will check the section again and see if it applies to fracking as well.

Mr. Woods presented a map that identified areas with proposed setbacks, areas not suitable for drilling, areas of existing drilling, and other open areas that would be suitable (applying some assumptions). He indicated the map would change with the introduction of variances.

16. Public Hearing to review and discuss an ordinance amending Chapter 34 of the Code of Ordinances by repealing existing Article VIII, "Oil and Gas Pipeline Standards," and adopting a new Article VIII, "Oil and Gas Pipeline Standards," and adopting a new Article IX, "Vested rights/preemption determination."

Staff Presentation

Mr. Matthew Woods provided the following presentation:



Pipeline Ordinance

Town Council Agenda Item #16
June 20, 2011



Pipeline Ordinance Review

- Pipeline ordinance originally adopted in 2007 (Article VIII of Ch. 34)
- New regulations adopted in January 2010, included centralized facility regulations (Ch. 34 and Ch. 98 "Zoning")
- Oil and Gas Advisory Board reviewed issues related to centralized facilities and pipelines



Centralized Facilities SUP Ordinance and Pipeline Ordinance

- Centralized facilities Specific Use Permit (SUP) ordinance (adopted in January 2010) proposed to be repealed in its entirety
- Definitions and standards for centralized facilities included in the proposed pipeline ordinance, but ordinance specifically states that "a person desiring to construct a centralized natural gas facility shall apply for and obtain a SUP for such use."
- Ordinance further states that if a centralized facility is not a permitted use, then a zoning amendment is required; if not obtained, the use of any property in the Town for a centralized facility is strictly prohibited.

Pipeline Regulations

- Other changes to ordinance are minor
- Adoption of language regarding Texas *Midstream v. City of Grand Prairie* case (eminent domain authority of pipeline companies addressed)
- Certain pipeline standards originally contained in the oil and gas ordinance [Sec. 34-427] have been transported into the pipeline ordinance so all pipeline regulations are in one ordinance
- Centralized facility and associated pipeline construction and design specifications retained to ensure standards are in place in the event court action permits the use
- Third party engineering review previously conducted relative to pipeline design standards

Article IX – Vested Rights

- New Article IX proposed to address vested rights
- Review process added to provide a method for vested rights determination purposes
- Appeal process available before the Board of Adjustment

Ordinance Timeline

- SUP ordinance review requires P&Z hearing with possible P&Z date of July 11
- Tentative date of July 18 for Town Council consideration of proposed regulations
- Moratorium extension necessary to provide time for P&Z and Town Council consideration of regulations

Councilmember Hayden inquired about what the process would be if a company wanted to put in a centralized collection facility.

Mr. Woods replied since the use is not permitted, and once it's repealed, they would have to apply for new zoning on the property. A Specific Use Permit (SUP) for that property for these facilities would be required, then a hearing before the Planning and Zoning Commission, and then also Town Council.

Mr. Welch clarified that in the circumstance in which the Town had no regulations on the books whatsoever, someone could come in and say I want a centralized collection facility, the Town would have to adopt standards (a zoning amendment that would permit that) and that zoning amendment would be changing the text of the zoning ordinance which would go before P & Z and Council. Then the Town would be required to have SUP requirements and someone would need to come in with an application for an SUP for one of those facilities.

Mr. Welch further added this ordinance repeals that zoning text language, but the pipeline ordinance says if someone comes forward in the future they have to go back with a zoning text ordinance amendment through P & Z and Council. And they have to go for an SUP for a specific location through P & Z and Council. The reason the pipeline ordinance has standards in it, is that in the event something were to occur with a court or administrative agency that the Town would have standards in place to serve as a backstop.

Mayor Northern opened the Public Hearing for Item 15 at 9:00 p.m.

Deborah Hempel-Medina, 6116 Corporation Parkway, Fort Worth, Tx

Ms. Hempel-Medina, representing Williams Production Company, noted they provided their comments in a written letter which has been distributed to all council members.

Virginia Simonson, 3104 Native Oak Dr, Flower Mound, Tx

Ms. Simonson highlighted some of the improvements in the proposed ordinance, while also pointing out there is room for additional improvements.

Dennis McKaige, 3400 North Dr, Flower Mound, Tx 75022

Mr. McKaige commented he chaired the Oil and Gas Advisory Board. He expressed appreciation that 98% of what the Oil and Gas Advisory Board identified is included in the ordinance, in addition to the inclusion of other items that that the board did not have on their list (vested rights). He indicated there were two items the Advisory Board felt strongly about that wasn't in the ordinance. That being a Charter addition to prevent these rules, once enacted, from being modified without voter approval. Secondly, there is a request to articulate a clear Town policy as to whether public property would also be leased without public involvement.

Mr. McKaige responded to some of the questions asked by Council earlier in the meeting.

Eric Jellison, 2705 Lake Ville Ln, Flower Mound, Tx

Mr. Jellison noted he served on the Oil & Gas Advisory Board. He thanked staff and Council for their work and echoed Mr. McKaige's comments that 98% of what was recommended by the Board has been included in the proposed ordinance.

Jennifer Rogers, 2608 Carterton Way, Flower Mound, Tx

Ms. Roger requested clarity on the topic of vapor recovery. She identified a situation in which she personally contacted TCEQ regarding an emissions issue. As a result of that situation she believed the Town could benefit from having staff take the one day training needed to do an opacity reading.

Deputy Mayor Pro Tem Lyda inquired of Ms. Rogers about the outcome of the ordinance and if she believes the majority of the Oil and Gas Advisory Boards recommendations were in the presentation tonight.

She stated yes, 98% of what they recommended is in the ordinance, however, she believed they were influenced by the Chair, Council, and the Town Attorney.

She stated that what was recommended was directed by their chair, who was directed by Council and the attorney. She indicated it was clear to that board what would and would not make it pass the attorney.

Councilmember Hayden indicated he believed that was not accurate based on all the feedback from the community and indicated Mr. Welch was responding to those needs presented.

Deputy Mayor Pro Tem Lyda stated that the first conversation he had with an Oil and Gas Advisory Board member was with Mr. McKaige, and it was at a Council meeting and that he did not provide any advance direction to the Oil and Gas Advisory Board.

Mayor Northern commented that she believes Ms. Rogers comments are opinions. She noted that she specifically directed Council to not contact Oil and Gas Board members and not to influence (although realizing there were two instances in which a former council member did attend). She also mentioned directing Mr. McKaige to inform her if there was a situation where there was a Council member attending the meetings or trying to influence the Board.

Mayor Northern asked Mr. McKaige if he felt the Board was influenced by any members of Council.

Mr. McKaige replied no.

Elaine Barry, 5357 Harbor View Dr, Flower Mound, Tx

Ms. Barry spoke against allowing drilling because of the danger.

Mayor Northern closed the public hearing on Item 15 at 9:37 p.m.

Mayor Northern opened the public hearing for item 16 at 9:37 p.m.

Virginia Simonson, 3104 Native Oak Dr, Flower Mound, Tx

Ms. Simonson noted that the implication that a pad site is equally as dangerous as a compression facility is an incorrect conclusion. She believed they needed to be looked at in a different manner. She also suggested asking industry experts what are the best available

control techniques and practices, and to what extent can those be reasonable put in. She outlined an experience she had with TCEQ.

Elaine Barry, 5357 Harbor View Dr, Flower Mound, Tx

Ms. Barry noted she has been following state legislation. She referenced SB 875 and the impact as a result of it.

Eric Jellison, 2705 Lake Ville Ln, Flower Mound, Tx

Mr. Jellison commented he was not ever influenced or coerced during his role on the Oil and Gas Advisory Board.

Dennis McKaige, 3400 North Dr, Flower Mound, Tx 75022

Mr. McKaige encouraged Council to gain a complete understanding regarding the vested rights content within the ordinance.

Jennifer Rogers, 2608 Carterton Way, Flower Mound, Tx

Ms. Rogers commented how the Town ended up with a centralized collection off of FM 1171, and questioned what is different now that would keep that from happening again.

Mayor Northern closed the public hearing at 9:53 p.m.

Councilmember Hayden read an excerpt from an opinion piece in *USA Today* regarding groundwater and hydraulic fracking and how the best companies are recycling fracking fluid and how he would like to see those types of companies operating in Flower Mound.

Councilmember Hayden thanked staff and the Advisory Board for the many hours put forth in getting the ordinance to where we are today.

Mayor Northern indicated Council will not be voting on this issue tonight and there will be additional public hearings.

- 17. Consider approval of an ordinance amending Ordinance No. 10-11 by extending the expiration dates for the oil and gas ordinance-related suspensions referenced in said ordinance from 11:59 p.m. on Friday, July 15, 2011, to 11:59 p.m. on Wednesday, September 7, 2011.**

Mayor Northern stated the Moratorium is scheduled to expire on Friday, July 15, 2011 at 11:59 p.m. and it's being moved to expire on September 11, 2011 at 11:59 p.m.

Mr. Welch stated this is because the next Council meeting is not until July 18th, (which would be after the expiration of the Moratorium) and the zoning ordinance would need to go through P & Z and then Council, so this allows ample time in the event P & Z takes longer with this item than anticipated, or any other events occur, so it allows time to not have the current Moratorium expire.

Mayor Pro Tem Filidoro stated this was discussed during the Town Council Planning Session in June. He added that this reasoning also allows for ample input from Council and the public and to get through the entire process.

Mayor Pro Tem Filidoro moved to approve an ordinance amending Ordinance No. 10-11 by extending the expiration dates for the oil and gas ordinance-related suspensions referenced in said ordinance from 11:59 p.m. on Friday, July 15, 2011, to 11:59 p.m. on Wednesday, September 7, 2011. Councilmember Hayden seconded the motion.

ORDINANCE 28-11

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, PROVIDING FOR THE EXTENSION OF THE SUSPENSIONS REFERENCED IN FLOWER MOUND ORDINANCE NO. 10-11, BY AMENDING SAID ORDINANCE RELATIVE TO THE SUSPENSION EXPIRATION DATES CONTAINED THEREIN, AND FURTHER PROVIDING FOR THE EXTENSION OF EACH SUCH SUSPENSION REFERENCED IN SAID ORDINANCE FROM 11:59 P.M. ON FRIDAY, JULY 15, 2011, TO 11:59 P.M. ON WEDNESDAY, SEPTEMBER 7, 2011; MAKING CERTAIN FINDINGS; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON THE MOTION

AYES: Lyda, Filidoro, Hayden, Wise, Stephenson

NAYS: None

- 18. Consider approval of Change Order No. 8 for the construction of the Morriss/Gerault Improvement Phase I project, amending the contract with TISEO Paving Company for an increase in the amount of \$288,492.56; and authorization for the Mayor to execute same on behalf of the Town.**

Staff Presentation

Mr. Kent Collins provided a summary for the change order requested for the following items:

- Changing fence for Creekside at Cross Timbers from 6' to 8' height
- Adding fence replacement for Sherwood estates Phase III
- Quantity and utility adjustments to reflect field condition

Deputy Mayor Pro Tem Lyda inquired where the money is coming from for the project.

Mr. Collins replied it's a capital project so there are funds available for this project. After this expenditure there would be \$1,139,975 remaining in the capital fund for the Morriss/Gerault project.

Mayor Pro Tem Filidoro moved to approve Change Order No. 8 for the construction of the Morriss/Gerault Improvement Phase I project, amending the contract with TISEO Paving Company for an increase in the amount of \$288,492.56; and authorize the Mayor to execute same on behalf of the Town. Deputy Mayor Pro Tem Lyda seconded the motion.

VOTE ON THE MOTION

AYES: Filidoro, Hayden, Wise, Stephenson, Lyda

NAYS: None.

M. WORK SESSION

19. Receive presentations, hold a discussion, and provide direction regarding the Community Support funding for various organizations.

Staff Presentation

Mr. Chuck Springer indicated with regard to the community support funding, historically it's been a Town practice to offer new groups an opportunity to do a presentation before Council.

Lewisville Civic Choral presentation:

The Lewisville Civic Chorale: Jean Wayne, 1326 Glenhill Lane, Lewisville and Toba Rotman, 4107 Remington Park Ct, Flower Mound

Ms. Wayne and Ms. Rotman provided a summary of the choral group and it was noted that they are seeking \$500 from the Town.

New Hope Learning Center presentation:

Dean Ragsdale and Linda Whitman, representing New Hope Learning Center, offered a summary and background of the program called Denton County Youth Today, in which they are seeking funding for. He noted it is a volunteer based drop in center.

Mr. Springer noted the next discussion on community support organizations will be at the budget workshop in August.

N. COORDINATION OF CALENDARS AND FUTURE AGENDAS/MEETINGS

Mayor Northern announced the July 4th meeting is cancelled and the next meeting will be July 18, 2011.

O./P. CLOSED/OPEN MEETING

The Town Council convened into a closed meeting at 10:42 p.m. on June 20, 2011, 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 11:55 p.m. on June 20, 2011, 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 and consider appointments to the Animal Services Board, Board of Adjustments, Community Development Corporation, Economic Development Advisory Committee, Environmental Services Commission, Oil and Gas Advisory Board and Oil and Gas Board of Appeals, Parks, Arts and Library Services Board, Planning & Zoning, SMART Growth Commission Board, and Transportation Commission.

No action taken.

- d. Consultation with Town Attorney regarding legal issues associated with proposed amendments to oil and natural gas drilling and production ordinance, oil and gas pipeline standards ordinance, and vested rights review ordinance, pursuant to Chapter 34 of the Town's Code of Ordinances, and all matters incident and related thereto.

No action taken.

- e. Discuss Interim Town Secretary position, evaluation, and potential title change to Town Secretary.

Mayor Pro Tem Filidoro moved to eliminate the Interim Town Secretary position and replace it with the Town Secretary position to be filled by Theresa Scott with an increase in pay as discussed in Executive Session. Councilmember Hayden seconded the motion.

VOTE ON THE MOTION

AYES: Wise, Stephenson, Lyda, Filidoro, Hayden

NAYS: None.

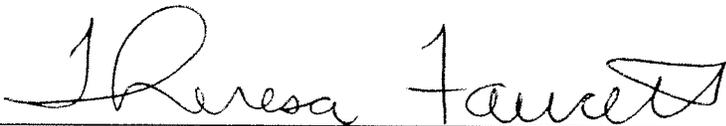
Q. ADJOURN MEETING

Mayor Northern adjourned the meeting at 11:57 p.m. on Monday, June 20, 2011, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS


MELISSA D. NORTHERN, MAYOR

ATTEST:


THERESA FAWCETT, INTERIM TOWN SECRETARY