

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING, TOWN OF FLOWER MOUND FIRE CONTROL, PREVENTION, AND EMERGENCY MEDICAL SERVICES DISTRICT SPECIAL MEETING; AND CRIME CONTROL AND PREVENTION DISTRICT SPECIAL MEETING HELD ON THE 21ST DAY OF NOVEMBER, 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 with the following members present:

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

And the following members absent:

Melissa Northern, Mayor

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

Harlan Jefferson	Town Manager
Theresa Scott	Town Secretary
Terrence Welch	Town Attorney
Kent Collins	Assistant Town Manager
Chuck Springer	Assistant Town Manager/CFO

**A. CALL BRIEFING SESSION TO ORDER**

Mayor Pro Tem Filidoro 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 Seniors in Motion meeting.

Deputy Mayor Pro Tem Lyda reported attending the Transportation Commission meeting on November 8<sup>th</sup>.

**2. Discuss Consent and Regular Items**

Councilmember Stephenson requested Item 10 be pulled from consent.

**3. Discuss Future Agenda Items**

No discussion.

**4. Discuss Council Communications**

Mr. Jefferson reported there are no outstanding council communications.

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

Mayor Pro Tem Filidoro adjourned the briefing session and called the regular meeting to order at 6:05 p.m.

**E. INVOCATION**

Chaplain Mike Liles gave the invocation.

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

Mayor Pro Tem Filidoro led the pledges.

**G. PRESENTATIONS**

Mayor Pro Tem Filidoro presented a Proclamation to Jared Martin, Environmental Review Analyst for the Town of Flower Mound, recognizing December 2<sup>nd</sup> as Arbor Day.

Mayor Pro Tem Filidoro acknowledged the kick-off of the Salvation Army Kettle campaign in conjunction with the holiday season. Sheleagh Skipsey, Salvation Army Corps Officer, provided information about the organization and how the funds are used.

Denise White, Town Council Liaison for the Lewisville Independent School District (LISD), provided an update regarding activities taking place at LISD, and acknowledged activities that impact Flower Mound schools.

Councilmember Hayden requested Ms. White look into the following items and provide an update in the future:

- update regarding some discussions he is aware of in relation to redistricting of some Flower Mound schools, particularly Marcus and Flower Mound high schools
- what caused Marcus High School to lose their exemplary rating
- with relation to LISD conducting a geographic study that projects population trends going out five to ten years, how might that study impact Flower Mound's ninth grade campus and future construction of schools

**H. PUBLIC PARTICIPATION**

Conrad Roach, 3106 Pecan, Flower Mound, TX

Mr. Roach expressed opposition to proposed road changes in Pecan Acres.

Amy Wallace, 2913 Trailwood Ln, Flower Mound, TX

Ms. Wallace requested Council not approve Consent Item 10.

Angie Cox, 7616 Emerson Ln, Flower Mound, TX

Ms. Cox expressed concern regarding comments made about her at a past meeting. She also commented about the importance of collaborative efforts between the Town and Flower Mound Chamber of Commerce.

## **I. ANNOUNCEMENTS**

Councilmember Stephenson had the following announcements:

- participated in Dorothy's Dash on Nov. 12<sup>th</sup>
- offered special recognition to the Lake Cities Cross Country for their efforts and what they are doing for youth

Councilmember Lyda had the following announcements:

- offered congratulations to the Marauders for their performance in the UIL playoffs for football, and a great season overall

Councilmember Hayden had the following announcements:

- Turkey shoot-out at Bridlewood to raise money for the American Cancer Society
- offered recognition to the Flower Mound Hospital for the high level of medical care recently administered to a friend of his

Councilmember Filidoro had the following announcements:

- attended the Seniors in Motion Thanksgiving luncheon
- wished the community a Happy and Safe Thanksgiving holiday

## **J. TOWN MANAGER'S REPORT**

Mr. Jefferson had the following updates:

- FM 407: the contractor announced they have discontinued work due to multiple utility conflicts. TxDOT has been provided a list of those conflicts and is working to resolve them. He noted it is anticipated the contractors will resume work around the first part of next year.
- Green Ribbon Funding (plantings for FM1171 from FM2499 to Shiloh): TxDOT informed Town staff they have the project listed and it's funded. They intend to finalize plans over the next ten weeks, with construction slated to begin as early as next spring, or next fall at the latest.

Councilmember Hayden inquired if the landscaping adjacent Westchester subdivision near Sonic is part of the Green Ribbon Funding area he mentioned.

Mr. Jefferson replied it was associated with that project and provided a detailed update as to the location of the plantings.

**K. CONSENT ITEMS**

1. **Consider approval of the minutes from a regular meeting of the Town Council; Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District Special Meeting; and Crime Control and Prevention District Special Meeting held on October 3, 2011.**

**RECOMMENDATION:** Move to approve the minutes from a regular meeting of the Town Council; Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District Special Meeting; and Crime Control and Prevention District Special Meeting held on October 3, 2011.

2. **Consider approval of an ordinance canvassing returns and declaring results of a Special Election held November 8, 2011, for the purpose of considering a ballot proposition for the reauthorization of the local sales and use tax at the rate of one-fourth of one percent, and to continue providing revenue for maintenance and repair of municipal streets.**

**RECOMMENDATION:** Move to approve an ordinance canvassing returns and declaring results of a Special Election held November 8, 2011, for the purpose of considering a ballot proposition for the reauthorization of the local sales and use tax at the rate of one-fourth of one percent, and to continue providing revenue for maintenance and repair of municipal streets.

**ORDINANCE NO. \_58-11**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, CANVASSING RETURNS AND DECLARING RESULTS OF A SPECIAL ELECTION HELD NOVEMBER 8, 2011, FOR THE PURPOSE OF CONSIDERING A BALLOT PROPOSITION FOR THE REAUTHORIZATION OF THE MUNICIPAL SALES AND USE TAX FOR STREET MAINTENANCE TAX IN THE TOWN OF FLOWER MOUND AT THE RATE OF ONE-FOURTH OF ONE PERCENT TO CONTINUE PROVIDING REVENUE FOR MAINTENANCE AND REPAIR OF MUNICIPAL STREETS; AND PROVIDING AN EFFECTIVE DATE.**

3. The Town of Flower Mound Crime Control and Prevention District Board to consider approval of an order canvassing the results of a special election held on November 8, 2011, for the purpose of considering a ballot proposition to continue the Crime Control and Prevention District and sales and use tax at the rate of one-fourth of one percent to provide revenue for crime control and prevention programs within the District.

**RECOMMENDATION:** Move to approve an order canvassing the results of a special election held on November 8, 2011, for the purpose of considering a ballot proposition to continue the Crime Control and Prevention District sales and use tax at the rate of one-fourth of one percent to provide revenue for crime control and prevention programs within the District.

**ORDER NO. 03-11**

**AN ORDER OF THE BOARD OF DIRECTORS OF THE TOWN OF FLOWER MOUND CRIME CONTROL AND PREVENTION DISTRICT, CANVASSING RETURNS AND DECLARING RESULTS OF A SPECIAL ELECTION HELD ON NOVEMBER 8, 2011, FOR THE PURPOSE OF CONSIDERING A BALLOT PROPOSITION FOR THE CONTINUATION OF THE CRIME CONTROL AND PREVENTION DISTRICT SALES AND USE TAX AT THE RATE OF ONE-FOURTH OF ONE PERCENT DEDICATED TO CRIME CONTROL AND PREVENTION PROGRAMS; CONTINUING THE CRIME CONTROL AND PREVENTION DISTRICT CREATED; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

4. The Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District Board to consider approval of an order canvassing the results of a special election held on November 8, 2011, for the purpose of considering a ballot proposition to continue the Fire Control, Prevention, and Emergency Medical Services District and sales and use tax at the rate of one-fourth of one percent to provide revenue for fire safety and emergency medical services programs within the District.

**RECOMMENDATION:** Move to approve an order canvassing the results of a special election held on November 8, 2011, for the purpose of considering a ballot proposition to continue the Fire Control, Prevention, and Emergency Medical Services District sales and use tax at the rate of one-fourth of one percent to provide revenue for fire safety and emergency medical services programs within the District.

**ORDER NO. 04-11**

**AN ORDER OF THE BOARD OF DIRECTORS OF THE TOWN OF FLOWER MOUND FIRE CONTROL, PREVENTION, AND EMERGENCY MEDICAL SERVICES DISTRICT, CANVASSING RETURNS AND DECLARING RESULTS OF A SPECIAL ELECTION HELD ON NOVEMBER 8, 2011, FOR THE PURPOSE OF CONSIDERING A BALLOT PROPOSITION FOR THE CONTINUATION OF THE FIRE CONTROL, PREVENTION, AND EMERGENCY MEDICAL SERVICES DISTRICT SALES AND USE TAX AT THE RATE OF ONE-FOURTH OF ONE PERCENT DEDICATED TO FIRE CONTROL, PREVENTION, AND EMERGENCY MEDICAL PROGRAMS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

5. Consider approval of the purchase of a pre-manufactured restroom and shower facility for Twin Coves Park from CXT Incorporated, through a Texas Multiple Award Schedule contract, in the amount of \$72,731.62.

**RECOMMENDATION:** Move to approve the purchase of a pre-manufactured restroom and shower facility for Twin Coves Park from CXT Incorporated, through a Texas Multiple Award Schedule contract, in the amount of \$72,731.62.

6. **Consider approval of a Professional Services Agreement with Kleinfelder Central, Inc., to provide geotechnical and material testing services associated with the construction of the Timber Creek Road 20-inch Water Line, and Valley Ridge Boulevard 20-inch Water Line projects, in the amount of \$22,900.00; and authorization for the Mayor to execute same on behalf of the Town.**

**RECOMMENDATION:** Move to approve a Professional Services Agreement with Kleinfelder Central, Inc., to provide geotechnical and material testing services associated with the construction of the Timber Creek Road 20-inch Water Line, and Valley Ridge Boulevard 20-inch Water Line projects, in the amount of \$22,900.00; and authorize the Mayor to execute same on behalf of the Town.

7. **Consider approval of Change Order No. 1 for the construction of the CDBG - Sunrise Circle Paving Improvements Phase IV project, final acceptance of the project; authorization of final payment to the contractor, Smith Contracting, Inc., in the amount of \$19,998.00; and authorization for the Mayor to execute same on behalf of the Town.**

**RECOMMENDATION:** Move to approve Change Order No. 1 for the construction of the CDBG – Sunrise.Circle Paving Improvements Phase IV project, final acceptance of the project; authorize final payment to the contractor, Smith Contracting, Inc., in the amount of \$19,998.00; and authorize the Mayor to execute same on behalf of the Town.

8. **Consider approval of Change Order No. 3 for the Dixon Lane project, amending the contract with JRJ Paving, LP, for an increase of \$45,752.56 to the contract amount; and authorization for the Mayor to execute same on behalf of the Town.**

**RECOMMENDATION:** Move to approve Change Order No. 3 for the Dixon Lane project, amending the contract with JRJ Paving, LP, for an increase of \$45,752.56 to the contract amount; and authorize the Mayor to execute same on behalf of the Town.

9. **Consider approval of Amendment No. 1 to the Fiscal Year 2011-2012 Capital Improvement Program.**

**RECOMMENDATION:** Move to approve Amendment No. 1 to the Fiscal Year 2011-2012 Capital Improvement Program.

Councilmember Hayden moved to approve by consent Items 1 – 9. 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. Deputy Mayor Pro Tem Lyda seconded the motion.

**VOTE ON MOTION**

**AYES: Stephenson, Lyda, Filidoro, Wise, Hayden**

**NAYS: None.**

**L. REGULAR ITEMS**

*Item 10 moved from Consent by Councilmember Stephenson.*

10. Consider approval of the purchase of one aerial truck for the Fire and Emergency Services Department from Martin Apparatus, Inc., through the Houston-Galveston Area Council of Governments (H-GAC) cooperative purchasing program, in the total amount of \$764,460; and authorization for the Mayor to execute same on behalf of the Town.

**Staff Presentation**

Mr. Springer stated the Town has a vehicle and equipment replacement fund, which means instead of coming up with all the funding when it's time to replace a vehicle, depreciation is put away every year so that by the time the vehicle has reached the end of it's life there are funds available to replace it. In addition, he provided background information related to how the replacement program works, the vendor selection process, and summarized the need that warranted the fire truck replacement.

Councilmember Hayden moved to approve the purchase of one aerial truck for the Fire and Emergency Services Department from Martin Apparatus, Inc., through the Houston-Galveston Area Council of Governments (H-GAC) cooperative purchasing program, in the total amount of \$764,460; and authorize the Mayor to execute same on behalf of the Town. Deputy Mayor Pro Tem Lyda seconded the motion.

**VOTE ON MOTION**

**AYES: Hayden, Wise, Filidoro, Lyda, Stephenson**

**NAYS: None.**

11. Public Hearing to consider a request for a Specific Use Permit (SUP/SP 396-11 - Kroger Signature Store and Fuel Station) to permit a convenience store with gasoline sales use, and a site plan to expand an existing grocery store, 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. The property

is located at 2709 Cross Timbers Road. (The Planning and Zoning Commission recommended denial by a vote of 4 to 2 at its October 24, 2011, meeting.)

**Waivers and Exceptions:** The applicant is requesting an exception to the Town's access management policy and criteria in order to keep the easternmost access drive onto Cross Timbers Road. Although this is an existing drive, it does not meet current spacing requirements and the expansion of the use triggers the need for an exception.

### **Staff Presentation**

Mr. Powell provided a presentation which included the location of the project, land use, photographs in and around the current store, site plan, video depicting vehicle activity around fuel pump islands at area grocery stores with fuel islands, pictures of site plans of surrounding stores that either did or did not have fuel islands for the purpose of comparison relating to parking areas.

Mr. Powell referenced aspects of the site plan that raised concerns during the Planning and Zoning meeting which included:

- How the fuel station will work within the existing conditions of the retail center;
- Traffic management in and around the retail center resulting in conflicts in relation to traffic circulation and maneuvering around the pump islands, spacing standards, and fuel truck deliveries);
- The reduction of parking spaces (especially during peak shopping days or special events);
- The aesthetics of being so close to FM 1171, including the removal of existing trees (as defined in the attached proposed site plan); and
- Pedestrian safety.

Many Council members expressed interest in discussing the traffic impact study and if there was an impact relating to safety.

Mr. Collins provided a summary of the traffic study for the project.

### **Applicant Presentation**

Nate Collins, Real Estate Manager, Kroger, 1331 E Airport Freeway, Irving, TX 75062

Mr. Collins provided a presentation summarizing the \$14,300,000 capital improvement project, which would include a 20,000 square foot expansion, five pump fuel center (with a 112 square foot kiosk), two electric car charging stations, \$542,000 of street improvements, upgraded store exterior, and the addition of 75-80 new jobs.

He also offered an estimated project timeline, and site plan details.



Gary Huddleston, Director of Consumer Affairs, Kroger, 1331 E Airport Freeway Irving, TX 75062

Mr. Huddleston provided a presentation identifying new features that would be associated with the store if approved. He also highlighted ways they are involved in the community through charity giving. He noted the current and anticipated sales and property tax that could be achieved from the new store. He provided the results of an in-store survey related to those in favor of the store expansion.

Herbert D. Weitzman, CEO and Chairman, The Weitzman Group/Cencor Realty Services, Owner of property

Mr. Weitzman provided a history of his company and pointed out his firm built the center and Kroger bought the site and Weitzman did the outlining retail. He noted Weitzman owns the site and Cencor manages the property. He stated there is a shift in the grocery industry to include fuel islands for convenience to the customer and to be competitive in the market. He also spoke about the economic impact in relation to the center.

Michael Clark, President, Winkelmann & Associates, 6750 Hillcrest Plaza Dr, Suite 325, Dallas, TX 75230

Mr. Clark noted the traffic impact analysis was paid for by Kroger and was performed by the Town's consultant. He noted the study did not address safety. He noted the study did include various recommendations. In addition, with regard to FM 1171, the study showed that before and after the improvements it would be a level service "B".

Mike Elmenhorst, Terminal Manager, Groendyke Transport, Inc., 1101 Cantrell Sansom, Blue Mound, TX 76131

Mr. Elmenhorst indicated his company delivers fuel to Kroger stores. He addressed the volume of fuel they deliver, the training drivers go through, and indicated they haven't had any accidents relating to pedestrians while delivering product. He further pointed out the route they would take for the proposed store. He indicated the company operates 24/7 so could accommodate any schedule.

There was in depth dialogue between Kroger, Weitzman Group representatives, and Town Council relating to parking requirements, safety of vehicular traffic in relation to the fuel center, traffic flow overall and various alternative options, in addition to the overall economic impact of the project.

Deputy Mayor Pro Tem Lyda opened the public hearing at 9:11 p.m.

<b>Public Participation</b>	
<b>Spoke in support or provided appearance form stating in support, however, did not speak.</b>	<b>Spoke in Opposition</b>
<u>Angie Cox, 7616 Emerson Ln, Flower Mound, TX</u>	
<u>Bryan Webb, 4112 High Rd, Flower Mound, TX</u>	
<u>Mark Woods, 2816 Waverly Rd, Flower Mound, TX</u>	
<u>Amy Wallace, 2913 Trailwood Ln, Flower Mound, TX</u>	

<u>Nate Collins, 1331 E Airport Frwy, Irving, TX</u>	
<u>Jean Levenick, 2716 Gentle Dr, Flower Mound, TX</u>	
<u>Patsy Mizeur, 1821 Castle Ct, Flower Mound, TX</u>	
	<u>Dennis McKaige, 3400 North Dr, Flower Mound, TX</u>
<u>Mark Woods, 2816 Waverly Rd, Flower Mound, TX</u>	
<u>David Johnson, 3617 San Paula, Flower Mound, TX</u>	
<u>Ken Harrell, 5810 Cross Timbers Rd, Flower Mound, TX</u>	
<u>Carol Kohankie, 4312 Lauren Way, Flower Mound, TX</u>	
<u>Irv Baker, 3404 Brightstone Ct, Flower Mound, TX</u>	
<u>Nell Pearson, 2802 Chelsea Ln, Flower Mound, TX</u>	
<u>Mike Starek, 1201 N. Bowser, Richardson, TX 75081</u>	
<u>Jeff Kullman, 2704 Cross Timbers, Flower Mound, TX</u>	
<u>Paul Stone, 709 Lake Bluff Dr, Flower Mound, TX</u>	
<u>Donna Arp, 2828 Hood, Dallas, TX (former Colleyville Mayor)</u>	
<u>Jon Bickert, 3508 Devonshire, Flower Mound, TX</u>	

Mayor Pro Tem Filidoro closed the public hearing at 9:51 p.m.

**Council Deliberation**

In depth dialogue between Kroger and Weitzman Group representatives and Town Council continued relating to traffic concerns during special events, the placement of the fuel island being in the middle of the parking lot and associated safety concerns, as well as the potential of closing the eastern driveway, economic impact, area competition, and background information.

Councilmember Hayden indicated he was prepared to make a motion.

Councilmember Stephenson asked Mr. Welch if it was appropriate to redraft the motion as it was drafted in the negative.

Mr. Welch stated it was redrafted and provided to Councilmember Hayden.

Mr. Welch asked for clarification to make sure it's Council decision to tie the Specific Use Permit (SUP) to the redevelopment of the Kroger store itself. He stated he wanted to be sure he understood in the motion to approve it, the SUP is to be contingent upon approval of the redevelopment of the existing Kroger store or not because the motion provided to Councilmember Hayden is an approval of the SUP, the site plan, and the exception to the access standards without linking no SUP without redevelopment of the store.

Councilmember Hayden noted it needs to be tied together as these will be concurrently.

Councilmember Hayden moved to approve an SUP -- SUP/SP 396-11 Kroger Signature Store and fuel station to permit a convenience store with gasoline sales use and a site

plan to expand the existing grocery store with an exception to the access measurements policy and criteria regarding driveway space contained in the Town's engineering design criteria and construction standards adopted through Chapter 32 of the Code of Ordinances. Further, the fuel island is contingent upon the redevelopment of the Kroger store and no fuel station shall be permitted until such time as Kroger has obtained a building permit related to its store redevelopment. Councilmember Stephenson seconded the motion.

**VOTE ON THE MOTION**

**AYES: Stephenson, Wise, Hayden**

**NAYS: Lyda, Filidoro**

Motion failed.

*Explanation: This item was recommended for denial by the Planning and Zoning Commission at their October 24, 2011, meeting. In response to the recommendation, the applicant has chosen to appeal the recommendation to the Town Council. The Town's Land Development Regulations (Section 78-154(c)) require a three-fourths vote of the Town Council in order to approve this item.*

Councilmember Hayden asked to reopen the discussion regarding Kroger. Councilmember Stephenson agreed with the request.

Deputy Mayor Pro Tem Lyda indicated he would like to make a motion in which they could strike the SUP from the motion and just include the site plan.

Deputy Mayor Pro Tem Lyda moved to approve a site plan to expand the existing Kroger store with an exception to the access measurements policy and criteria regarding driveway space contained in the Town's engineering design criteria and construction standards adopted through Chapter 32 of the Code of Ordinances. Mayor Pro Tem Filidoro seconded the motion.

Mr. Welch stated the drafted motion is an approval of the site plan for the redevelopment of the store with the required exception to the access requirements but no SUP is being authorized for the fuel station.

**VOTE ON THE MOTION**

**AYES: Lyda, Filidoro**

**NAYS: Hayden, Wise, Stephenson**

Motion failed.

*Explanation: This item was recommended for denial by the Planning and Zoning Commission at their October 24, 2011, meeting. In response to the recommendation, the applicant has chosen to appeal the recommendation to the Town Council. The Town's Land Development Regulations (Section 78-154(c)) require a three-fourths vote of the Town Council in order to approve this item.*

Councilmember Hayden asked to reopen the discussion regarding Kroger. Councilmember Stephenson agreed with the request.

Mr. Welch clarified the request is to reopen the matter and in essence the request is to suspend the rules as the applicant presentation and public debate has ended

and the request is to reopen the matter for further discussion by Council. Mr. Welch clarified that at this juncture both motions have failed; however, Council has the option to discuss a new motion.

Councilmember Hayden indicated he would like to propose a new motion, however, needs to offer an explanation to precede the motion to provide the parameters related to the motion. He stated that "the reason the motion failed by a three to two vote to allow this to happen is because P & Z denied the application so thus it takes a supermajority." For that reason he would like to have the item be reconsidered by the Planning & Zoning Commission at their next meeting since there have been some changes in the application.

Mr. Welch indicated the item can be remanded back to P & Z for consideration; however, there are timing concerns due to the newspaper notification requirements.

Councilmember Hayden moved to remand the item back to Planning and Zoning for consideration at its December 12<sup>th</sup> meeting and double notice it for the Town Council meeting on December 19<sup>th</sup>. Councilmember Stephenson seconded the motion.

Mr. Powell indicated the Notice for the December 12<sup>th</sup> meeting would need to get to the paper by November 28<sup>th</sup>.

Mr. Welch stated that December 12<sup>th</sup> would be the next available P & Z meeting in which this item could be heard.

### **Council Deliberation**

Councilmember Stephenson asked for clarification if the item would be double noticed in conjunction with the December 12<sup>th</sup> P & Z meeting and December 19<sup>th</sup> Town Council meeting.

Mr. Welch indicated it would have to be double noticed in order to meet the newspaper publication requirements.

Councilmember Stephenson stated she would like to inquire if those dates would fit within Kroger's time line.

Council agreed to allow the applicant to come forward and answer the question.

Mr. Collins stated if the application moves back to the next Council meeting, they would resubmit the project for a different set of capital allocation from a different year. They can do that; however, they go up against all the other projects in the company again. He is willing to take it back to the committee for approval again, however, he said it now goes back to an unapproved project and he has to go back to a new set of allocations.

## VOTE ON THE MOTION

**AYES:** Stephenson, Lyda, Filidoro, Wise, Hayden

**NAYS:** None.

12. Public Hearing to consider approval of a License Agreement with ATC Outdoor DAS, LLC, regarding the construction and installation of a Distributed Antenna System, including the use of three Town-owned poles and one signal light standard, in specified areas of the Town near Lake Grapevine to supplement and improve mobile communications in those areas; and authorization for the Mayor to execute same on behalf of the Town.

### Staff Presentation

Mr. Powell gave a presentation identifying the proposed cellular antenna locations for the Distributed Antenna System (DAS) and pointed out that cell phone signal in those areas are weak which warrants the need for the antennas. He noted the information in the Council packet is similar to what was presented to Council in July, with a few modifications.

### Applicant Presentation

Karmen Rajamani, Regional Director, American Tower Corporation

Ms. Rajamani offered a presentation which included the following information:

- background information on the company
- explained how the DAS system works
- identified the benefits offered to the Town, including a five percent revenue sharing, with anticipated revenue in the first year at \$8,000 with AT & T, and this amount would escalate as more tenants come on line
- identified node and panel locations, and types of antennas
- public benefits gained
- time line and next steps (construction would start in 2012 and launch in May)

Mayor Pro Tem Filidoro opened the Public Hearing at 11:20 p.m.

### Public Participation:

Dennis McKaige, 3400 North Dr, Flower Mound, TX

Spoke in favor of the antenna system.

Mayor Pro Tem Filidoro closed the public hearing at 11:21 p.m.

### Council Deliberation

Councilmember Lyda inquired about the location in which a resident sent an e-mail stating concerns. Mr. Powell indicated it is Node 31 and it's a modified light pole

so there is an existing light pole in which a whip antenna will be added on that pole and there will be accommodations made to match the light pole.

Councilmember Hayden moved to approve a license agreement in relation to pole licensing in the feasible right of usage agreement with ATC Outdoor xxx LLC regarding the construction and installation of a distributed antenna system including the use of three Town owned poles and one signal light standard as specified in the areas of the Town near Lake Grapevine to supplement and improve mobile communication in those areas and authorize the Mayor to execute same on behalf of the Town. Further, the applicant agrees to consult and work with surrounding property owners for the citing of Node 31. Deputy Mayor Pro Tem Lyda seconded the motion.

**VOTE ON THE MOTION**

**AYES: Hayden, Wise, Filidoro, Lyda, Stephenson**

**NAYS: None.**

**M. COORDINATION OF CALENDARS AND FUTURE AGENDAS/MEETINGS**

Councilmember Wise indicated he will not be at the December 5<sup>th</sup> Town Council meeting.

Deputy Mayor Pro Tem Lyda indicated if Council agrees he would like to extend the Chamber of Commerce an invitation to offer a presentation at a Town Council meeting. There was consensus by Council to extend the invitation.

**N./O. CLOSED/OPEN MEETING**

**The Town Council convened into a closed meeting at 11:27 p.m. on November 21, 2011, pursuant to Texas Government Code Chapter 551, including, but not limited to, 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 11:47 p.m. on November 21, 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.

- d. Discuss and consider appointments to the Animal Services Board, Board of Adjustment, Oil and Gas Board of Appeals, Community Development**

Corporation, Environmental Conservation Commission, Parks, Arts and Library Services Board, Public Arts Committee, Planning & Zoning Commission, SMART Growth Commission Board, Tax Increment Reinvestment Zone Number One (TIRZ #1), and Transportation Commission.

No action taken.

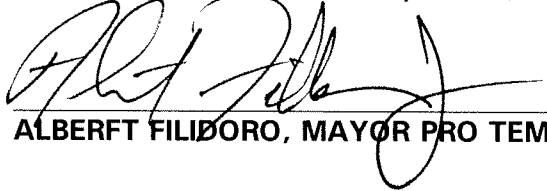
- e. Discuss and consider annual review of Presiding Judge and Alternate Judges.

No action taken

**P. ADJOURN REGULAR MEETING**

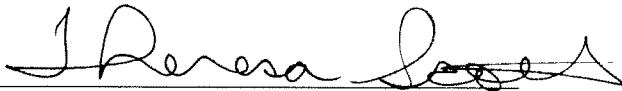
Mayor Pro Tem Filidoro adjourned the meeting at 11:48 p.m. on November 21, 2011, and all were in favor.

**TOWN OF FLOWER MOUND, TEXAS**



**ALBERT FILIDORO, MAYOR PRO TEM**

**ATTEST:**



**THERESA SCOTT, TOWN SECRETARY**

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