

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 20th DAY OF FEBRUARY, 2012, 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
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 Scott	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	Director of Development Services

A. CALL BRIEFING SESSION TO ORDER

Mayor Northern called the briefing session to order at 6:00 p.m.

B. BRIEFING SESSION

1. Town Council Boards and Commissions Subcommittee/Liaison Reports

Councilmember Stephenson reported attending the Environment Conservation Commission (ECC) meeting and noted the main topic of discussion was a review of their sustainability plan outline. She further stated a council communication will be coming forward to identify project priorities and objectives associated with each as established by the ECC.

Mayor Pro Tem Filidoro reported attending the Planning & Zoning Commission (P & Z) meeting on February 13th in which two replats were discussed, as well as an addition for First Security Bank.

Deputy Mayor Pro Tem Lyda reported the Transportation Commission postponed their meeting to next month due to Valentine's Day, and the Community Development Corporation will meet this Thursday at 6:30 p.m., which will include a work session on the upcoming items for the special tax funding.

Councilmember Hayden reported attending the Seniors Advisory Board meeting in which they held elections for their officers.

2. Discuss Consent and Regular Items

Councilmember Stephenson requested Item 6 be pulled.

Councilmember Hayden requested Item 5 to be pulled.

3. Discuss Future Agenda Items

None.

4. Discuss Council Communications

Mayor Northern announced there is one outstanding Council Communication relating to Town Council review and feedback of calendar year 2012 goals and work program for the Environmental Conservation Commission (ECC), Parks, Arts, and Library Services (PALS) Board, and the Transportation Commission.

Mr. Jefferson reported the Council Communication referenced was distributed to Council on February 6th and he inquired if there were any objections to the goals and objectives being brought forward by those boards respectively.

Councilmember Hayden indicated he would like to see more discussions regarding Capital Improvement Plans related to money allotted for Heritage Park instead of just having a placeholder for the item.

Mr. Jefferson stated that a discussion will occur as the Town moves forward with the budget process.

Mayor Northern inquired that within the ECC work and education program, and outdoor learning area, she commented that it's also a PALS item so it would be her recommendation for both groups to discuss the topic to prevent any unintended overlap.

There was consensus by Council to proceed with the goals as presented.

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 6:07 p.m.

E. INVOCATION

Chaplain Mike Liles gave the invocation.

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

Girl Scout Troop #3648 led the pledges.

G. PUBLIC PARTICIPATION

Bryan Webb, 4112 High Rd, Flower Mound, TX

Mr. Webb announced the Summit Club is having a Western Saloon Night fundraiser.

Paul Stone, 709 Lake Bluff Dr, Flower Mound, TX

Mr. Stone stated that with regard to the Town Charter and the items related to the citizens' initiative and recall petitions, he recommended Town Council consider the percentage of the registered people to vote in order to bring that down to five percent, given the actual voter turnout is always fewer than ten percent.

Patsy Mizeur, 1821 Castle Court, Flower Mound, TX

Ms. Mizeur expressed concern regarding multiple change orders related to the Morriss-Gerault road project. She inquired what was in the four change orders and why was the Town Manager delegated to sign them.

David Madigan, 1540 Superior Pl, Flower Mound, TX

Mr. Madigan extended compliments to the members of the Charter Review Commission. He inquired about how the Council goes about determining someone to open positions, such as what is about to be a vacant seat for Place 5, or for the various Boards & Commissions. More specifically, for consideration as to where individuals reside to prevent a bias.

Joe James, Waste Management, 520 Corporate Drive, Lewisville, TX

Mr. James announced he is Flower Mound's new customer service representative with Waste Management.

Mayor Northern responded to Mr. Madigan's question regarding the selection process of Board and Commission members by offering an explanation of the application and interview process. She further added that consideration is given to applicants based on qualifications and a willingness to serve.

Mr. Jefferson responded to Ms. Mizeur's question with regard to the authority the Town Manager has to execute change orders, by pointing out that this authority to execute contracts below \$15,000 was first granted through a Charter amendment. He further added that he did execute four of the change orders; however, the Mayor didn't authorize each one of those. He noted this process is done for expediency purposes in order for projects to move forward in a timely manner.

H. ANNOUNCEMENTS

Councilmember Hayden encouraged the public to participate in the upcoming Charter Review Commission meeting on March 1st.

Deputy Mayor Pro Tem Lyda announced the Town celebrated the opening of Dixon Lane four lane improvement project with a ribbon cutting earlier today, and he noted the project is complete four months ahead of schedule.

Mayor Northern had the following announcements:

- The Town commenced work on thirty-seven roads this past year
- The annual Chamber golf outing is scheduled for April 4th
- Provided an update to Council members regarding the Chamber Board by distributing a copy of the *Chamber at a Glance* to each member present

Mayor Pro Tem Filidoro announced March 3rd is the Summit Club Western Saloon Night fundraiser at Circle R Ranch. He also announced that the Women of Flower Mound are having their fashion show mid-March and noted there is an opportunity for the Summit Club and Women of Flower Mound to work jointly on some projects.

I. TOWN MANAGER'S REPORT

Mr. Jefferson reported on the following road projects:

West Windsor:

- Bids were opened last week for the West Windsor Drive extension/park and five bids were received. He noted the engineer's estimate was \$3,250,000, and the

low bidder came in at \$2,694,000. He stated the item is anticipated for award consideration for the March 19th Agenda.

Wellington Interceptor:

- The Wellington Interceptor bid was also opened - Section One, which runs from Red Cliff Lane to Forest Vista Elementary School. He pointed out this project is going to expand the wastewater capacity in that general area. He noted there were 10 bidders and the engineer's estimate was \$1,270,000, and the apparent low bidder came in at \$754,000.

Future Projects:

- He announced Wichita Trail, Phase II project from Skillern to Simmons, is anticipated to be on Council's agenda this coming June. In addition to that is Post Oak Park in the spring for consideration award.
- Staff anticipates having Chinn Chapel on the agenda before the end of the year.

Mayor Northern commended staff on saving the residents of Flower Mound over a million dollars on these projects.

Councilmember Stephenson stated receiving an e-mail regarding the Wellington Interceptor and the number of trees that were going to be removed.

Mr. Jefferson responded there are three different alignments being evaluated and staff is taking into consideration costs, routes that impact the least amount of trees, or if new trees can be planted to replace any loss of trees. He further stated that a reply to the e-mail previously mentioned demonstrated that the resident wouldn't be impacted as they anticipated. He announced that once the alignment determination is done Council would be informed of the total impact on the area with regard to the trees.

J. CONSENT ITEMS

Councilmember Hayden made a motion to approve by consent Items 1-4 and Item 7. Councilmember Filidoro 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 an ordinance ordering the May 12, 2012, general election for the purpose of electing a Mayor, Councilmember Place 2, and Councilmember Place 4, for two-year terms each.**

RECOMMENDATION: Move to approve an ordinance ordering the May 12, 2012, general election for the purpose of electing a Mayor, Councilmember Place 2, and Councilmember Place 4, for two-year terms each.

ORDINANCE NO. 07-12

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ORDERING A GENERAL TOWN ELECTION TO BE HELD ON THE 12th DAY OF MAY 2012, FOR THE PURPOSE OF ELECTING THE MAYOR AND TWO COUNCILMEMBERS, PLACES 2, AND 4, FOR TWO-YEAR TERMS EACH; PROVIDING FOR ELECTION OFFICERS; DESIGNATING THE PLACES AND MANNER OF HOLDING SAID ELECTION; AND PROVIDING FOR THE POSTING AND PUBLICATION OF NOTICE.

2. **Consider approval of an agreement with Kimley-Horn & Associates, Inc., to provide professional engineering design services associated with the Bakersfield Park Water Line**

(Garden Ridge to Duncan) project, in the amount of \$31,000.00; and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Move to approve an agreement with Kimley-Horn & Associates, Inc., to provide professional engineering design services associated with the Bakersfield Park Water Line (Garden Ridge to Duncan) project, in the amount of \$31,000.00; and authorization for the Mayor to execute same on behalf of the Town.

3. Consider approval of the purchase of creek bank stabilization and erosion control services, associated with the Bakers Branch Stabilization at Echo Bluff project, to Knight Erosion Control, Inc., a sole source provider in the amount of \$143,441.00.

RECOMMENDATION: Move to approve the purchase of creek bank stabilization and erosion control services, associated with the Bakers Branch Stabilization at Echo Bluff project, to Knight Erosion Control, Inc., a sole source provider in the amount of \$143,441.00.

4. Consider approval of an ordinance amending Chapter 66, Article V, Section 66-214 of the Code of Ordinances of the Town of Flower Mound relating to prima facie speed limit for Dixon Lane east of Long Prairie Road (FM 2499) to 40 mph.

RECOMMENDATION: Move to approve an ordinance amending Chapter 66, Article V, Section 66-214 of the Code of Ordinances of the Town of Flower Mound relating to prima facie speed limit for Dixon Lane east of Long Prairie Road (FM 2499) to 40 mph.

ORDINANCE NO. 04-12

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, SUBPART A, CHAPTER 66 OF THE CODE OF ORDINANCES, ENTITLED "TRAFFIC AND VEHICLES," ARTICLE V, "SPEED LIMITS," SECTION 66-214, "ENUMERATION FOR SPECIFIC STREETS," BY REVISING SPECIFIC ENUMERATIONS FOR A SPECIFIED LOCATION AND ADDING A LOCATION TO THE LIST OF STREETS ENUMERATED THEREIN AND IDENTIFYING THE MAXIMUM PRIMA FACIE SPEED LIMITS FOR SAID STREETS AND THE TIME FRAMES FOR SUCH REDUCED SPEEDS, IF APPLICABLE; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

Item 5 pulled from Consent by Councilmember Hayden.

Item 6 pulled from Consent by Councilmember Stephenson.

7. Consider approval of an ordinance amending the Town of Flower Mound's Annual Budget for the fiscal year beginning on October 1, 2011, and ending on September 30, 2012, as adopted by Ordinance No. 52-11 and amended by Ordinance No. 63-11, for adjustments to the Tree Preservation Fund.

RECOMMENDATION: Move to approve an ordinance amending the Town of Flower Mound's Annual Budget for the fiscal year beginning on October 1, 2011, and ending on September 30, 2012, as adopted by Ordinance No. 52-11 and amended by Ordinance No. 63-11, for adjustments to the Tree Preservation Fund.

ORDINANCE NO. 05-12

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE TOWN'S BUDGET FOR THE FISCAL YEAR BEGINNING ON OCTOBER 1,

2011, AND ENDING ON SEPTEMBER 30, 2012, AS ADOPTED BY ORDINANCE NO. 52-11 AND AMENDED BY ORDINANCE NO. 63-11; FOR ADJUSTMENTS TO THE TREE PRESERVATION FUND; PROVIDING THAT EXPENDITURES FOR SAID FISCAL YEAR SHALL BE MADE IN ACCORDANCE WITH SAID BUDGET, AS AMENDED; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON MOTION

AYES: Stephenson, Filidoro, Lyda, Wise, Hayden

NAYS: None

K. REGULAR ITEMS

5. Consider approval of a resolution by the Town of Flower Mound, Texas, suspending the March 6, 2012, effective date of Atmos Mid-Tex's requested rate change; and authorization for the mayor to execute same on behalf of the Town.

Councilmember Hayden commented the proposal is to increase the fixed charge by 140%, while decreasing the consumption charge, so usage charge would be less, which, he stated, disadvantages people who use less gas by decreasing the fixed charge by 140%. He asked for clarification regarding the process given this increase.

Staff Presentation

Mr. Springer stated the Town is suspending their rate increase and how the process works is that as a regulated utility they can propose an increase in the communities in which they serve, and the governmental body can act to suspend that rate increase, and if the Town doesn't suspend it, the requested rate increase would go into effect on March 6th. Once suspended, the Atmos Steering committee (which includes 150 cities within the Metroplex area) become involved. When cases like this come up the steering committee reviews the increase and then negotiates with Atmos. If there is an agreement, then that information comes forward to the respective cities for approval, and if there isn't an agreement the rate case goes to the Public Utility Commission (PUC), and the PUC determines the rate case. Mr. Springer noted the proposal is both a structural change and rate increase, so for this reason he anticipates there will be numerous meetings with Atmos and discussions related to the change.

Councilmember Hayden questioned if the group has the Town's proxy. Mr. Springer noted the Town is a member, and Melanie Harden in the Purchasing Department is the individual that represents the Town on that committee. He noted there is always an option to accept or reject what comes out of that committee.

Mayor Pro Tem Filidoro asked based on what they are proposing now by increasing the fixed cost, has any financial analysis been done as to what that net plus gain is for them. Mr. Springer noted it's 11.94%. Secondly, Mayor Pro Tem Filidoro asked with regard to the arrangement with other communities, if we have some idea as to how well the communities banded together have fared vs. going to the PUC or going it alone.

Mr. Springer stated it's been very effective overall for the communities, the PUC, and Atmos.

Councilmember Hayden noted the structural change truly disadvantages the person who doesn't use that much gas. He stated interest in knowing what their fixed cost are that

goes along with the increase.

Councilmember Hayden moved to approve a resolution by the Town of Flower Mound, Texas, suspending the March 6, 2012, effective date of Atmos Mid-Tex's requested rate change; and authorization for the mayor to execute same on behalf of the Town. Councilmember Filidoro seconded the motion.

RESOLUTION NO. 01-12

A RESOLUTION OF THE TOWN OF FLOWER MOUND, TEXAS SUSPENDING THE MARCH 6, 2012, EFFECTIVE DATE OF ATMOS ENERGY CORP., MID-TEX DIVISION REQUESTED RATE CHANGE TO PERMIT THE TOWN TIME TO STUDY THE REQUEST AND TO ESTABLISH REASONABLE RATES; APPROVING COOPERATION WITH ATMOS CITIES STEERING COMMITTEE AND OTHER CITIES IN THE ATMOS MID-TEX SERVICE AREA TO HIRE LEGAL AND CONSULTING SERVICES AND TO NEGOTIATE WITH THE COMPANY AND DIRECT ANY NECESSARY LITIGATION AND APPEALS; REQUIRING REIMBURSEMENT OF CITIES' RATE CASE EXPENSES; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY AND ATMOS CITIES STEERING COMMITTEE'S LEGAL COUNSEL.

VOTE ON MOTION

AYES: Hayden, Wise, Lyda, Filidoro, Stephenson

NAYS: None

6. Consider approval of Amendment to the Interlocal Cooperative Agreement (ICA) with Denton County for the construction of Dixon Road; and authorization for the Mayor to execute same on behalf of the Town.

Staff Presentation

Mr. Collins noted the purpose of the item is to reduce the value of the ICA that already exist from \$2.6 million dollars to \$2.055 million in order to be in line with what was approved in the TRIP Bond election. He further added the item is also for the utilization of savings on the Dixon Land road project to construct Wichita Trail. He pointed out that Wichita Trail has a budget in the Capital Improvement Plan in the amount of \$2.85 million.

Councilmember Stephenson moved to approve an Amendment to the Interlocal Cooperative Agreement with Denton County for the construction of Dixon Road; and authorization for the Mayor to execute same on behalf of the Town. Councilmember Wise seconded the motion.

VOTE ON MOTION

AYES: Stephenson, Filidoro, Lyda, Wise, Hayden

NAYS: None

8. Charter Review Commission **Public Hearing**
Public Hearing to receive report and update from the Charter Review Commission, discuss and consider recommendations from the Charter Review Commission and provide direction to staff regarding Charter Amendment propositions.

Staff Presentation

Ms. Scott provided a presentation regarding the background of the Town Charter, work of the current and past Charter Review Commissions, including public input received, timing, and costs considerations.

Charter Review Commission (CRC) member Keith Simonson summarized the work of the CRC over the course of the last few weeks. He noted they discussed the recommendations that have been proposed from Council, Charter Review Commission members, and the public. He gave a presentation on each of the recommendations proposed to date and Mayor Northern asked for Council input as each recommendation was being presented.

Recommendation No. 1 – Term Limits (Sec. 3.02)

Councilmember Stephenson asked for clarification as to if the intent is to have three full terms in one position.

Mr. Welch noted the intent is to get three full consecutive terms, regardless as to whether serving as mayor or a councilmember. He stated that if someone was a councilmember for three full terms and opted to take a year off, they could then run again a three two-year term. He further added if the question is “can you run three full terms as a councilmember, and then run for three full terms as mayor with no break”, then the answer is no because you can’t have more than three full consecutive terms for any place or position on the council.

Recommendation No. 2 – Qualifications (Sec. 3.02.1)

Mr. Simonson noted this recommendation basically cleans up language in that it’s redundant to state Naval and military reserve because Naval is part of the military, and the Coast Guard Reserve was added as its part of the Homeland Defense.

No discussion amongst council members on this recommendation.

Recommendation No. 3 – Compensation (Sec. 3.04)

Mr. Simonson noted this recommendation is basically a stipend, however, the word compensation needed to remain.

Mayor Northern indicated she is not in favor of the compensation recommendation.

Recommendation No. 4 – Town Manager – Appointment and Qualifications (Sec. 4.02)

Mr. Simonson noted this recommendation is for the purpose of adding a sentence that establishes a time frame in which the Town Manager would be required to become a resident, in the event the selected applicant is not already a resident, and it sets a guideline should the situation arise in the future.

No discussion amongst council members on this recommendation.

Recommendations No. 5 – Petition for Recall (Sec. 6.02)

Mr. Simonson noted this recommendation proposes the text omission of “300 qualified voters” due to the 15% of qualified voters referenced in this same paragraph far exceeds that amount.

In addition, he noted the remaining language clean-up associated with this recommendation has to do with coinciding with Texas state law (added “or date of birth” to voter registration number language), general clean-up for clarity purposes, and requires a signature by the voter.

Councilmember Stephenson asked if it’s possible to have the Charter Review Commission consider Mr. Stone’s recommendation in the event it is possible according to state law to reduce the 15%. She stated her reasoning is because it does seem like a lot and recognizes there are other places that require less than the 15%.

Mr. Simonson noted the CRC discussed that topic and noted that upon looking at the current voter registration of 44,000, it was agreed that 15% was sufficient, meaning 6,600 people would need to sign a petition. He stated that discussion took place as to whether that was high or low. He indicated they didn’t want to recommend it be too low and let a low threshold put into place a recall item on the ballot, for example.

Mr. Welch added that Mr. Dalton did a comparison with other cities and 15% was on the low end of what most cities were doing. The average is about 27% and others were up to 30% or higher.

Councilmember Hayden inquired if the CRC discussed the 45-day period and if that is enough time to get things accomplished.

Mr. Simonson noted given the city survey data indicated most were right at the 45 days, the Charter Review Commission believed this allotted time was sufficient.

Mr. Welch pointed out that of the cities surveyed, eight were at 45 days, five at 30 days, one at 60 days, and one didn’t have a number listed.

Mr. Jefferson noted the survey information presented by Mr. Dalton identifies the average is 41 days, the median is 45, and the longest is 60.

Deputy Mayor Pro Tem Lyda indicated he believes that falls within the ballpark of where the Town wants to be and it’s been proven as doable.

Recommendation No. 6 – Petition Requesting Submission for Ordinance by Initiative (Sec. 7.02)

Recommendation No. 7 – Council Either to Pass Ordinance or Call Election (Sec. 7.04)

Recommendation No. 8 – Submitted at General Election When Only 5% Sign (Sec. 7.05)

Recommendation No. 9 – Referendum Petition Requirements (Sec. 7.15)

All of the above referenced recommendations are for the purpose of proposing the text omission of “300 qualified voters” due to the 15% of qualified voters referenced in this same paragraph far exceeds that amount, as previously stated in Recommendation No. 5.

No discussion amongst council members on these recommendations.

Recommendation No. 10 – Public-Private-Partnerships (new section – 7.17)

Mr. Simonson noted there was some discussion as to the reference of one year, as well as whether a monetary amount was needed. After discussion by the CRC, and based on feedback from Council, it was decided that one year was sufficient, and if it was limited to a monetary amount there is a missed opportunity to capture everything involved.

Councilmember Stephenson inquired as to if there was discussion regarding being redundant as everything that has been talked about such as building stadiums or hotels with Town funds would require a bond to be issued, which is already required to take to an election. She questioned if it was necessary in the interest of not cluttering the Charter, however, making sure the Town was protected from the concern that was brought forward.

Mr. Welch gave the example of the Stars Center and how when that came forward it could have been done with CO's which would not be voted upon, as opposed to GO's which would be voted on.

Mr. Jefferson confirmed that in the event the Town did bonds there would be a requirement to go to the voters for authorization, however, Certificates of Obligation (CO's) have the same authority or impact of bonds, however, voter approval is not required, although it does require the full backing of the Town's tax rate, and in addition there is the option of revenue bonds and other financing mechanisms. General Obligation (GO) Bonds is simply one of the mechanisms that could be looked at when considering certain types of public-private-partnerships, therefore it's not a perfect overlay and just one of the mechanisms that would require a public vote.

Councilmember Stephenson indicated she would like Council to consider that this might not be the right time as there hasn't been an in-depth discussion given only two cities were provided as examples. She questioned if it was the right time given the Town is embarking on pursuing a new economic development strategy. She indicated it is her preference to have feedback from that strategy plan prior to moving forward with this recommendation. In addition, she would not want to put the Town at a disadvantage to compete by having something like this in the Charter.

Councilmember Hayden inquired as to what defines when the Town issues a CO versus a GO.

Mr. Jefferson indicated generally to issue a GO the normal practice is to put together a Blue Ribbon Committee to talk about the type of projects the Council is considering presenting to the public for General Obligation Bonds in the future. There is not a clear cut answer – issue GO's now and CO's later. Normally if there is a sense as to whether the community is fully backing a project, that's generally when the process begins with the committee and general obligation bonds are done. He noted a lot of times CO's are used for revenue bonds for utility fund projects.

Mayor Pro Tem Filidoro stated being in favor of letting the residents vote on the item. If they decide it's the right time they will vote "yes" and if it's not they will vote "no".

Recommendation No. 11 – Parks, Arts and Library Services Board (Sec 8.04)

Mr. Simonson noted this recommendation is for the purpose of cleaning up the language in the Charter to reflect the revised name of this board from "Parks" to the "Parks, Arts, and Library Services" Board.

No discussion amongst council members on this recommendation.

Recommendation No. 12 – Amendments to Oil and Natural Gas Well Drilling and Operations Ordinance (new section – 8.06)

Mr. Simonson noted this recommendation would require a public hearing and the approval of 3/4 of the membership of the Town Council in order to make any amendment to the Oil and Natural Gas Well Drilling and Operations Ordinance of the Town.

No discussion amongst council members on this recommendation.

Recommendation No. 13 – Correction of non-substantive error such as misspellings, punctuation, grammar, and sentence structure.

Mr. Simonson noted this recommendation is for the purpose of language corrections in two places. One being in Section 5.08 – Oath of Office, which fixes a typo by replacing the word “or” with “nor”. The second correction is in Section 3.11 – Bond for Employees, which adds two commas for proper sentence structure.

Deputy Mayor Pro Tem Lyda inquired how this type of item would be worded on the ballot.

Mr. Welch indicated there is a general ballot proposition which states to correct grammatical or typographical errors in the Charter.

Mr. Simonson brought forward a recommendation from the CRC outside of a Charter recommendation. He noted that originally the discussion began with the language that any lease or conveyance of the Town’s mineral rights requires a public hearing and approval of 3/4 of the Town Council membership. After discussion by the CRC on this topic, the recommendation is to address having a public hearing component as part of the Ordinance.

Councilmember Hayden asked why the CRC recommended taking the super majority out. Mr. Simonson noted you can’t have a super majority on an Ordinance, only a majority.

Mr. Welch clarified that it just takes a simple majority to pass an Ordinance so if you pass an Ordinance that requires a super majority, that Ordinance can only be changed by a majority vote.

Mr. Simonson identified various items that were considered and discussed, however, opted not to bring forward as recommendations by the CRC.

Mayor Northern opened the Public Hearing at 7:24 p.m.

Public Participation

Kia Mastey, 3608 Polo Run Dr, Flower Mound, TX

Ms. Mastey spoke in support of Charter recommendations as written by the Charter Review Commission, and more specifically for the Oil and Gas amendment.

Mayor Northern closed the Public Hearing at 7:28 p.m.

Councilmember Hayden indicated he is in favor of putting all of the items forward to the voters; however, he is not in favor of the compensation item related to council members. He noted while he might vote to put this item on the ballot for the benefit of the letting the public decide, he is not in favor of compensation for council members.

Deputy Mayor Pro Tem Lyda noted he is not in favor of a filing fee, however, as an alternative, an idea might be that you could get a petition that would waive the filing fee.

Mayor Northern announced the next meeting of the CRC is March 1st at the Shiloh Road Fire Station and indicated if the CRC opts to move forward with their recommendations, there would be another Public Hearing with Town Council on March 5th.

9. **LDR 04-11 – LDR Update 2011** **Public Hearing**

Public Hearing to consider a request to amend the Land Development Regulations (LDR 04-11 – LDR Update 2011) by amending the following sections thereof by adding, amending, deleting, modifying and/or revising certain paragraphs, phrases, provisions and subsections contained in section 74-3, "definitions," section 82-33, "application requirements," section 82-37, "minor changes," section 82-74, "off-street parking and loading space requirements," section 82-82, "queuing requirements for drive-through facilities," section 82-161, "clear visibility standards," section 82-213, "approving bodies," section 82-214, "landscape plan," section 82-272, "outdoor storage areas," section 82-274, "loading and service bays," section 82-302, "compatibility buffer," section 90-2, "creation of building site," section 90-52, "distribution of development plans," section 90-54, "comments; written report," section 90-251, "special roadway and area standards," section 90-311(d), "street design standards," section 90-320, "procedure to be followed by persons seeking street name change of an existing street," section 98-543, "specific uses," section 98-542, "permitted uses," section 98-573, "specific uses," section 98-602, "permitted uses," section 98-633, "specific uses," section 98-663, "specific uses," section 98-693, "specific uses," section 98-723, "specific uses," section 98-817, "permitted uses," section 98-873, "specific uses," section 98-952, "use classification," section 98-990, "recycling dropoff center," section 98-996, "swimming pool, private," section 98-1142, "front yard fence height and visibility," and section 98-1143, "perimeter and open space walls and fences" as more particularly described and set forth herein below; by adding a new section 82-137, "residential driveway spacing from an intersection," a new section 82-246, "outdoor patios and seating areas," and a new section 82-278, "exposed concrete and retaining walls"; by renumbering section 90-186, "specific use permits," as section 98-953, "specific use permits," and thereafter deleting previously existing section 90-186; and by deleting section 90-318, "thoroughfare buffers" in its entirety; "and substituting the phrase "town manager" for "director of community development" throughout Chapter B, Land Development Regulations, of the Code of Ordinances, and to consider adopting an ordinance providing for said amendment. *(The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its November 14, 2011, meeting. The Town Council postponed this item to the February 20, 2012, meeting at their December 5, 2011, meeting.)*

Staff Presentation

Mr. Dalton provided a presentation which offered historical background information, identified amended sections, and details in relation to outdoor patios and seating areas.

Deputy Mayor Pro Tem Lyda asked for more information related to the item that P & Z opted not to take action on (Sec. 90251-Special Roadway and Area Standards) – November 14th of last year.

Mr. Dalton indicated it was a long discussion at P & Z and it had to do with a conflict that occurred between the Town's Land Development Regulations and Master Plan as to how to describe certain roadways (i.e. scenic and country roadways) so the commission, at that time, decided not to recommend approval and to look at it more from a broader base when the Master Plan is reviewed in the future.

Mayor Northern noted this item has come before Council on two occasions previously in great detail.

Mayor Northern opened the Public Hearing at 7:39 p.m.

Public Participation

There were no participants.

Mayor Northern closed the Public Hearing at 7:39 p.m.

Deputy Mayor Pro Tem Lyda moved to approve a request to amend the Land Development Regulations (LDR 04-11 – LDR Update 2011) by amending the following sections thereof by adding, amending, deleting, modifying and/or revising certain paragraphs, phrases, provisions and subsections contained in section 74-3, "definitions," section 82-33, "application requirements," section 82-37, "minor changes," section 82-74, "off-street parking and loading space requirements," section 82-82, "queuing requirements for drive-through facilities," section 82-161, "clear visibility standards," section 82-213, "approving bodies," section 82-214, "landscape plan," section 82-272, "outdoor storage areas," section 82-274, "loading and service bays," section 82-302, "compatibility buffer," section 90-2, "creation of building site," section 90-52, "distribution of development plans," section 90-54, "comments; written report," section 90-311(d), "street design standards," section 90-320, "procedure to be followed by persons seeking street name change of an existing street," section 98-543, "specific uses," section 98-542, "permitted uses," section 98-573, "specific uses," section 98-602, "permitted uses," section 98-633, "specific uses," section 98-663, "specific uses," section 98-693, "specific uses," section 98-723, "specific uses," section 98-817, "permitted uses," section 98-873, "specific uses," section 98-952, "use classification," section 98-990, "recycling drop off center," section 98-996, "swimming pool, private," section 98-1142, "front yard fence height and visibility," and section 98-1143, "perimeter and open space walls and fences" as more particularly described and set forth herein below; by adding a new section 82-137, "residential driveway spacing from an intersection," a new section 82-246, "outdoor patios and seating areas," and a new section 82-278, "exposed concrete and retaining walls"; by renumbering section 90-186, "specific use permits," as section 98-953, "specific use permits," and thereafter deleting previously existing section 90-186; and by deleting section 90-318, "thoroughfare buffers" in its entirety; "and substituting the phrase "town manager" for "director of community development" throughout Chapter B, Land Development Regulations, of the Code of Ordinances and to adopt an ordinance providing for said amendment. Councilmember Wise seconded the motion.

ORDINANCE NO. 06-12

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY AMENDING THE FOLLOWING SECTIONS THEREOF BY ADDING, AMENDING, DELETING, MODIFYING AND/OR REVISING CERTAIN PARAGRAPHS, PHRASES, PROVISIONS AND SUBSECTIONS CONTAINED IN SECTION 74-3, "DEFINITIONS," SECTION 82-33, "APPLICATION REQUIREMENTS," SECTION 82-37, "MINOR CHANGES," SECTION 82-74, "OFF-STREET PARKING AND LOADING SPACE REQUIREMENTS," SECTION 82-82,

“QUEUING REQUIREMENTS FOR DRIVE-THROUGH FACILITIES,” SECTION 82-161, “CLEAR VISIBILITY STANDARDS,” SECTION 82-213, “APPROVING BODIES,” SECTION 82-214, “LANDSCAPE PLAN,” SECTION 82-272, “OUTDOOR STORAGE AREAS,” SECTION 82-274, “LOADING AND SERVICE BAYS,” SECTION 82-302, “COMPATIBILITY BUFFER,” SECTION 90-2, “CREATION OF BUILDING SITE,” SECTION 90-52, “DISTRIBUTION OF DEVELOPMENT PLANS,” SECTION 90-54, “COMMENTS; WRITTEN REPORT,” SECTION 90-311(D), “STREET DESIGN STANDARDS,” SECTION 90-320, “PROCEDURE TO BE FOLLOWED BY PERSONS SEEKING STREET NAME CHANGE OF AN EXISTING STREET,” SECTION 90-423, “UNDERGROUND UTILITIES,” SECTION 98-543, “SPECIFIC USES,” SECTION 98-542, “PERMITTED USES,” SECTION 98-543, “SPECIFIC USES,” SECTION 98-602, “PERMITTED USES,” SECTION 98-633, “SPECIFIC USES,” SECTION 98-663, “SPECIFIC USES,” SECTION 98-693, “SPECIFIC USES,” SECTION 98-723, “SPECIFIC USES,” SECTION 98-817, “PERMITTED USES,” SECTION 98-873, “SPECIFIC USES,” SECTION 98-952, “USE CLASSIFICATION,” SECTION 98-990, “RECYCLING DROPOFF CENTER,” SECTION 98-996, “SWIMMING POOL, PRIVATE,” SECTION 98-1142, “FRONT YARD FENCE HEIGHT AND VISIBILITY,” AND SECTION 98-1143, “PERIMETER AND OPEN SPACE WALLS AND FENCES” AS MORE PARTICULARLY DESCRIBED AND SET FORTH HEREIN BELOW; BY ADDING A NEW SECTION 82-137, “RESIDENTIAL DRIVEWAY SPACING FROM AN INTERSECTION,” A NEW SECTION 82-246, “OUTDOOR PATIOS AND SEATING AREAS,” AND A NEW SECTION 82-278, “EXPOSED CONCRETE AND RETAINING WALLS”; BY RENUMBERING SECTION 90-186, “SPECIFIC USE PERMITS,” AS SECTION 98-953, “SPECIFIC USE PERMITS,” AND THEREAFTER DELETING PREVIOUSLY EXISTING SECTION 90-186; AND BY DELETING SECTION 90-318, “THOROUGHFARE BUFFERS” IN ITS ENTIRETY; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON MOTION

AYES: Hayden, Wise, Lyda, Filidoro, Stephenson
NAYS: None

10. Chapter 380 Partnership Agreement Public Hearing

Public Hearing to consider approval of a Chapter 380 Partnership Agreement with Direct Development to provide incentives for the economic development of Flower Mound, and authorization for the Mayor to execute same on behalf of the Town.

Staff Presentation

Mr. Springer noted that at the last regular Council meeting staff was provided direction to draft a 380 Agreement for incentives with Direct Development that would include two requirements. One being an assessed valuation requirement of \$10 million or greater within a set time frame and the second one was to have 160 full time jobs within the same type of time frame. He indicated that agreement was drafted to include a five-year period from issuance from the first certificate of occupancy on one of the structures. He stated discussions took place with Direct Development, however, was unable to finalize a 380 Agreement for Council consideration. Some of the concerns can be related to different ownership of some of the buildings, and with regard to certification of some of the employees.

Councilmember Hayden inquired as to if a project of this magnitude comes forward, doesn't the Town historically waive 50% of the impact fees, and the Town has an opportunity to go above and beyond that.

Mr. Jefferson stated the impact fees for non-residential are already set at 50% and then for economic development incentives Council can consider cutting that in half again.

Councilmember Hayden further inquired if that was in line with what was done with other projects such as The Pines.

Mr. Jefferson responded "Yes".

Councilmember Stephenson indicated being in receipt of multiple e-mails suggesting the Town is going to have to pay impact fees to TxDOT, and for this reason should not waive the impact fees. She further added it's her understanding the Town doesn't have impact fees related to TxDOT and asked for clarification regarding that statement.

Mr. Jefferson responded that is correct, the Town doesn't have impact fees that would need to be paid to the state for this project or any others. He pointed out the only involvement TxDOT would have is the applicant's submittal of a permit for the turn lanes.

Mayor Pro Tem Filidoro asked for clarification regarding the items of contention being the valuation of the project established.

Mr. Springer stated that what is being brought back to Council is based on direction. At this juncture staff is coming back to Council acknowledging being unable to enter into a 380 Agreement based on that Council direction. He indicated he would defer to Mr. Watson to discuss their desire for the 380 Agreement in relation to the number of items.

Mayor Pro Tem Filidoro asked for clarification regarding the attempt to add an employment incentive and he thought the agreement is, based on the application, that there would be 160 full time jobs, and it's his understanding that is now being taken off the table.

Mr. Springer indicated Mr. Watson will answer any questions related to the items that couldn't be agreed upon, or as needed.

Applicant Presentation

David Watson, Direct Development, 2001 Ross Ave, Ste 550, Dallas, TX

Mr. Watson clarified Direct Development and the Town are not in disagreement on the agreement and it's about getting an agreement that is structured properly for the Town and Direct Development. He noted there were two incentive items that Council was interested in making sure was achieved in order to earn the waiver of road impact fees, and if they weren't able to hit those achievements there was a provision in the agreement that allowed the Town to "clawback", or force Direct Development to pay those fees back. He indicated the agreement is structurally difficult. He stated having no problem with the ad valorem tax and the assessed value creation, however the 160 employees target is problematic for the reason being his company is not considered an employer at the shopping center. He noted the amount of employees is determined by the retailers and the agreement states that he would certify annually to the Town how many people were employed at the shopping center. He indicated this would be difficult to do as he's not involved in the hiring or retention of those employees. He asked for the Town to consider the fact that the retailer will hire the employees necessary to protect the investment that they have in their own store. He requested the employment incentive be removed from the agreement due to this component being out of his control.

Mayor Northern asked if Direct Development will be constructing the Tom Thumb and Walgreens buildings. Mr. Watson responded they would not; however, and they would be doing the horizontal improvements.

Mr. Watson pointed out that when the employee count was submitted on the application, it was not clarified how many were actually considered part time labor.

Mayor Northern asked if they were able to identify how many of the 135 would be full time. Mr. Watson indicated they had not.

Mayor Northern asked if they had spoken to Walgreens about their employment numbers. Mr. Watson replied he did not.

Mayor Northern questioned if they are asking for incentive abatements for both sides of that road. Mr. Watson indicated that is correct and he added it's consistent with the last request as nothing has changed in that regard.

Councilmember Hayden inquired why are incentives being addressed at this point given it lends the appearance of a done deal, and he asked for confirmation as to if it is a done deal with Tom Thumb moving forward at this moment.

Mr. Watson replied with regard to why these incentives are being asked for now – he stated they built three other centers in Flower Mound and on those centers a seventy-five percent reduction on impact fees was granted, and he was under the assumption that it would be granted again subsequent to other projects. He indicated he didn't realize there was a need to go through this process again. With regard to the second part of the question relating to Tom Thumb being a done deal, he responded that there has been a long delay (10 years) due to having a development agreement in place that stated developments couldn't be made on this property until FM 1171 was open in its full section. He stated receiving a call from Tom Thumb indicating they would try and open the store in October, however, the only way to do that is to get started on the horizontal improvements, so he took that risk and went forward in order to allow them to have a pad site to begin their building. Tom Thumb is in the process of going through the total cost of their building so the deal is not done with Tom Thumb. He noted currently there is no contract signed to build a Tom Thumb or any shopping space.

Councilmember Hayden indicated 160 jobs sounds like a reasonable number; however, the issue is how many are part time. Mr. Watson indicated he didn't know that answer other than a substantive portion of those workers would be part time.

Mayor Northern summarized the reason for the incentive request is due to the cost of the curb cut. Mr. Watson indicated that is correct.

Mr. Springer provided a review of the Town's incentive policy, and a summary with regard to how the incentive was structured for this project.

Councilmember Hayden asked if the five-year time frame was adequate. Mr. Watson responded it's adequate.

Councilmember Hayden asked who would certify the employment figures should Direct Development's ownership change and they are no longer able to certify those numbers.

Mr. Welch indicated most of the development agreements are structured in that any future successor would have the responsibility to do so as the Agreement would be filed with the deed of record for Denton County. The Town would require someone to verify the employment data for every business in the shopping center.

Councilmember Hayden asked if it was proportional in that a certain business, such as Tom Thumb, would be responsible for a set figure. Mr. Welch indicated the Agreement doesn't provide for that - simply a straight number, and at some point in time if that number is less than that amount, they would be considered in default. He also clarified that it's a one point in time between now and the fifth year that the obligation is met.

Mayor Pro Tem Filidoro noted the last time they came before Council they were given overwhelming support by Council and that's why there was direction given to move forward with an agreement. Mr. Watson indicated it's his understanding there was direction to the Town Attorney to engage with the developer to see if an agreement can be ironed out with the two stipulations identified.

Mayor Pro Tem Filidoro asked if the items within the stipulations are from the application they submitted. Mr. Watson indicated "yes". Mayor Pro Tem Filidoro stated the reason they are here is not because Council asked him to come back, and it's more of a matter of not being able to come up with an Agreement. Mr. Watson indicated that was correct - they couldn't come up with Agreement due to one of the stipulations being difficult to follow or certify.

Mayor Pro Tem Filidoro sought clarification that because the changes presented are substantive, and if that is what warranted the need to come back to this meeting.

Mr. Springer clarified that the direction from Council was with the inclusion of two stipulations on value and jobs and Council would need to approve or disapprove those changes. He further added if Council would like to consider changes to the Agreement that Council can do that.

Councilmember Hayden commented that when all Council members have had the opportunity to ask questions he would like the Council to consider taking up the matter of negotiations in closed session.

Mayor Northern opened the Public Hearing at 8:15 p.m.

Public Participation

Dennis McKaige, 3400 North Dr, Flower Mound, TX

Mr. McKaige asked Council to consider dropping the term of "full time" in the agreement, and with regard to the clawback issue, maybe a change of pace to clawback at \$3.00 for every 1,000 square feet under 140,000 square feet that does not get developed.

Cindy Barnett, 5401 Park Place, Flower Mound, TX

Ms. Barnett stated it's her understanding that after five years they have to have 160 employees employed at this facility, and if they don't they are in default. In addition she questioned if this would be considered a public-private-partnership, and if so they don't want it.

Mayor Northern closed the Public Hearing at 8:19 p.m.

Mr. Springer clarified the project would not be considered a public private partnership (PPP) because the Town has no ownership interest in this facility, which is part of what a PPP is, and in terms of default the Town wouldn't have any liability – it simply means they would not have met the terms of the Agreement and therefore they would have to pay the fees that were waived at the end of the five year period. The Town would not have a financial liability such as a loan default.

Mr. Springer and Mr. Jefferson clarified and responded to questions from Council related to impact fee assessments and the Town's Incentive Policy.

Councilmember Stephenson inquired of Mr. Watson as to if they've had the employment language in other agreements they've done in the Metroplex. Mr. Watson replied "no". Furthermore, she asked if this requirement was a factor in the way of a dis-incentive going forward with additional projects. Mr. Watson replied "Yes it would, given it's not something you would typically see".

Councilmember Hayden indicated being in favor of having some type of jobs reference within the agreement, even if it's just 100.

Mayor Pro Tem Filidoro asked of Mr. Welch if he had enough information to work on an Agreement, as he stated it's his understanding from Council there is an understanding on the issue of employment and inquired if there is anything else needed to formulate an Agreement.

Mr. Welch clarified that it's his understanding to remove the job creation requirement completely and to keep the assessed valuation of \$10 million, exclusive of any existing land values, meaning \$10 million in new valuation. He asked for clarification regarding keeping the clawback provision in the agreement.

Mayor Pro Tem Filidoro indicated he supported what Mr. McKaige suggested.

Mayor Northern inquired as to what is usually done for this type of item.

Mr. Jefferson responded that typically a taxable appraised value threshold would be set, with a clawback provision in the event that threshold is not met during a certain time frame. He noted if the employment would be removed from the agreement, then that would be consistent from the last four to five years. He further suggested Council give some thought to Mr. McKaige's suggestion because it can get individuals to overpromise and then you have to track the numbers and get back somewhere less than \$10 million. He noted the Incentive Policy is updated every two years so there is an opportunity to process those types of changes in the future.

Mayor Northern indicated she would like to see the developer amend their application and resubmit with the correct information because the application received indicates there will be 160 jobs.

Councilmember Hayden indicated in order to keep this going forward a decision needs to be made sooner than later as those involved are working on budgets for the project. He indicated wanting to have an opportunity to discuss this matter in closed session.

Deputy Mayor Pro Tem Lyda, Councilmembers Stephenson and Wise indicated being acceptable to discussing the matter in closed session at this juncture while the topic is at hand.

Mayor Northern summarized that it's her understanding from Council that they want to move forward with the current dollar amount based on ad valorem taxes within five years of at least \$10 million, and removing the jobs clawback.

Mr. Welch asked for clarification regarding the clawback provision as he recalled hearing some uncertainty regarding the clawback provision and wants to make sure there is agreement from Council on that.

Mayor Northern indicated the only option clawback that is being removed is the clawback for jobs, and the clawback for ad valorem taxes would be retained.

Mr. Watson pointed out that typically there would be some credit if in the event they reached \$9 million, just short of the \$10 million.

Councilmember Stephenson indicated she would be acceptable for the agreement to be structured in a pro-rata share.

Mr. Welch stated that the property can be rendered at a higher value, and he noted that in the event it is stipulated and 90% met, and if there is a \$300,000 waiver impact fee that then becomes \$30,000 that would be owed back -then the question comes who pays that, and that pro rata gets divided amongst the property owners on that track of land. At that point it becomes how much each retailer owes and an administrative issue because the impact fees are for the entire development and five years from now if it goes into default there has to be a mechanism to be paid. His concern is that if there is a pro-rata portion that is owed, it becomes a matter of who owes that.

Councilmember Stephenson indicated she is suggesting that it's more on the lines of focusing on what was missed.

Mr. Welch indicated this could be done if Direct Development would be responsible for that pro-rata going forward. Mr. Watson replied he would be acceptable to the pro-rata because of the situation that the idea is that if they earn 9/10 of the goal they wouldn't get penalized for the full 10/10.

Mr. Jefferson noted that clawback provisions have been executed before and the practice is that developers are informed well in advance of that time frame coming forward. In addition, if they believe the goal has been met, the developer has the option of approaching the appraisal district to render a certain value. Mr. Jefferson suggested thinking through the process because of the potential of under delivering and overpromising.

Mr. Jefferson noted if a decision is made within two weeks it's still within their time frame as to when they need to pull a building permit.

Mr. Jefferson responded to questions from Mayor Pro Tem Filidoro related to extensions associated with 380 Agreements.

Mayor Pro Tem Filidoro suggested allowing a ten minute break for Mr. Watson to speak with the Town Manager and Town Attorney to discuss terms of a revised agreement.

Councilmember Hayden indicated he was in favor of making sure the bar is set at an attainable level.

Deputy Mayor Pro Tem Lyda clarified that waiving the \$10 million is not being proposed and they are only being asked to pay the amount of fees that have been waived at the end of

the five year period if they don't meet their target, with \$446,000 being the maximum they could be out if the incentive policy is adopted as written.

Mayor Northern asked of Mr. Watson if it would be beneficial for Council to recess for the purpose of allowing him to discuss the Agreement with the Town Attorney and Town Manager. He indicated it would be.

Mayor Northern recessed the meeting at 8:55 p.m.

Mayor Northern reconvened the meeting at 9:06 p.m.

Mayor Northern temporarily postponed Item 10 at 9:06 p.m. and proceeded with Item 11.

11. **Consider approval of Change Order No. 12 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 \$533,081.18; and authorization for the Mayor to execute same on behalf of the Town.**

Staff Presentation

Mr. Collins indicated the full change order is in the packet, and he reviewed the major categories of the change order as noted in the packet for this item, in addition to highlighting areas of cost associated with the budget. He later responded to questions from Council members relating to funding sources, irrigation systems, and landscaping.

Councilmember Stephenson commented it would be her preference to have slides similar to what was presented at the November work session on Morriss Rd to assist Council in following every change order through, and pointed out that given the project size it would be helpful to have that same type of information so Council can follow the total cost and where the overruns were.

Councilmember Lyda moved to approve Change Order No. 12 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 \$533,081.18; and authorize the Mayor to execute same on behalf of the Town. Councilmember Wise seconded the motion.

VOTE ON MOTION

AYES: Filidoro, Lyda, Wise, Hayden

NAYS: Stephenson

Mayor Northern reopened Item 10 at 9:29 p.m.

Mr. Welch indicated, after meeting with Mr. Watson, and as requested by him, the following adjusted revisions are being brought back to Council:

- employment provision of the Agreement be removed, along with the removal of the annual certification related to the employment
- the period of seven years for the increase of the assessed valuation to \$10 million rather than five years as currently exist in the agreement, and it would be exclusive of land values so it would be just based on new construction for the \$10 million assessed valuation
- the cure period would be 90 days rather than 30 days, and in the event they were to be in default, and a provision would be added that the developer be liable for the amount actually waived in impact fees, meaning the total possible waiver fees are estimated at \$445,000, and if for some reason only \$200,000 had been waived that would be the clawback provision (the amount actually waived), which would be

specified in the agreement

Mr. Welch responded to questions from Council related to the structure of past 380 Agreements.

Mayor Northern asked Mr. Watson how long it took to build out the JC Penney center. Mr. Watson replied 30 months and it could be similar for this project, and that's the reasoning for the seven years instead of five years.

Mayor Pro Tem Filidoro indicated being acceptable to the new agreement terms.

Councilmember Filidoro moved to approve the proposed Chapter 380 Partnership Agreement with Direct Development to provide for incentives for the economic development of Flower Mound, subject to the provisions and modifications referenced by the Town Attorney, and authorize the Mayor to execute same on behalf of the Town. Councilmember Hayden seconded the motion.

Council Discussion

Mayor Northern indicated she was not in favor of the seven years given the commitment the developer has by the various retailers and a bank.

VOTE ON MOTION

AYES: Hayden, Wise, Lyda, Filidoro, Stephenson

NAYS: None

12. **Consider approval of an ordinance authorizing the issuance of the Town of Flower Mound, Texas, General Obligation Refunding Bonds, Series 2012, establishing parameters for the sale and issuance of such bonds, delegating certain matters to an authorized official of the Town and resolving all matters incident and related thereto.**

Staff Presentation

Mr. Springer gave a presentation which offered background information relating to a parameters Ordinance, included term definitions, and identified interest rates and savings that can be gained.

Councilmember Hayden inquired about flexibility with the term to allow for a 30-year term instead of 15 years in order to take advantage of the interest rates.

Mr. Springer responded it's matched to the outstanding debt so we have what is called a level savings. In other words we take our debt service we have now and we want to reduce our debt service and have a savings in each year so we're reducing our debt service in each year. He further added there are restrictions on refunding debt on Texas law where you can't extend the debt.

Boyd London, First Southwest Company, 325 N. St. Paul, Ste 800, Dallas, TX 75201

Mr. Boyd pointed out that we are in a fortunate market and that is why they are here and he stated they will be selling these at a competitive sales so they will be taking bids.

Councilmember Wise moved to approve an ordinance authorizing the issuance of the Town of Flower Mound, Texas, General Obligation Refunding Bonds, Series 2012, establishing parameters for the sale and issuance of such bonds, delegating certain

matters to an authorized official of the Town and resolving all matters incident and related thereto. Councilmember Stephenson seconded the motion.

ORDINANCE NO. 08-12

AN ORDINANCE AUTHORIZING THE ISSUANCE OF "TOWN OF FLOWER MOUND, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2012"; LEVYING A CONTINUING DIRECT ANNUAL AD VALOREM TAX FOR THE PAYMENT OF SAID BONDS; RESOLVING OTHER MATTERS INCIDENT AND RELATED TO THE ISSUANCE, SALE, PAYMENT AND DELIVERY OF SAID BONDS; ESTABLISHING PROCEDURES FOR THE SALE AND DELIVERY OF SAID BONDS; AND DELEGATING MATTERS RELATING TO THE SALE AND ISSUANCE OF SAID BONDS TO AN AUTHORIZED TOWN OFFICIAL.

VOTE ON MOTION

AYES: Stephenson, Filidoro, Lyda, Wise, Hayden

NAYS: None

13. Consider a request for a Site Plan (SP 19-09 - Raising Cane's) to construct a fast food restaurant, 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 3205 and 3207 Justin Road. *(The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its January 9, 2012, meeting. This item was postponed to the February 20, 2012, meeting at the February 6, 2012, Town Council meeting).*

Mayor Northern opened the item and it was previously noted this item was pulled by the developer due to work still underway on the development plan due to a TxDOT item, and asked direction from Mr. Welch as to if a motion was necessary.

Mr. Welch indicated a motion to indefinitely postpone the item would be needed and when the issues get resolved it can be placed back on the agenda given there is not a public notice requirement associated with the item.

Councilmember Lyda moved to table this item indefinitely. Councilmember Stephenson seconded this motion.

Council Discussion

No discussion.

VOTE ON MOTION

AYES: Hayden, Wise, Lyda, Filidoro, Stephenson

NAYS: None

L. COORDINATION OF CALENDARS AND FUTURE AGENDAS/MEETINGS

Mayor Northern announced the next Council meeting is March 5th.

M./N. CLOSED/OPEN MEETING

The Town Council convened into a closed meeting at 9:53 p.m. on February, 20, 2012, pursuant to Texas Government Code Chapter 551, including, but not limited to, Sections 551.087, 551.072, 551.074, and 551.071 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 10:34 p.m. on February, 20, 2012, 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 duties of Presiding Judge and Alternate Judges, and all matters incident and related thereto.

Councilmember Lyda moved to approve the Mayor to execute a letter agreement amendment with the alternate municipal judge. Councilmember Filidoro seconded the motion.

VOTE ON MOTION

AYES: Stephenson, Filidoro, Lyda, Wise, Hayden

NAYS: None

- 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, SMARTGrowth Commission, Tax Increment Reinvestment Zone Number One (TIRZ #1), and Transportation Commission.

No action taken.

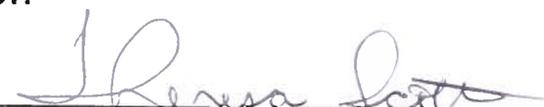
O. ADJOURN REGULAR MEETING

Mayor Northern adjourned the meeting at 10:36 p.m. on February 20, 2012, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS


MELISSA D. NORTHERN, MAYOR

ATTEST:


THERESA SCOTT, TOWN SECRETARY

THIS PAGE WAS INTENTIONALLY LEFT BLANK