

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 15TH DAY OF APRIL, 2013, 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:

Tom Hayden	Mayor
Kendra Stephenson	Mayor Pro Tem
Mark Wise	Deputy Mayor Pro Tem
Bryan Webb	Councilmember Place 2
Steve Dixon	Councilmember Place 4
Jean Levenick	Councilmember Place 5

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

Theresa Scott	Town Secretary
Terrence Welch	Town Attorney
Jimmy Stathatos	Town Manager
Debra Wallace	Assistant Town Manager/CFO
Doug Powell	Executive Director of Development Services
Tiffany Bruce	Engineering Manager
Mark Wood	Director of Economic Development

A. CALL REGULAR MEETING TO ORDER

Mayor Hayden called the regular meeting to order at 6:02 p.m.

B. INVOCATION

Chaplain Fredrickson gave the invocation.

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

Zachery with Boy Scout Troop 2 led the pledges.

D. PRESENTATIONS

1. Motorcycle Safety and Awareness Month (May) Proclamation.

Mayor Hayden presented a motorcycle safety and awareness proclamation to:
The Confederation of Leathernecks, National President, BullDog.

2. Presentation by a representative of Realty Capital related to the Lakeside DFW development, including an update on development applications and the selection of a consultant for the amphitheater market/design study, and Town Council to discuss and consider same.

Jimmie Archie, Realty Capital, 909 Lake Carolyn Pkwy, Irving, TX, 75039

Mr. Archie gave a presentation offering an update related to the Lakeside DFW development, identifying what is currently underway and what is planned for the future as follows.

- There will be a groundbreaking ceremony on April 24th from 5 – 6pm
- Currently working on the first residential part of the project - 124 lots and includes different housing types built with 30', 55', and 60' lots. There are three builders involved in the initial phase of the development: Darling Homes, American Legend Homes, and Normandy Homes. Those houses will range from \$300,000 to \$800,000 and range from 2,400 square feet up to 4,000 square feet. There will be free standing villas that are similar to town homes without the attached wall.
- Phase II will come before P & Z a week from tonight and it's the first phase of the mixed use portion of the project being developed by Greystar, and in sum it will be 45,000 square feet of commercial space (that will be six buildings that line Lakeside Parkway right off of 2499) and some town homes and urban style apartments

Stephenson: Asked Mr. Archie to clarify why are they building those first four commercial buildings.

Archie: We are trying to set the tone as a mixed use development and one of the reasons people want to live in this type of environment is so they have access to coffee shops, ice creams shops, restaurants, etc. In addition, technically it is a requirement of the development agreement. Technically, the development agreement only requires that the first four buildings off of 2499 be built. However, after doing different studies it was determined that it made sense to go on with the 5th and 6th building to create that critical mass and sense of place from day one. In addition, as part of the first phase, there is also some public spaces that are required as part of the development agreement. There will be some fountains, a mini amphitheater, a place for a farmers market, and arts and crafts festivals, all in the first phase of the project.

- Next for construction, starting the first part of 2014, with lots coming on line during the summer of 2014, would be Phase III, which is another 70 lots by the same builders doing Phase I.
- Projecting going forward, Greystar has the entire mixed use portion of the project under option. So the idea would be they are our long term partner to develop out the mixed use portion of the project. He projected next would be Phase IV, and stated that up front at the intersection of Lakeside and 2499 we're looking to get a specialty retailer or grocer to anchor the retail at that intersection
- Phase I of the residential and mixed use will have about 10 different parks and open spaces, and those spaces will be used for all different types of things. You'll have a linear park with the wide boardwalk running through it, pocket parks, mini amphitheater, children's garden, esplanade, and a

detention pond park area with trails around it. One of the things that is unique about the project is there is not a huge park in the middle, we have little open spaces scattered around because it's a pedestrian friendly community. We want people to walk and experience different parts of the development.

- Currently there are approximately 100 live oak trees (planted years ago) being moved by a professional tree farm company to an on-site tree farm for nurturing. They will later be replanted within the development as appropriate. Where they are planted now is where the mixed use buildings and sidewalks are planned.
- Projecting through there are another 50 lots of single family homes, which is Phase V, and includes the Lakeside Village, which is intended to be the regional entertainment restaurant draw, and allow people to really enjoy the lake. That area is where our amphitheater is planned, an observation deck and plaza is planned, and anchoring that space is destination restaurants with lake view dining.
- Phase VI would finish out the mixed use area and include some condominium towers
- Part of the development agreement at this stage requires us to hire a consultant to analyze our site and the market, which includes working with the Town to see what they would like to see here and what the market could support here. When we went through the zoning process no one wanted us to build an amphitheater that sat empty. We wanted it to be programed year round that would activate the Lakeside Village throughout the course of the year. We have done extensive research and interviewed 10 different event planning firms, and we feel we've found the right firm with Marshal Milam Music Events & Promotion.

Marsha Milam and Cara Fischer, Marsha Milam Music, 1506 W. 13th St, Austin, Texas

Ms. Milam indicated that they want to determine what fits for Flower Mound and will soon begin interviewing staff as well as Council. She recited their mission statement, and provided an overview as to things they have done. She gave the examples of Chuy's Children's Parade, Austin Film Festival, Gardens By Moonlight in San Antonio, Fort Worth Music Festival, Ranch Bash in Sundance Square, and Solar Powered Music Festival. She noted they produce six music series across Texas and she outlined the various locations.

Stephenson: Inquired about the demand for musical events in this area.

Milam: We're just starting and I want to be clear we think music should be a part of this but we don't think it's the only thing that would work here. Some ideas we want to talk to people about is free movies, and then the girl scouts are in charge of the cokes and popcorn and it becomes a fund raiser for them. The size is important because it offers a variety of options and we envision the entertainment being once or twice a week, and that would be seasonal. The demand for music is universal.

Levenick: Are you planning on doing family events as well, and if so, what type of events would be planned?

Milam: It could be used for a children's story hour, or letting the scouts use it as a fundraiser, or to go as far as to contract tours that go around (i.e. Spider Man, Dora the Explorer, etc.). We've looked at the demographics and we are well aware that children's programming is a part of this amphitheater.

Hayden: We're excited to have you here and we would like our organizations in Flower Mound to be able to use those facilities, whether it is school children or the Flower Mound volunteer symphony, the Voices of Flower Mound, etc.

Milam: It's a community amphitheater so we are anticipating that.

Hayden: There will be people from the region attending. Also, how many events per year?

Milam: Estimated 4 – 5 in the good months (especially Thursday thru Sunday), with perhaps 40 – 50 events a year.

Stephenson: Asked Mr. Archie to go over the build out of the boardwalk and the amenities.

Hayden: Requested to demonstrate on the map the location where the farmers market might be.

Archie: He pointed out the location on the map and noted the space is designed as a flexible, multi-use space. On a Saturday morning you could have a farmers market and in the evening it becomes a live entertainment venue.

For the boardwalk and other amenities, the development agreement requires that with the initial phase we have to dedicate an easement for the extension of the boardwalk into the areas you are not building on. He demonstrated that path on the map. Most of the boardwalk will be built in the initial phase of the project. Some of it may be temporary because the boardwalk can't go through areas where major construction is taking place. For the amphitheater, I don't have the exact numbers, but I believe once Phase II starts of either the single family or the multi family, basically you have to start construction on the amphitheater. So that is why Marsha and Cara are involved now because it's time to start designing and figuring out what the programming will be so that as this project builds out we're ready to pull the trigger on the amphitheater. He encouraged anyone who has interest in this amenity to stay tuned to their Face Book page and web site and the public will soon be invited to participate in focus groups with Marsha and Cara as they are doing their due diligence.

Levenick: Can you estimate how long it's going to take to get to the amenities of Phase V?

Archie: The amenities are required to be built, regardless of whether the rest of the development is ready to go, we're required to build those amenities.

With respect to who are the retailers and restaurants slated for the property we're not ready to make any formal announcements yet, however, he announced they have secured a commercial marketing and leasing company called United Commercial Realty (UCR), who is one of the top retail leasing brokerage firms for the area. We're in massive marketing mode and hopefully over the next few months we can make some announcements.

Laird Sparks, Greystar, 600 E Las Colinas, Irving, TX

Mr. Sparks gave a presentation identifying or noting:

- Background information about Greystar
- overview of the current site plan
 - 45,000 sf of ground floor commercial with residential above it
 - average rents in the residential portion are \$1,350 per month
 - the balance of the buildings are typical urban style apartments
 - pointed out various park locations within the development and there has been a tremendous amount of effort to save the trees
 - presented a three dimensional video to demonstrate what is anticipated for the development

Hayden: How long will it take you to complete this first phase?

Sparks: Two years, with the front retail completed in 10 months.

Hayden: Is there a section for senior housing?

Sparks: We do build senior housing; however, there is no technical senior housing component.

Hayden: I think down the road there is zoning for senior housing and I didn't know if you all would be part of.

Sparks: We could be.

Hayden: Can you speak on the quality of the buildings, and what the amenities would be like?

Sparks: It's our typical product and he described as follows:

- Average rent will be \$1,300:
- 1 bedroom apartments are between \$900 - \$1,500 a month.
- 2 - 3 bedroom town homes would be \$2300 - \$2400 a month.
- 2 bedrooms are \$1,500 - \$2,000 a month.
- Units come with either black or stainless appliances, granite countertops, and primarily hardwood flooring (except for the bedrooms). The interior will be a custom home type of finish.

- In addition, if people are going to be paying this kind of rent they will want a large fitness center, resort style pool, and the ability to walk to the retailers.

Hayden: Asked Mr. Sparks to incorporate artistic features as much as possible within the site for things such as fountains to create a "wow" factor.

Stephenson: Asked Mr. Stathatos to make the video available for viewing on the Town's web site.

Archie: This is a \$58 million project. It's wall street money being invested in this project. There are professional developers involved.

Webb: When are you breaking ground and where are you breaking ground at?

Archie: April 24th, 5 – 6 pm at the Northwest corner of FM 2499 and Lakeside Pkwy.

Hayden: Who is going to be the management of the property?

Sparks: Greystar

E. PUBLIC PARTICIPATION

Jane Foster, 5108 Peaceful Cove, Flower Mound, TX

North Central Texas College is having a breakfast for books fundraiser on April 27th from 9am – 11am to help raise funds for students that can't afford books.

Jason Hitt, 912 Wood Duck, Flower Mound, TX

Mr. Hitt expressed interest in initiating a warrant study to have north/south stop signs put up at the location of FM 3040 and Garden Ridge for the purpose of helping to set pace. He noted there is a significant amount of pedestrian and bike traffic at this location, and there have been some close calls with kids so there is a concern for the kids in the neighborhoods. In addition he pointed out there is a deaf couple that lives there. He pointed out that essentially in accordance with the 8/14 minutes from the Transportation Commission the request for the sign to be generated it has to be brought to your attention by the citizens. He reiterated that the request is for two signs to be put up at the two locations where it converges and for a warrant to be looked at for those to be legitimate. He pointed out on a map there are two entrance points for parks, there are bus stops at each end, and kids out there playing. What we have found is that people make that first turn pretty fast at 25 mph and pick up very fast to 50 mph by the end of the street.

Susan Dawson, 3425 Camden Dr, Flower Mound, TX

Lisa Johnson, 4401 Biscayne Dr, Flower Mound, TX

Ms. Dawson thanked the Council for supporting Children's Advocacy of Denton County. She provided statistics related to services provided to their clients. She invited Council and staff to a lunch tour every 3rd Friday between 11:30-1:00.

Denis Toth, 2020 Skelton St, Flower Mound, TX

Mr. Toth announced the Seniors In Motion celebrated their 8th anniversary this month. He provided background information as to facilities they have been previously located at. He noted they anticipate having 1,200 members at the end of 2013. He pointed out there is an influx of seniors coming to Flower Mound. He stated the senior center is a great amenity for seniors and each time space has been limited with all three of those locations. Now is the time to move forward with a permanent senior center.

He expressed support for Mike Walker and Jean Levenick for Town Council.

Nan Gwinn, 5320 Gregory Dr, Flower Mound, TX

Ms. Gwinn announced she has been a member of the Seniors in Motion for seven years and thanked the Town for the senior center. She pointed out how they moved to various locations as they have exceeded their space. They are once again at capacity and requested support for a permanent senior center.

Leo Gonya, 2217 Shumard Ln, Flower Mound, TX

Mr. Gonya indicated he was a member of the Seniors in Motion and echoed what Nan and Dennis said. He pointed out they have a candidate forum at the senior center, however, there are some members that want to play card games, however, they were told they couldn't do that because they have only one room. He added they have almost 20 activities that take place simultaneously. We need additional rooms with additional space so we can do multiple functions within the center, all at the same time.

Shirley Belcher, 3123 Mission Ridge, Flower Mound, TX

Mr. Belcher commented she came to Flower Mound 4 years ago and at that time questioned what she would do with no one in Town her age. She commented having then discovered the senior center. She noted it would be wonderful for Flower Mound to have a larger senior center.

Virginia Simonson, 3104 Native Oak, Flower Mound, TX

Ms. Simonson indicated she agrees with the seniors in that we need a larger facility. I would like to say that all the councils I have come before in a number of years, this Council is the most responsive. You try to address the concerns.

She indicated having some concerns regarding agenda item 17 and hoped it would be addressed by the Town staff and Town attorney.

Her concerns were as follows:

- Is this the only way we can do this successfully.
- Didn't the developer have the inclination to have an election for a PID instead of a management district?
- What are the expressed and implied authorities that go with this district?
- What happens if they are sued and they lose?
- I don't feel the residents have had enough time to consider the impacts.
- What will you do after two public hearings and the residents don't want it?

Carol Kohankie, 4512 Lauren Way, Flower Mound, TX

Ms. Kohankie commented I think proceeding with the MMD is prudent at this time. Let's not lose the project. It's a vital part of our economic development. I ask that you not delay this.

She stated being supportive of Jean Levenick and Mike Walker for Town Council.

Mark Burroughs, 17 Royal Oaks Cir, Denton, TX

Mr. Burroughs pointed out he has been Flower Mound's tax collector/attorney since 1985. He requested, from an objective standard, to have a review of applications and under whatever methodology you use, try to get an apples to apples type of analysis of the proponents of their services and not just subjective statements.

Pointed out there are only a couple of dozen specialized tax collectors in the State of Texas. The reasons for that are:

- It's a high volume business
- Lots of legal enforcement & activity
- Low dollar amount per account
- It takes a sophisticated computer system to handle it right
- Lots of staff members needed to do a good job

He noted they have concentrated their forces in Denton County to do a good job. That experience level and background to do this job in a superior way is not something the average law firm would have.

Greg Sawko, 207 Wellington Oaks, Denton, TX 76210

Mr. Sawko recollected there has been some discussion related to how difficult or not difficult tax collection was. I mostly want to talk about qualifications. Mark and I have been doing this for a long time and we greatly appreciate that and we don't want to offend anybody by telling you how important your contract is to us. Understand that the tax collection work is a very multi-faceted project. You have people paying, things being collected, and multiple things happening at one time. We keep track of all those pieces and parts. It's like a big puzzle. Always moving every day. People are at our office routinely. If you are just doing 5, 6, or 10 it's not a problem. Any lawyer can send out collection letters, but any lawyer can't handle the dynamics of multiple hundreds and thousands of accounts. That's where our specialty is.

He spoke about Mr. Cox's resume, noting Mr. Cox was hired to do business-commercial litigation. He noted Mr. Cox worked for him and he wanted to point out his level of experience. He provided a record from the Denton County District Clerk's office which list every case Mr. Cox has been involved in since he joined our office until a couple of days ago. It shows that Mr. Cox's name or involvement on eight tax law suits since 2007. This is a complete listing. The reason I bring that up is because of the Affidavit that Mr. Cox filed. We take this seriously and so it's like a litigation case. You can't prove something is not the way it appears when you have things in front of you. So you have to show more

objective stuff and this is a public record. Other than those eight cases, there were forty other unrelated commercial litigation matters that Mr. Cox assisted me on. Those eight cases were situations in which Mr. Burroughs or I didn't sign something because we weren't there, or Mr. Cox appeared because we couldn't do it. Since Mr. Cox has left he's primarily focused in the area of divorce. We appreciate your business and want to continue to serve the citizens of Flower Mound.

Michael Walker, 5121 Marshall Creek, Flower Mound, TX

Mr. Walker announced he is a candidate for Town Council and expressed appreciation for those who endorsed him this evening.

He pointed out that for item 17 he has some background information and experience related to that item and it's important to make sure the citizen's questioned are being answered. If it is successful coming back from Austin, make sure it gets a good review from staff. When you get to the development agreement piece of that, make sure that everyone has a clear understanding as to what is in that agreement as that is the governing document of how that special district will function.

As a result of a recent candidate forum, he pointed out his position related to gas drilling, and how it differentiated from his opponent.

David Inderlied, 3713 Britford, Flower Mound, TX

Mr. Inderlied stated he is here because there is a request for proposal for a football league in Flower Mound. He indicated when moving to Flower Mound there wasn't a flag football league so he got one started. He was advised that due to an existing contract with a local football league they couldn't grant them access to the fields. After several attempts at being turned away in Flower Mound he went to Highland Village. He indicated he is approaching Town Council because he believes the kids need a choice. He indicated their field requirements are minimal and they would like to have access to another field.

Pete Simon, 1301 Stapleton Ln, Flower Mound, TX

Mr. Simon shared Mr. Inderlied's same comments. He added, without the flag football league his son wouldn't have the chance to play football. Having fields available to us doesn't hurt anything and it doesn't compete with regular football. It's about giving parents a choice.

Dan Jaworski, 1432 Sun Breeze Dr, Little Elm, TX

Mr. Jaworski commented he has been attached to football all of his life. He indicated having entered his son in a league in Little Elm and had a terrible experience with tackle football. The Highland Village league that David runs has been a great experience. He asked that you entertain the option of having a flag football league.

Paul Stone, 709 Lake Bluff, Flower Mound, TX

Mr. Stone stated it's that time of year again – silly season. He noted the subject he wants to talk about is civility. He's seen a lot of elections in Town and always felt, as a candidate and citizen, before people vote they should do their homework. Don't believe everything you hear or read about. Any candidate should make themselves available for a telephone call. They shouldn't allow their supporters to speak for them. I would rather see someone running who is concerned about ethics, service, and interested in a consensus. He indicated being supportive of Jean Levenick and Mike Walker.

F. ANNOUNCEMENTS

1. Announce recent and upcoming civic and social events.

Councilmember Dixon announced mosquito dunks are now available for pick up at Town Hall. Every household is eligible to pick one up as long as they are available. This will help to abate the mosquito problem and its important homeowners watch out after their own property and make sure there is no standing water. He indicated a desire for residents to look after their own property so we don't have to do aerial spraying like last year. He noted if we have a situation like last year, and it's found necessary that the Town has to make a decision about aerial spraying, he will chose people and safety first.

Councilmember Webb had the following announcements:

- For the mosquitos, this is truly one of those things in that if every resident takes personal responsibility we won't have a problem. Richardson is already doing ground spraying. We would love it if we didn't have to go to ground or aerial spraying. But it's going to take everyone's efforts to make it a reality.
- On August 10th, the Town will host a drug summit at Trietsch Methodist Church. We are going to be inviting not just Flower Mound folks, but including our Denton County neighbors and communities to have a discussion about drugs in our community.

Mayor Hayden had the following announcements:

- He indicated there was a need to educate the community about the issue of drug abuse. He gave two examples of heroin overdose he has been made aware of in the community.
- There will be a corporate headquarters relocating from Carrollton to the Lakeside Business District site at the corner of Lakeside Parkway and FM 2499. It will be a 200,000 square feet facility, including show room and distribution space, and it will bring 100 jobs to Flower Mound.

G. TOWN MANAGER'S REPORT

1. Update and status report related to capital improvement projects.

- **Wichita Trail:** There has been some complaints about the cross streets and how the dirt isn't holding up or stabilizing. The Town is having the contractor put flex base on all the aprons to the cross streets so the public should see immediate results.
- **FM 1171 waterline:** Assuming it passes (item is on tonight's agenda); it shows the progress being made to Canyon Falls and tying in that critical infrastructure.

2. Update and discussion on Economic Development projects.

- **New Business Opening:** For the new Carrollton business relocating to Lakeside as previously announced by Mayor Hayden; not only is it a corporation moving in, but it is also an international business that will be attracting visitors to Flower Mound. The name will later be released.
- **Lakeside DFW:** For the Lakeside DFW project, he pointed out that one of the investors is Black Rock, and they are a trend setter type of Wall Street firm. When other companies see that Black Rock is engaged in the community, it tells them it's okay to get in.
 - On the morning of April 24th, Realty Capital will be the presenter at the Chamber & Town Economic Forum here at the Town Hall, Council Chambers.
- **Lakeside Ranch:** Two buildings at Lakeside Ranch (Exeter developments) and collectively they equal around 580,000 square feet.

Hayden: When is the ribbon cutting for the Ranier building?

Stathatos: I don't have an exact date. I was just told April, however, I haven't heard anything since.

Hayden: I just know that coming up in a few weeks for their building at the River Walk.

3. Update and status report related to ATMOS.

- On Thursday, April 18th, 6:00 p.m. there will be a work session, which will include public comments. Historically there has not been public input during a work session; however, staff was directed by Council to do so. He noted Mayor Hayden and Councilmember Levenick actually walked the easement so some of that feedback will be offered. In addition, Atmos will unveil their plans and will take public input and will do their best to incorporate those thoughts into their plans. He pointed out the Town has a section on the web site where residents can see their property as it relates to the easement. He pointed out that all of the HOAs who are impacted by this easement have been informed.

Hayden: Reminded residents this will be the last time the public could express their opinion regarding Atmos and their tree clearing. Right now the estimation is somewhere between 750 and 800 trees that will be removed throughout Flower Mound.

Councilmember Levenick announced there will be public participation at this work session to allow for an opportunity to hear from the residents and have conversations back and forth, and that's important so that they feel included in the process. She noted that normally that opportunity does not exist during a work session.

H. CONSENT ITEMS

Councilmember Dixon moved to approve Consent Items 1, 2, 4-10, Councilmember Levenick seconded the motion. Each item, as approved by consent, is restated below along with the approved recommendation, and if applicable, the Ordinance or Resolution caption for each, for the record.

1. **Consider approval of the minutes from a regular meeting of the Town Council held on March 18, 2013.**

RECOMMENDATION: Move to approve the minutes from a regular meeting of the Town Council held on March 18, 2013.

2. **Consider approval of canceling the July 1, 2013, regular meeting of the Town Council.**

RECOMMENDATION: Move to approve canceling the July 1, 2013, regular meeting of the Town Council.

Item 3 was requested to be removed and postponed indefinitely by staff.

4. **Consider approval of Change Order No. 3 for the Sunrise Circle Paving Improvements project, amending the contract with 3D Paving and Contracting, LLC., for a decrease of \$7,506.00, final acceptance of the project, authorization of final payment to the contractor, 3D Paving and Contracting, LLC., in the amount of \$23,823.43; and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Move to approve Change Order No. 3 for the Sunrise Circle Paving Improvements project, amending the contract with 3D Paving and Contracting, LLC., for a decrease of \$7,506.00, final acceptance of the project, authorize final payment to the contractor, 3D Paving and Contracting, LLC., in the amount of \$23,823.43; and authorize the Mayor to execute same on behalf of the Town.

5. **Consider approval to award Bid No. 2013-47-B, for the 2013 Street Reconstruction project (Wood Creek Drive, Sheffield Court, and Colony Street Reconstruction projects), to P&E Contractors, Inc., in the amount of \$970,477.00; and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Move to approve award Bid No. 2013-47-B, for the 2013 Street Reconstruction project (Wood Creek Drive, Sheffield Court, and Colony Street Reconstruction projects), to P&E Contractors, Inc., in the amount of \$970,477.00; and authorization for the Mayor to execute same on behalf of the Town.

6. **Consider approval of a Professional Services Agreement with Kleinfelder Central, Inc., to provide geotechnical and material testing services associated with the 2013 Street Reconstruction project (Wood Creek Drive, Sheffield Court, and Colony Street Reconstruction projects), in the amount of \$74,560.00; 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 2013 Street Reconstruction project (Wood Creek Drive, Sheffield Court, and Colony Street Reconstruction projects), in the amount of \$74,560.00; and authorization for the Mayor to execute same on behalf of the Town.

7. **Consider approval of an Interlocal Agreement for Cooperative Purchasing for Actuarial Shared Services with North Central Texas Council of Governments, and a Master Agreement with Gabriel, Roeder, Smith & Company to provide actuarial services, in the amount of \$7,725; and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Move to approve an Interlocal Agreement for Cooperative Purchasing for Actuarial Shared Services with North Central Texas Council of Governments, and a Master Agreement with Gabriel, Roeder, Smith & Company to provide actuarial services, in the amount of \$7,725; and authorization for the Mayor to execute same on behalf of the Town.

8. **Consider approval of the award of Best Value Bid No. 2013-6-A Employee Uniforms, to The Richie Company, at the unit prices and guaranteed percentage discounts bid, in the estimated annual amount of \$60,000.**

RECOMMENDATION: Move to approve the award of Best Value Bid No. 2013-6-A Employee Uniforms, to The Richie Company, at the unit prices and guaranteed percentage discounts bid, in the estimated annual amount of \$60,000.

9. **Consider approval of a Staffing Agreement with AMTEK Consulting LLC, not to exceed the amount of \$30,000, for a temporary Network Technician for the Information Technology Division; and authorization for the Mayor to execute same on behalf of the Town.**

RECOMMENDATION: Move to approve a Staffing Agreement with AMTEK Consulting LLC, not to exceed the amount of \$30,000, for a temporary Network Technician for the Information Technology Division; and authorization for the Mayor to execute same on behalf of the Town.

10. Consider approval of a partial release of two old water line easements and a temporary construction easement upon, over, under, and across land owned by Lakeside DFW Land, Ltd.; and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Move to approve a partial release of two old water line easements and a temporary construction easement upon, over, under, and across land owned by Lakeside DFW Land, Ltd.; and authorization for the Mayor to execute same on behalf of the Town.

VOTE ON MOTION

AYES: Wise, Dixon, Stephenson, Levenick, Webb.

NAYS: None.

I. REGULAR ITEMS

Item 3 was requested to be removed and postponed indefinitely by staff.

3. Consider approval of a Real Property Exchange Agreement by and between the Town of Flower Mound, and Toll BBC LLC, exchanging approximately 0.225 acres of unimproved Town-owned right-of-way in the Lake Forest Phase II North Addition for approximately 0.344 acres of land owned by Toll BBC LLC, in the Flower Mound Oaks Addition; and authorization for the mayor to execute all documents related to said real property exchange on behalf of the Town

Councilmember Dixon moved to indefinitely postpone the approval of a Real Property Exchange Agreement by and between the Town of Flower Mound, and Toll BBC LLC, exchanging approximately 0.225 acres of unimproved Town-owned right-of-way in the Lake Forest Phase II North Addition for approximately 0.344 acres of land owned by Toll BBC LLC, in the Flower Mound Oaks Addition. Councilmember Levenick seconded the motion.

VOTE ON THE MOTION

AYES: Webb, Levenick, Stephenson, Dixon, Wise.

NAYS: None.

11. Consider the approval of a professional services agreement with Elsey & Elsey, Attorneys at Law for the collection of outstanding taxes and other accounts receivable.

Staff Presentation

Mr. Stathatos requested the item be postponed indefinitely to allow for additional time to examine all the interested parties and their qualifications, and later report back to Council.

Mayor Pro Tem Stephenson moved to postpone indefinitely the consideration of the approval of a professional services agreement with Elsey & Elsey, Attorneys at Law for the collection of outstanding taxes and other accounts receivable. Councilmember Webb seconded the motion.

VOTE ON THE MOTION

AYES: Wise, Stephenson, Levenick, Webb.

NAYS: None.

ABSTAIN: Dixon

12. Consider approval to award Bid No. 2013-49-B for the FM 1171 to HWY 377 Water Line Phase 1 (Roanoke Hills to Hwy 377) and Hwy 377/UPRR Water Line Phase I project, to Condie Construction Company, Inc., in the amount of \$2,700,901.00; and authorization for the Mayor to execute same on behalf of the Town.

Mayor Hayden opened items 12 and 13 at the same time.

Staff Presentation

Tiffany Bruce, Engineering Manager, Town of Flower Mound

Ms. Bruce stated these items provide for the construction contract for the award of the water line going out to western Flower Mound, which will include the water necessary for Canyon Falls. Also, it will provide a connection to the future western pump station coming early next year. As part of this project the Canyon Falls Development provided \$1.5 million in pre-payment of water impact fees in association with the development agreement that was done last Spring. Therefore that money is going toward the award of this contract.

The second item is for the testing associated with the construction.

Stephenson: Asked Mr. Stathatos if this takes care of the issues related to the Denton County building.

Stathatos: Yes, for the water.

Councilmember Webb moved to approve the award of Bid No. 2013-49-B for FM 1171 to HWY 377 Water Line Phase I (Roanoke Hills to Hwy 377) and Hwy 377/UPRR Water Line Phase I project, to Condie Construction Company, Inc., in the amount of \$2,700,901.00; and authorize the Mayor to execute same on behalf of the Town. Deputy Mayor Pro Tem Wise seconded the motion.

VOTE ON THE MOTION

AYES: Webb, Levenick, Stephenson, Dixon, Wise.

NAYS: None.

13. Consider approval of a Professional Services Agreement with Fugro Consultants, Inc., to provide geotechnical and material testing services associated with the FM 1171 to HWY 377 Water Line Phase 1 (Roanoke Hills to Hwy 377) and Hwy 377/UPRR Water Line Phase I project, in the amount of \$32,731.60; and authorization for the Mayor to execute same on behalf of the Town.

Councilmember Dixon moved to approve a Professional Services Agreement with Fugro Consultants, Inc., to provide geotechnical and material testing services associated with the FM 1171 to HWY 377 Water Line Phase I (Roanoke Hills to Hwy 377) and Hwy 377/UPRR Water Line Phase I project in the amount of \$32,731.60; and authorize the Mayor to execute same on behalf of the Town. Councilmember Levenick seconded the motion.

VOTE ON THE MOTION

AYES: Wise, Dixon, Stephenson, Levenick, Webb.

NAYS: None.

14. Consider a request for a Site Plan (SP 02-13 - Lakeside Ranch Buildings 32 & 33) to develop warehouse buildings. The property is generally located south of Lakeside Parkway, west of Garden Ridge Boulevard, and north of Enterprise Road. *(The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its April 8, 2013, meeting.)*

Mayor Pro Tem Stephenson opened items 14, 15, and 16 at 8:12 p.m.

Staff Presentation

Doug Powell, Director of Development Services, Town of Flower Mound

Mr. Powell gave a presentation identifying or noting:

- Detailed location
- Land use and zoning are appropriate, and the two buildings to be constructed do comply with the PD and the concept plan.
- Photographs of the site.
- The item wouldn't be brought forward to Council except for the fact that they are seeking incentives.
- The architecture and color will be similar to what is out there now.

Mark Wood, Director of Economic Development, Town of Flower Mound

Mr. Wood gave the following presentation:

- The reason the item is on the agenda is because Texas Tax Code requires passage of an Ordinance prior to entering into a tax abatement agreement.
- The two buildings total 580,000 square feet.
- This project is going to add approximately \$18 million to the commercial tax base for Flower Mound.
- The project meets the requirements under the Town's incentive policy
- The tax agreement presented before Council provides for a 5-year/50% real and business personal property tax abatement, as well as a reduction of road, water, and wastewater impact fees to 25%, and a waiver of building permit fees.
- This agreement is similar to what has been offered to other Lakeside businesses in the district.
- In return, the development must substantially complete both buildings on or before December 31, 2020 to receive the full five year abatement and they must maintain a real property value of \$10 million for the larger building and \$7 million for the smaller building.
- The cost benefit analysis over a 20 year period shows a total benefit of \$1.9 million and the cost to the Town for this same period for abatement and fee reduction is \$462,000, for a net benefit of \$1.4 million to the Town.

Hayden: How many jobs will this create?

Wood: They currently don't have a tenants, however, taking into account what other Lakeside businesses have accomplished with a building this size, approximately 200 jobs.

Hayden: What is the occupancy level in the Lakeside and warehouse sector?

Wood: It's a little bit above 96% and that will go down once Oakmont's buildings come on line sometime this summer.

Webb: I'm glad to hear occupancy is up. Are the rents improving?

Wood: They are. We are also seeing a lot of tenant interest in the buildings.

Dixon: Two years ago, and again three to four months ago, I asked about the connectivity at Garden Ridge south of Lakeside Parkway. I haven't heard back as to if there is an opportunity for the Town to develop Garden Ridge south of Lakeside. Currently it terminates at Lakeside Parkway. For Garden Ridge going south there is CTDI. Looking at these plans you see a drive aisle going between the existing CTDI and this proposed west building. I am in favor of what is before us tonight, but I want to make sure that as construction moves forward we plan for Garden Ridge potentially to go south and somehow curve around to the west or to the east to make sure we have good connectivity down there.

Councilmember Dixon moved to approve a request for a Site Plan (SP 02-13 - Lakeside Ranch Buildings 32 & 33) to develop warehouse buildings. Mayor Pro Tem Stephenson seconded the motion.

VOTE ON THE MOTION

AYES: Webb, Levenick, Stephenson, Dixon, Wise.

NAYS: None.

15. Public Hearing to consider approval of an ordinance establishing a Tax Abatement Reinvestment Zone for commercial-warehouse tax abatement.

Mayor Hayden opened the Public Hearing at 8:19 p.m.

No one spoke in support or against.

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

Councilmember Webb moved to approve an ordinance establishing a Tax Abatement Reinvestment Zone for commercial-warehouse tax abatement. Deputy Mayor Pro Tem Wise seconded the motion.

ORDINANCE NO. 16-13

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, DESIGNATING A CERTAIN AREA AS A TAX ABATEMENT REINVESTMENT ZONE FOR COMMERCIAL-WAREHOUSE TAX ABATEMENT, WITHIN THE TOWN OF FLOWER MOUND, TEXAS; ESTABLISHING THE BOUNDARIES THEREOF AND OTHER MATTERS RELATED THERETO; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

VOTE ON THE MOTION

AYES: Wise, Dixon, Stephenson, Levenick, Webb.

NAYS: None.

16. Public Hearing to consider approval of a Tax Abatement Agreement with Exeter Lakeside Land L.P., to provide for incentives for the economic development of Flower Mound, and authorization for the Mayor to execute same on behalf of the Town.

Mayor Hayden opened the Public Hearing at 8:20 p.m.

No one spoke in favor or opposition.

Mayor Hayden closed the Public Hearing at 8:20 p.m.

Mayor Pro Tem Stephenson moved to approve a Tax Abatement Agreement with Exeter Lakeside Land, L.P. to provide for incentives for the economic development of Flower Mound, and authorize the Mayor to execute same on behalf of the Town. Councilmember Dixon seconded the motion.

VOTE ON THE MOTION

AYES: Webb, Levenick, Stephenson, Dixon, Wise.

NAYS: None.

17. Resolution expressing support for legislation to create the River Walk Municipal Management District #1 within the Town's corporate limits.

Staff Presentation

Mr Stathatos provided an overview as to how this came about, noting that the River Walk has only been under contract for two and a half weeks and we have been made aware by the developer's interest in exploring an MMD on April 1st. You also need to take into consideration that the legislative session ends at the end of May, so the deadline has already passed for legislation to be submitted, but since this is a local bill, they are still able to have a bill presented. However, in order for the bill to move forward the Town has to express support. The reason I think it's important we discuss it because, for example, you look at abatements like tonight, the TIRZ District we have, and the EB5 program we looked at. If the Town is going to deliver the high quality economic development that the residents expect and demand we wouldn't be doing our jobs if we didn't explore every tool in the tool box. This is a unique situation in that by supporting the creation of the district, even if it's 5 – 0 vote, we're not going to leave here tonight with a new Municipal Management District. It's not legal, because the Town and Commissioner's Court has to express support, and a bill has to pass the state legislature (house and senate) and have the governor sign it. On top of that it has to come back to the Town and then the Town still has to negotiate a development agreement. So all of this could happen where everything gets approved and the Town has the option to change their mind in that we won't go forward. The reality is, this is the first step. If the Council says "no", then we wouldn't have the chance to examine whether or not this tool would be effective for Flower Mound. If Council opts not to move forward its two years when the legislation is back in session. There is such a tight window. If you look at it from start to finish its 17 – 18 days from when the property was under contract and 13 days from when I was made aware of it. If it gets approved by the legislature that's when we really roll up our sleeves and continue to do the due diligence. We have already looked at a lot of MMDs and there is one in League City, Frisco, and Heath. We have looked at the success stories and reviewed the downfalls so that when the time comes for Council to consider whether an MMD is wanted we want to be armed with information. We want to be able to say what makes it good or not good for Flower Mound. There would also be a market feasibility study. This is not going to occur in a vacuum. It's going to have to be sustainable so it will be analyzed appropriately. We also want to make sure that all of the financial aspects are vetted heavily. We want to conduct the due diligence since the Town Council would approve the development agreement, which includes selected what board members are on the board of directors, and they also have to approve the finance plan. We want to understand what public improvements are going to be made because these public improvements are going to be dedicated to the Town. There will be a future opportunity for public input and involvement.

Kirk Wilson, T Wilson & Associates, 1221 N I-35E S, Carrollton, TX

Mr. Wilson gave a presentation identifying or noting:

- Background information on his company, noting he has a consulting firm in which he generally represents developers, and prior to starting that firm in 2001 he was in government and served as Denton County Commission for 4 years, on the North Texas Toll Way Board for 2 years, and served as Denton County Judge for 2 years. He noted most of the projects he has worked on included special district components. He started working with Centurion American group as a client in 2003. Centurion American has an estimated 18 special districts right now in the North Texas area, noting all of those special districts will be focused on water, sewer, drainage, and roads.

- Centurion American purchased 107 acres in the River Walk Development
- Any improvements done, or any levy that takes place on the property would require consent by the land owner. This district is only for areas that Centurion American has under its control. Centurion American believes that this project requires a higher level of financial feasibility in order to provide the level of quality to make it a destination project.

He offered the following presentation:

Why create an Municipal Management District (MMD):

- Facilitate economic development.
- Reduce financial risk and/or cost to Town.
- Assist in the financing of public improvements (our purpose: water, sewer, drainage and roads only).
- Compliment a project's overall feasibility (\$7 million estimated expenditure on the canal and drainage ponds, the chapel project, the amphitheater, etc.). Those types of costs are not reimbursable by any special district because those will be private improvements, but by having this type of reimbursement mechanism the developer would be able to free up money that would be spent on those public improvements and be able to invest those monies in a higher level of amenity on the project.

MMD Overview:

- Finance or reimbursement of capital improvements.
 - Water, sewer, drainage, roadways, public recreation facilities, other public improvements as approved by law.
- As the development agreement unfolds, we would be proposing as a limitation: water, sewer, drainage and roads. Those would be the four items that we would be requesting going forward.

MMDs – What are they used for:

Purpose:

- Created to promote, develop, encourage and maintain employment, commerce, transportation, housing, tourism, recreations, arts, economic development, safety and the public welfare within a defined area.

Eligibility criteria:

- Created through state legislature or the Texas Commission on Environmental Quality (TCEQ) procedurally. He pointed out the drawbacks associated with going through TCEQ.

Powers and duties:

- The proposed bill sets forth a five member board that is initially appointed by the Town Council. The names of the board members would be agreed to in the developers agreement (their initiative).
- The proposed bill does not allow a levy of ad valorem property taxes by the District.
- This district may levy assessments in accordance with its service plan and only by petition of affected property owners, and he outlined that process.
- Under the proposed bill a "Development Agreement" consenting to the district must be entered by September 30, 2017, or the district is "dissolved".

Revenue:

- The bill then only allows the district to raise revenue through assessments
- Assessments must be requested by petition of affected property owners

Bonds:

- A district may issue bonds as allowed by statute and its local governing municipality
- In the developer's agreement we will state estimated costs and there will be a dollar amount defined in that developer's agreement, and all cost of issuance would also be defined in that agreement as to what we expect to be reimbursed on and how that would move forward.
- As the project matures and those costs become actuals (if they increased) we would have to come back to Council. We will probably estimate high to be safe on that count so as not to have to come back to Council.

MMDs – How are they created:

Administration:

- The bill allows the initial board of directors to be appointed by the Town Council. We would think that the names of the directors would be listed in the development agreement.
- The directors would serve four year staggered terms and the district would be a political subdivision in the State of Texas. In this regard going forward, the directors would be elected by people within the boundaries. That type of election is not required on assessments so the levy of assessment could be put through the board and a person doesn't have to go out and vote.

Duration:

- Municipal management districts exist until dissolved by:
 - Petition of property owners
 - Vote of the board
 - Resolution of the local governing authority
 - Under this Bill failure to enter into a Development Agreement by September 30, 2017 triggers dissolution

MMDs - How are they funded:

- This district would be funded by levy of assessment on property within the district.
- River Walk MMD would not have taxing authority - only assessment authority.
- The assessment payment would be in addition to all other applicable ad valorem taxes on the property, so when a tax bill is produced on property owners within these boundaries, all taxes will be collected 100%, and then, in addition this assessment will appear on the tax statement.
- The Developer and Town would seek to limit assessments to a reasonable total obligation that fits the market and completes needed public improvements as applicable. This point is here because it's a two-sided deal. The developer cannot have an assessment on his property that is so high he can't sell property (commercial or residential). So in this market we're going to be looking at a ceiling of how much total taxes can be, and in our estimation between \$2.85 and \$3.05 is the maximum on a millage basis of what we could have within the boundaries of River Walk. So that gives us between 56 and 75 cents total (as far as a millage) in order to assess on that property. Any amount above that would make us non-competitive and we wouldn't be able to operate. That number would be something agreed to by the developer and the Town.
- The district may issue bonds as allowed by statute and the local governing body.
- A funding stream of assessments would be used as the sole pledge of funding for the bonds. The Town has no connection to the bond issue of the MMD. It is a governmental subdivision. It will issue the bonds in its name. Those bonds shall only be payable by the assessments that are collected on the property.
- In the event of non-payment of the assessment, the property would be subject to the same collection procedures and remedy as a non-payment of ad valorem property taxes.
- The bond debt is not Town debt.
- The bond debt does not impact Town bonding capacity.

MMDs – How are they governed:

- After appointment the directors are subject to election on four-year, staggered terms.

- Qualifications include - must be:
 - 18 years old
 - Resident or owner of property
 - Owner of stock of a corporate owner of property in the district
 - Owners of a beneficial interest in a trust that owns property in the district
 - An agent, employee or tenant of a person that owns property in the district

River Walk MMD:

- This legislatively created MMD would be tailored to prohibit the levy of ad valorem property taxes by the district.
- The MMD would be granted the power to impose a "Levy of Assessment" only on the properties within the District by petition of landowners.
- These assessments could be imposed consistent with an approved finance plan and finding of benefit for limited purposes.
- The limited purposes of the assessments would be the finance of water, sewer, drainage and roadways.
- The assessment payments would appear on the annual Tax Statements of property owners within the district.
- All ad valorem taxes due for the City, ISD and County would be fully collected.
- The assessment payments would be in addition to all other property taxes due on the property.
- The district would only be allowed to levy Assessments on the property within the district.
- The revenue stream from the assessments annually would be used to service debt payments and all other district costs.
- The Town would not fund the district for any purpose.
- The MMD could issue "Tax Exempt Debt" to reimburse the developer for roadways early in the project. Roads and utilities are two separate issues for the MMD. Roads – we can issue bonds at an earlier point and we would anticipate doing that for roadways. For utilities, the project has to be further along and a higher level of value has to be achieved on the project and those utility bonds are regulated by the TCEQ.
- The MMD could issue "Tax Exempt Debt" to reimburse water, sewer and drainage projects to the developer as the project develops and matures to a higher level of value.
- The MMD debt would only be secured by the revenue stream from the assessments.
- The MMD does not change any land use rights or obligations from the developer to the Town.

This is step one:

- In the event the proposed Legislative Act is supported by the Town and passes the 83rd Session, many further steps will allow thorough review of the process and implementation.
- The developer would have to reach a "Developers Agreement" with the Town by September 30, 2017.
- The district would have to be organized.
- The district would have to adopt a finance plan.
- Any levy of assessment must be found to 'benefit' each property assessed.
- The district would have to make findings of benefit for all the public improvements for each parcel of property to be assessed within the District.
- The District would have to Levy assessments and adopt a "Notice to Purchasers" that clearly defines the obligations of land owners in the district.
- The developer would have to construct water, sewer, drainage and roadways with private funds. That point is important because the developer is not getting a free ride. They have to go out, put these improvements in the ground, and be reimbursed for those.
- Road bonds could be issued early in the project to reimburse the developer for road facility costs.
- Utility bonds could be issued for water, sewer and storm drainage to reimburse the developer as the project develops and grows in value.
- The district would have to meet in open meetings with a thorough and transparent operation as any other state subdivision would be required.

Centurion American requests consideration of action:

- The lateness of the 83rd legislation session poses significant timing challenges to passage of this Legislative Act. We posted this bill in the Dallas Morning News (DMN) on March 29th. The contract for purchase of the property went into effect March 28th. We noticed immediately to the DMN on March 29th to seek filing of this bill. We cannot be heard by the House Special Districts Committee until after 30 days has passed from March 29th. With the session ending on May 30th we're on a very tight time frame.
- Although we are late in session, the River Walk MMD could be created in the 83rd Session of the Texas Legislature as a 'Local Bill'.
- Centurion American Development Group would seek support from the Town to pass a resolution in support of the proposed legislative act known as "River Walk Municipal Management District Number One".
- Centurion American (CA) Development Group would ask that the Town Manager request the Denton County Commissioners Court passage of a "Support Resolution" for the legislation.

- CA asks for your consideration this evening and looks forward to working with the Town as we proceed.
- CA would continue working with legislative leadership to secure passage of the Town's supported bill in the event the Town Council acts in support this evening.

Wise: Regarding the board of directors, how soon would that need to be created?

Wilson: We anticipate that the development agreement would have to be reached prior to the appointment of the board of directors.

Levenick: Regarding the board of directors, can you explain again how they are qualified.

Wilson: We would not seek for any name to be submitted under the three qualifications listed and there are some tax reasons for that and I'll let Ross Martin address that.

Ross Martin, Attorney, Kelly Hart & Halloway LLP, Fort Worth, TX

Martin: Chapter 375 of the Local Government Code and several specially created MMDs provide for people to serve on the board that are in the bottom three categories. For most water districts, only the top two categories may serve on the board. The reasons for this are normally because MMDs tend to be within the corporate limits or ETJs of cities, and sometimes have city appointees and sometimes a city will appoint developer appointees as well. For the elected officials those are available options. For election purposes they still have to be either elected, or in this case the initial appointees will be appointed by the Town Council.

Levenick: Clarified that what you are saying basically is for those last three, and you don't want anyone on the board that doesn't fit those perimeters.

Martin: I don't think that is the plan for this district, although legally it would be possible.

Levenick: So your plan is people who are on the board have to be 18 years old, be a resident or owner of property.

Martin: The IRS has been looking at some district bond issuances in Florida with developer representatives that are on the board. They issued a preliminary ruling that might affect the tax exempt quality of that debt for those districts. They haven't issued a final letter ruling, but in light of that, that is one other reason why we have been recommending having any developer appointees on the board - we don't want to jeopardize the tax exempt status of the bonds.

Levenick: How does it work when you need your board appointed and you have one owner of the property? How soon do you get people on the board, given you need five people.

Martin: He referenced Chapter 49 of the Water Code as to how the majority of districts appoint their initial directors. You have a piece of land; no one is living there, so by its very nature very few people can serve on the board. The statutes contemplate the conveyance of land to someone specifically for service on the board. In fact, Chapter 49 of the Water Code says that people can be conveyed land specifically for the purpose of serving on the board. It's in the statute.

Levenick: The way that this is worded is that the Town Council appoints the first board. If the Town Council appoints the board are we coming up with those individuals and vetting them, or are you coming to us and saying this is who we want on this board, and we're approving it.

Wilson: The developer will reach an agreement with the Town on five agreeable names. Those individuals will be qualified by ownership of property where we will allow one acre of property to be divided into one fifth interest, and those five people would be qualified by ownership of property.

Levenick: Where are the written rules with respect to what can or cannot happen, such as with an HOA.

Martin: You will have two sets of governing documents. The first thing you are going to have is the typical constitutional and statutory on districts, MMDs specifically. You will also have to the extent you have utilities; you have a separate set of Commissioner environmental quality rules that the district has to follow. You will also have to comply with the Open Meetings and Open Records Act. Then you get into what is the relationship between the city and the district. What can the district do that the Town Council has decided on. That is in the development agreement. Without the development agreement the district dissolves in four years.

Stephenson: When I looked at the emails we got from residents, one of the things that jumped out at me, and I agree with this – there is the hesitancy that somehow we (the Town) might end up in a position where we're taking on this debt. For that reason I think it would be helpful if we could somehow write into the bill that would require a financial viability study be done by a person of our choosing at the time the development agreement is entered into, and again at the time of bond issuance that would be done on the 107 acre River Walk property, unless they were going to be done within 30-60 days of each other. Then again, I would suggest it would be helpful (because there are two pieces – the financial viability (which is the soundness of Centurion American), but also the market feasibility of the property itself. We just went through one with Lakeside DFW and the study came up with issues. If there was some way to write into the bill that all of those issues related to market feasibility would have to be addressed to the satisfaction of the Town Council. I think the residents would need to have that to know we are doing everything possible to mitigate the risk. Is that something that could be written into the bill and you would be comfortable with?

Wilson: The district really is not going to be issuing any debt until the project is more proven, except in the area of roads. The feasibility study will be a market

proven operation for the boundaries of the district by the time it issues debt. We would have a problem with putting anything like that in the district bill. There may be something like that could be negotiated in the development agreement.

Stephenson: Is it possible to add those requirements into the Resolution so residents can be comfortable it (market feasibility study and financial viability review to assess the financial soundness of the structure) doesn't get forgotten as part of getting to the development agreement. There are two places this could hurt the Town, it's if we have a project that is not feasible in the marketplace, or if we are dealing with a company that is not financially sound. So before we enter into a development agreement the residents of Flower Mound would want to have independent verification to say "yes", you are dealing with a financially sound company and the plan put forward (how you are going to develop the property) has a reasonable chance of success.

Mehrdad Moayedi, President/CEO of Centurion American, 1221 I35E, Carrollton, TX

Moayedi: First of all, the assets are going to be in a single asset entity with a certain amount of equity put into it that our lender approves the viability of us getting the loan to purchase the property. Every property we have is in a single asset entity. It's not just all mixed in together. Second, for the market study, these bonds are sold after the improvements are done and people are occupying the buildings. That in itself has proven the market. Those people that buy these bonds do not buy these bonds unless they have seen that the project has already been improved and it's successful. That is about as good as a market study as you can get. However, if you would like us to do a market study prior to that, we would be open to doing that but it cannot be part of the district document. It can be a side agreement with the city that we will order a market study on the total project. The lenders go through our financials extensively when you are talking about the dollar amounts we are talking about. We have a tract record of twenty five years.

Stephenson: It's no offense to you but we've been down this path before with River Walk and it wasn't financially viable for a lot of different reasons, so that is causing a little bit more concern in relation to this property. We just went with this with Lakeside and before we gave them the zoning needed, we did a market study to make sure it was feasible so there are a lot of good reasons to do this. She asked Mr. Welch if it was possible to put something like that in the Resolution.

Councilmember Dixon requested Council convene into closed session to consult with the Town Attorney on this item, and there was consensus of Council to do so.

At 9:15 p.m. Town Council convened into closed session for consultation with the Town Attorney related to this item and reconvened into open session at 10:01 p.m.

Hayden: Asked Mr. Moayedi if he had anything he would like to add to the discussion.

Moayed: For the River Walk we feel we need to go above and beyond on the things that need to happen for it to be a destination point for people to be there. That is one reason for asking for the district – it allows us to spend the added \$7 – 9 million that is required (for the chapel, bell tower, art spaces, etc.). We have been working in this Town for over 20 years and we have performed on every item we promised.

Levenick: Mr. Wilson mentioned something earlier related to supplemental assessment for public safety. Can you talk about that?

Wilson: The district would have the authority on an annual basis for a variety of purposes. If the district owned roads, water, or sewer, they could do a supplemental assessment to maintain those facilities. In this case the district will not own those types of facilities because they are given to the Town. The district could have a supplement to increase public safety or security within the boundaries.

Levenick: Who approves that?

Wilson: I would think if we wanted to do any type of supplemental assessment that the developer and the Town would agree to that early on in the agreement. Right now we don't plan on having that type of service.

Hayden: I had someone tell me we are creating a city within a city. He asked Mr. Welch to explain the powers and duties of the district.

Welch: There is a significant difference between what a municipality can do and what a special district can do. With regard to the powers of a Home Rule municipality, you can do anything not prohibited by state law. We have the full power of government at the Town level. A special district is substantially limited in what it can do. So to say it is a city within a city is incorrect. For special districts for limited purposes, the statute defines what those districts can do. They have the power to do what is in the statute. They can't go beyond that. They don't have the ability to create an Ordinance, zone land, or establish their own public safety.

Hayden: Can we put in the development agreement what they can and can't do.

Welch: Yes, and I anticipate the development agreement would be very detailed and limited to what we're going to do (roads, water, sewer, drainage). The development agreement is going to be, in essence, the constitution of the district.

Hayden: So the Town would start with the existing River Walk agreement and build off of that, is that correct?

Welch: Yes, that agreement is in place and on the property so the Town would have to go back and review that, and the new development agreement would address that. Impact fees are not included in the proposed legislation so existing impact fees will apply.

Dixon: Another one of the points that was made was will this MMD supersede SMARTGrowth and the Master Plan.

Welch: No, it will not have any impact whatsoever. SMARTGrowth and the Master Plan are land development issues. The district will not have the ability to change any of that.

Hayden: Reaffirmed to Mr. Moayedhi that the Town is going to ask him to do a market feasibility study.

Hayden: What is going to happen if this district is not created?

Moayedhi: Our studies indicate there is a lot more that needs to take place for it to be successful, especially for higher end restaurants, and for the hotel. This district allows us to spend the money on what is necessary to make it work. If this doesn't happen we would have to do the basic minimum and keep the higher number of multi-family units, and the amount of amenities would need to be reduced.

Dixon: People driving down FM 2499 will see you are putting in your infrastructure. What do you think will be on the ground when the bonds are issued?

Hayden: You are going to have to front the money to pay for this infrastructure items, but then as ad valorem is built you will be able to get reimbursed for your expenses. I understand you don't have to have ad valorem for the roads. How does that work?

Wilson: You do have to have value. The difference between the roads and utilities is the process by which TCEQ requires an application and certain thresholds to be met prior to the reimbursement for utility cost (water, sewer, drainage). Roads are exempt from that application process at the Commission, therefore we have to have a value that the market will accept and there has to be a reasonable expectation that the project is going to be reasonable and workable for anyone to buy those securities.

Hayden: So you will finance the infrastructure cost, then you will put it in the ground, and you will be reimbursed as the project goes, but you're not able to get your money back unless there is actually valuation on the ground because there is an assessment that is attached to it. I'm guessing that as you go forward you're only able to get a portion of it, is that correct?

Wilson: Yes. And for roads we're limited to 25% of the value of the property for the first road bond issuance. If the property is worth \$40 million, your maximum road amount is 25% of \$40 million.

Hayden: How much do you anticipate you will spend on infrastructure and that you will try to recover in the way of reimbursements?

Dixon: That was my question. To the average citizen they see this and think these guys are wanting the Town to do something while they go out and borrow all this money. What we are learning is that Centurion American is going to go and spend a lot of money and put this infrastructure in. And when this infrastructure is in, then issue the bonds to reimburse some of those expenses.

Moayed: In layman's terms basically what happens is that we have to spend our own money. We have to put in an extreme amount of equity in for a bank to get the land financed, and everything else done. What's important to us is that as you look at that plan we need to build all those roads, with the first thing being the River Walk. The problem with this site, even though it seems big, it's somewhat scattered. The infrastructure needs to be complete for business recruitment purposes. Then after that we build everything that needs to be built to create this ad valorem. Then after that we sell bonds. More importantly, this is all on our nickel. We can handle the disclosure process. We have never had a homeowner say they didn't know about the assessments.

Hayden: One of the questions we got is that this special assessment will make your property uncompetitive so people will avoid it.

Moayed: If you compare taxes, our taxes will be within a cent or two of what the City of Fort Worth is charging. The way we explain this is that we did away with the higher amount of multi-family units, and they will have places to walk to. They will live in a location that has additional amenities than that of other locations and that is why there is an assessment, all of which is discussed up front.

Hayden: If you add the Town, County, and School District portions, that tax rate is approximately \$2.15. What are you contemplating that your assessment will be per \$1000?

Moayed: Estimate 70 cents would be added, making it \$2.85 total.

Hayden: Will the bonds be rated?

Wilson: No, they will not.

Hayden: What if the project goes into bankruptcy?

Moayed: I would have to get consent from my lender because this assessment goes in front of that land lender. Usually when we buy land there is 30 - 50% equity put in up front. Under the assumption that Centurion American goes into bankruptcy, it's very unlikely for that lender not to pay that assessment, just like a property tax that they would, and forego \$7 - \$8 million on a loan that they put on a property for an assessment of that year. This has a backstop to it with the lender.

Wilson: I think we need to point out that the levy of assessment is not accelerated for non-payment so the annual payment is all that is due.

Hayden: But what happens if you go into bankruptcy and 4 – 5 years passes and someone wants to buy that property. There will be liens as it's coming out of bankruptcy and the bond holders would not fare well. Is that all going to be forgiven?

Moayed: Either the lender cures it, or if the lender doesn't cure it, yes it would be in jeopardy. The lender on a property has a lot more at stake than what the annual assessment payment would be.

Hayden: Now I want to understand how the Town could ever be responsible for this debt.

Wilson: If the Town moved to dissolve this district prior to the reduction in debt to zero the Town would have to acquire those debts.

Hayden: Redirected the question to Mr. Welch at the request of Councilmember Levenick.

Welch: If the Town dissolves the district the Town would have the responsibility for the debt, or the outstanding obligations of the district. We discussed in closed session the issues with foreclosure versus bankruptcy and there are some distinctions there. Under Chapter 375 of the Local Government Code, the statute on the proposed bill, the Town doesn't take on that debt or the obligations of the district unless the Town dissolves the district.

Hayden: Why would we ever dissolve a district if there are obligations outstanding?

Welch: For the most part, you never would.

Hayden: But if that did happen, would the assessment still be paid to service the debt?

Welch: If the Town took on the debt the obligations, in all likelihood, it would just become an obligation of the Town to repay the bonds.

Webb: With regard to all the questions I have read from emails, Face Book, and the Cross Timbers Gazette, they have all been answered tonight.

Dixon: My question is to the Town Manager. I read all of the questions that were posed to us. I believe everything has been answered. He asked Mr. Stathatos to clarify if there has been a question posed to the Town that hasn't been answered.

Stathatos: No, and after a thorough review of all of them, I don't think there is a question that went unaddressed. Further, a lot of the questions that have addressed will even be further strengthened if it moves forward when we look at the development agreement.

Dixon: Mr. Welch is there anything you would like to add?

Welch: The only question I can think of is in relation to sovereign immunity. And not to get too technical but it would have sovereign immunity to the extent allowed by law, which means it would have some. There are some exceptions in state law that applies to the Town as well. That is the only thing I don't think was addressed tonight.

Hayden: In the development agreement we are going to be very specific about where the money will be spent.

Dixon: You acknowledged that it is going to be a very specific development agreement so he offered thanks for that.

Moayed: It is specific by law about what we spend the money on.

Hayden: When I look at this, it's not Town of Flower Mound debt. So legally you're responsible for the debt, correct.

Moayed: Yes.

Hayden: It doesn't impact any existing tax payers in Flower Mound. The only impact will be for the people that buy property in this district, and they will know about it going in. The benefit is that it allows Centurion American to build a product with more bells and whistles to attract people to come to the Town of Flower Mound. It will add additional amenities to the Town and without this that wouldn't happen.

Stephenson: As residents listen to this they think we're committing to this. I want everyone to understand we have talked through a lot of the impacts. What we are doing tonight is making sure we're keeping the tool in the toolbox. We are not entering into that development agreement and Council has not decided to enter into that agreement. We're just keeping the door open. If this gets through the state legislature we need to enter into a developer agreement, which I trust that the Council will do a great job at making sure it's very stringent as it needs to be. The next thing is that we (the Town) are going to have to approve these bonds if we get that far. There are many checkpoints along the way and I want to make that clear to the residents that until the development agreement is signed, and the Town approves the bonds, nothing is going to happen.

Moayed: With regard to the schedule, if we are successful in everything we want to change, I don't think the Town would have a problem with things like lower density or adding amenities. I don't see that as an issue. If we are successful, the first thing that is going to get done is we're going to start the River Walk itself because that doesn't have anything to do with this process. That is part of the original River Walk development. As we're going through this process we are going to sell you on an idea and how doing this benefits the Town. Then we have a developer agreement, and once that is done we go and do the improvements. Once

that is in place and people bought and are happy out there, then we get to sell some bonds.

Wise: Regarding the citizen comments that we received all day, it might be a good idea to augment some of those FAQs in case some of those questions come back up.

Stathatos: Encouraged anyone that might have unanswered questions to contact him as we wanted to make sure everyone's concerns are met now and in the future.

Moayed: We are open to having two educational meetings for those citizens that have concerns and questions and we can take him through the process.

Webb: Ms. Simonson raised a cautionary flag in that if we go down this road make sure we have the stomach to say "no" if we do go down the road and start exploring this and we recognize that maybe this isn't right for Flower Mound. I think that is a fair request and so I wanted to address that and let Ms. Simonson know that I'm prepared to say "no" if we go forward today, and before the development agreement is approved, if it's not the right thing for us to do.

For this Resolution tonight, if we don't approve it, we take it out of the toolbox. A lot of what I heard over the weekend is a fair amount of concern and a significant amount of distrust. My thoughts are if we don't allow ourselves to move past those items, we're going to limit our future potential as a Town. If we choose not to go forward then we are choosing others to pass us by. I'm for keeping this in the tool box. I'm for letting us go through the process to see if we can work to a development agreement. Hopefully the County Commissioners will go along if we do, and hopefully the state legislature will go along if they do and we do. Then we can sit down at the table and try to work this out. But until we get those things done, we can't even really sit down and do that.

Dixon: Over the years I have had many people make comments about why didn't we get the Shops of Highland Village in Flower Mound? The reason why we don't have some of those things here is because we haven't put ourselves in the position to get those things here. In the past Flower Mound has simply said "no". I don't want to say no to this tonight when tonight is not the final action. It does not make any sense. We're going to have an opportunity to vet this out more, and get more answers, and I'm assuming we'll get more questions. I am not willing to say no at this point. Once we have more information, and once we get into the developers agreement, if it doesn't make sense for Flower Mound we're not going to do it. This is just the first step.

Kendra was correct in stating that tonight's action is not the final action on the MMD. This is just the first of many steps and there are 6 – 8 more steps in the process. He offered appreciation for Moayed being willing to sit down with the residents.

Levenick: All of the questions have been asked this evening and appreciated all of the information and agreed with Deputy Mayor Pro Tem Wise's idea to put them out on the web site. She agreed that this is the first step in the possibly of using this as an economic development tool for an area that hasn't had anything going on since 2008.

Moayed: Having those meetings with residents would help because we could have an open dialogue.

Hayden: A good time would be after it comes out of the legislative session.

Councilmember Dixon moved to approve the Resolution expressing support for legislation to create the River Walk Municipal Management District #1 within the Town's corporate limits. Councilmember Webb seconded the motion.

RESOLUTION NO. 12-13

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS ("TOWN"), EXPRESSING ITS SUPPORT FOR LEGISLATION TO CREATE THE RIVER WALK MUNICIPAL MANAGEMENT DISTRICT NO. 1 WITHIN THE TOWN'S CORPORATE LIMITS; MAKING FINDINGS; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

VOTE ON THE MOTION

AYES: Wise, Dixon, Stephenson, Levenick, Webb.

NAYS: None.

J. COORDINATION OF CALENDARS AND FUTURE AGENDAS/MEETINGS

Councilmember Webb announced he would not be at the next work session.

Councilmember Levenick reiterated the April 18th work session will be open to the public for discussion and comment.

K./L. CLOSED/OPEN MEETING

The Town Council convened into a closed meeting at 10:51 p.m. on April, 15, 2013, 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 11:10 p.m. on April, 15, 2013, 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.

Councilmember Levenick moved to authorize the Mayor to execute an amendment to a Real Estate Purchase and Sale Agreement with Y Street Ventures, LLC, for a 45-day extension of the Feasibility Period. Councilmember Webb seconded the motion.

VOTE ON THE MOTION

AYES: Wise, Dixon, Stephenson, Levenick, Webb.

NAYS: None.

- c. 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.

- d. Consultation with Town Attorney regarding legal issues relative to franchise agreement with utility provider and contract utilities.

No action taken.

M. ADJOURN REGULAR MEETING

Mayor Hayden adjourned the meeting at 11:12 p.m. on Monday, April 15, 2013, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS



THOMAS E. HAYDEN, MAYOR

ATTEST:



THERESA SCOTT, TOWN SECRETARY

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