

THE FLOWER MOUND TOWN COUNCIL SPECIAL MEETING HELD ON THE 29TH DAY OF JULY, 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
Steve Dixon	Mayor Pro Tem
Bryan Webb	Deputy Mayor Pro Tem
Michael Walker	Councilmember Place 1
Mark Wise	Councilmember Place 3
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
Doug Powell	Executive Director of Development Services

A. CALL SPECIAL MEETING TO ORDER

Mayor Hayden called the special meeting to order at 6:00 p.m.

B. INVOCATION

Mr. Powell gave the invocation.

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

Mayor Hayden led the pledges.

C1. PUBLIC PARTICIPATION

Linda Woosley, 1115 Oak Drive, Flower Mound, TX

Linda expressed the following concerns:

- lack of a traffic signal at the intersection of Fireside and FM 1171
- poor road conditions on Fireside, including a need for striping
- the speed limit change from 40 to 45 mph takes place at the intersection of FM1171 and Fireside and she requested the speed marker be moved away so it's not right at that intersection
- there are a lot of U-turns at Fireside and FM 1171 which adds to the already dangerous situation

Mayor Hayden indicated the Town's Traffic Engineer will look into this and get back to her.

D. REGULAR ITEM

1. Consider approval of a Resolution setting a public hearing, and provide appropriate notices, for the creation of the proposed River Walk Public Improvement District within the Town. The public hearing would be called for Monday, August 19, 2013, at 6:00 p.m. at Town Hall.

Mayor Hayden opened the Public Hearing at 6:12 p.m.

Public Participation

Carol Kohankie, 4312 Lauren Way, Flower Mound, TX

Ms. Kohankie offered her support of voting to put this on the ballot for voting this November so the citizens feel they are part of the decision. She offered appreciation of the work of Council and how well they work together even though they have independent thoughts, ideas, and different backgrounds.

Mark Glover, 140 Red Oak Ln, Flower Mound, TX

Mr. Glover indicated we have a great developer with Centurion American and he thinks they will do a wonderful job with the River Walk. He offered his support of the project and would like to be able to vote on that in November.

Pat Lawson, 4808 Schooner Ct, Flower Mound, TX

Mr. Lawson noted he is a small business owner at the River Walk. He expressed his support for the River Walk because the more we can get out there to get people to come to that area, the better.

Renee Doyle, 920 Drake Trail, Flower Mound, TX

Ms. Doyle was not at the Council meeting, however, the following letter was received by the Town Secretary's Office with a request that her statement be read during the meeting and be included in its entirety in the meeting minutes.

July 29, 2013

Honorable Councilmembers:

I ask that my statement be read into the minutes during the public participation portion of the July 29th, 2013 Special Town Council Meeting and included in the final meeting minutes.

This statement is intended to cover four points pertaining to the Regular Meeting Item #1 on the July 29th Special meeting agenda:

1. **Failure to follow procedural order.** Under Flower Mound's Town Charter, The Open Meetings Act and Texas Local Government Code, Flower Mound Town Council, the Baptist Foundation of Texas, and Centurion American have violated the procedural requirements to establish a public improvement district (PID); and

2. **The absence of a recorded Town Council Vote to consider a PID.** Flower Mound Town Council failed to consider this PID as a regular agenda item, including discussion, debate and recorded vote during a regular Town meeting; and
3. **Misrepresentation of property owner.** The Baptist Foundation of Texas, a Texas non-profit corporation and legal owner of the Riverwalk property, did not request the creation of a PID at a regular Flower Mound Town Council meeting; and
4. **Expediting the Process with misinformation.** The misrepresentation of ownership is an appearance to confuse the public so that this Public Improvement District can be expedited for the November 2013 ballot.

1. Failure to follow procedural order. Under Flower Mound's Town Charter, The Open Meetings Act and Texas Local Government Code, Flower Mound Town Council, the Baptist Foundation of Texas, and Centurion American have violated the procedural requirements to establish a public improvement district.

Flower Mound's Town Charter Section 7.16 reads: "(a) The request shall be made to the Town Council at a regular meeting. The Town Council, following discussion and debate of the issue, may approve the implementation of a Municipal Utility District or a Public Improvement District by vote of the Council members;

(b) Following vote of the Council to approve such Municipal Utility or Public Improvement District, the Council shall call a special election to allow the qualified voters of the Town to consider the question of allowing the District to be placed in the Town of Flower Mound;"

A resolution cannot be considered at this time since there has been no agenda item on a Town Council regular meeting to consider the request for a Public Improvement District. A request by way of Public Participation does not allow for discussion, deliberation and vote by the Town Council. Allowing the request by way of Public Participation in a regular meeting does not follow proper procedure mandated by our Town Charter.

2. The absence of a recorded Town Council Vote to consider a PID. Flower Mound Town Council failed to consider this PID as a regular agenda item, including discussion, debate and recorded vote during a regular Town meeting

Background information included in July 29th, 2013 Agenda Packet and an email between Renee Doyle and Teresa Scott, Town of Flower Mound's Town Secretary, dated July 19, 2013
(See attached email) states that:

"a request for the creation of the public improvement district was made at the Town Council's regular meeting of July 15,2013" during public participation."

According to The Open Meetings Act Section 551.042:

"The Act permits a member of the public or a member of the governmental body to raise a subject that has not been included in the notice for the meeting, but any discussion of the subject must be limited to a proposal to place the subject on the agenda for a future meeting. Section 551.042 of the Act provides for this procedure:

(a) If, at a meeting of a governmental body, a member of the public or of the governmental body inquires about a subject for which notice has not been given as required by this subchapter, the notice provisions of this subchapter do not apply to:

- (1) a statement of specific factual information given in response to the inquiry; or
- (2) a recitation of existing policy in response to the inquiry.

(b) Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.²¹⁴"

There has been no agenda item or recorded vote of implementation (Town Charter Section 7.16 (a)) by Flower Mound Town Council after Centurion American made the request of creation of a Public Improvement District, during public participation of Town Council Meeting of July 15, 2013.

While the town secretary, through email, stated the meeting happened during the July 15, 2013 Town Council Meeting during public participation, this bypassed discussion and Town Council vote on consideration of this issue. Proceeding with this resolution tonight usurps due process as outlined in our Town Charter and the Open Meetings Act.

3. Misrepresentation of property owner. The Baptist Foundation of Texas, a Texas non-profit corporation and legal owner of the Riverwalk property, did not request the creation of a PID at a regular Flower Mound Town Council meeting

Centurion American and their attorney requested the PID during the Public Participation portion of the July 15, 2013 Flower Mound Town Council meeting.

Where is the legal documentation that authorizes Centurion American to act on behalf of the legal owner of the property?

Texas Local Government Code Chapter 372.005 states:

- (b) The petition is sufficient if signed by:
- (1) owners of taxable real property representing more than 50 percent of the appraised value of taxable real property liable for assessment under the proposal, as determined by the current roll of the appraisal district in which the property is located; and
 - (2) record owners of real property liable for assessment under the proposal who:

- (A) constitute more than 50 percent of all record owners of property that is liable for assessment under the proposal; or
- (B) own taxable real property that constitutes more than 50 percent of the area of all taxable real property that is liable for assessment under the proposal.

Centurion American was not the legal owner on July 15th, 2013 and, therefore, cannot request a PID.

4. Expediting the Process with misinformation. The misrepresentation of ownership is an appearance to confuse the public so that this Public Improvement District can be expedited for the November 2013 ballot

This resolution states the "Baptist Foundation" is the current owner of the property. If Centurion American has since transferred ownership due to the purchase of the land, then this agenda item is not correct and should be rescheduled after a proper request through a regular Town Council meeting and when the correction to landowner information can be made.

I request that you please provide clarity on who is the legal owner of the property in question at the time of this meeting (July 29, 2013 @ 6pm).

If it is Baptist Foundation of Texas, then the petition is valid (per Local government code 372.005), but the request at a regular town council meeting has not been met (per Town Charter 7.16) Also, if Centurion American closes on this property before the 19th of August 2013 it will void the Town Resolution because it states that Baptist Foundation of Texas, is the legal owner.

Regardless of whether this resolution is valid or not by way of stating the correct landowner, this meeting does not follow proper procedure per Town Charter 7.16.

In conclusion, I formally request this Town Council reconsider the procedure followed and honor the process set forth by our Town Charter. The Riverwalk development will hopefully be a cornerstone for our community and should not be put in jeopardy of failing because due process was not followed.

Respectfully,
Renee Doyle
Flower Mound Resident
920 Drake Trail Flower Mound, TX 75028

Mayor Hayden closed the Public Hearing at 6:12 p.m.

Staff Presentation

Mr. Welch pointed out the Resolution before Council tonight is a formality that is required under state law. The Public Improvement District (PID), specifically

Chapter 372 of the Local Government Code, has a series of procedural steps in creating a PID. The Town Charter adds a step about an election. When we go through this process most cities don't have the election requirement. You start off with a petition where the owner or owners of the property request the creation of the PID. The Charter requires that to happen at a regular meeting. The petition comes forward (which it did). It was verbally requested at the July 15th Council meeting. Now the next step, by statute, is to call a public hearing. That public hearing requires 15 days' notice. So one of the reasons for calling a special meeting is because for a November election the last day to call the November election is August 26th, so it's a good amount of time in advance of the November election. The Council meets August 5th and 19th. If the Council called for a public hearing we have to have at least 15 days' notice. So if Council called it on August 5th it would be a day after the August 19th meeting, and because of publication requirements and getting the notices in the newspaper and the property owners, etc., it would actually take a little more time, which is why the special meeting is being called tonight to consider calling that public hearing for August 19th. At that August 19th meeting there would be a public hearing about going forward with the PID, as well as an Ordinance on the agenda to call an election for November 5th to be considered at that same time. To meet all of the procedural guidelines to call the election and it's getting to where time is of the essence, so what this Resolution does is call it for a regular meeting of the Town Council on August 19th. It allows the Town staff the opportunity to send out the appropriate notices to the newspaper and property owners, and then to call a public hearing on August 19th. There would be additional information available at that time. I would anticipate there would be some proposed amendments to the existing development agreement on the River Walk and more flushing out of the details by that time. This is the first step. Simply a Resolution calling the public hearing after the petition has been submitted to the Council.

Walker: The issue tonight is to make this move forward, however, no one has voted yet on the creation of a PID. Even our Resolution this evening doesn't approve or disapprove of the PID, it just enables us to conduct a public hearing. Then we'll collect public comments, either for or against, at that public hearing, followed by Council taking a vote at that time, and that vote would legitimately place it on the November ballot.

Welch: Correct.

Walker: And then there is some due diligence on the part of Council to move it forward.

Welch: I would expect a lot of work between now and August 19th.

Walker: There seems to be some confusion that Council voted on a PID already and we have not. The vote approving the Resolution this evening is not to approve the PID.

Welch: Correct. The state requires a public hearing and at least 15 days' notice. This is nothing more than a Resolution setting the public hearing for August 19th.

Walker: Encouraged the public to attend that meeting as it's a great time to discuss it, as the next time it'll be at the election.

Welch: Correct

Hayden: Tonight is just one of the steps as part of the process.

Webb: We have heard comments in the past relative to process and inquiries made about why you are having a special meeting. The way the calendar works, if we're going to have the option of placing this on a November election, based upon the date in which we received this, we were going to have to call a special meeting, and our special meeting was either going to be to call the public hearing (such as what we're doing tonight), or if we waited until August 5th, then we would have had to call a special meeting to decide whether or not to call the election, and that would have happened on August 26th (which would have been a special meeting as well).

Welch: Correct, and actually the 26th would conflict with the P & Z meeting for that evening.

Webb: Of those two special meetings I think the far more important meeting is when we make a decision on whether or not to call the election, and having that on a regular meeting for Town Council is the right way to go.

Dixon: On August 19th there will be several items noticed on the Agenda. He asked Mr. Welch to talk about the actual items that will be placed on the Agenda, and also give the public some clarification on if we work through those three to four items, and what happens if they pass or fail.

Welch: The first step is a petition and that has been filed with the Town and is in accordance with the requirements of state law, and that was prior to July 15th. A verbal request was made at the July 15th Council meeting. The next step is the Resolution calling the public hearing for August 19th. On August 19th I would anticipate a few things being presented to you. One would be the public hearing to receive input. I would expect prior to the public hearing there would be a great deal of details about what is being proposed in relation to the PID and the River Walk development. I would anticipate also you would see a very detailed amended development agreement. When the River Walk was approved in 2008 there was a lengthy development agreement about that project. There will need to be some amendments to it as well as some new items, because the PID wasn't contemplated in 2008. I would anticipate there would also be a Resolution to consider approval of the PID, which would then trigger calling the election, and that would all occur on August 19th. If there is an election called and the voters would approve the creation of the PID then it would go forward. If the voters do not approve of the creation of the PID, then I would anticipate that the

development agreement would be contingent upon voter approval of the PID. Right now we're in the process of working through some of those development agreement issues that would be presented at the August 19th meeting, which include details such as funding, amenities, infrastructure, and things of that nature.

Dixon: There has been interaction between Town staff and the application on this. He asked Mr. Stathatos to give the public a feel as to what has been going on, and what some of the expectations are as this project moves forward between now and the August 19th meeting.

Stathatos: Pointed out the economic benefit of the project. Noted there will be a feasibility study required to make sure the project is sustainable and to make sure we're not cannibalizing ourselves. Also, aside from the developer, we want to make sure that any possible assessment that might be recommended is not going to be a deal killer for the development. We want to make sure they're not going to put such an albatross on the back of that vacant property that it's going to sit vacant permanently. Those are the things staff is looking at. In addition, we will continue to look at all of the pros and cons related to the developer.

Dixon: As this moves forward, he pointed out to Mr. Moyedi that the one thing they are very aware of is that this is different than the MMD. The genesis of the MMD is that it had to be approved by the legislature first. In this situation it has to be approved by this body first. Then, because of our Charter, and one of the layers of protection (which I don't have a problem with) is that if this body decides to approve (in this situation a PID) it has to go to the voters for the final word. When you're working with staff and coming to a meeting of the minds for an exceptional product out at the River Walk, on August 19th it's going to have to be proven to us, and then from there, if we do approve it (so to speak), and at that point we call the election, we give it up to the voters and they will decide the final action. At that point it's incumbent on your team to make sure that not only were all the questions asked and answered up front, but you have to clarify that to the voters.

Hayden: Asked Mr. Moayedi when will he become the owner of record on the property?

Mehrdad Moayedi, Centurion American, 1221 Hwy. 35E, Carrollton, TX 75006
Probably Thursday morning this week.

Hayden: Stated that Mr. Moayedi had a binding letter of intent to purchase the property, and asked Mr. Welch if it matters that he wasn't the owner of record at the time he made the application for the PID?

Welch: Both Centurion American and Baptist Foundation signed off on the Petition.

Hayden: For the ideas about the feasibility study, when might that be completed?

Moayed: In approximately the next seven to eight days. We're actually closing on the property before any of this is approved. We're going to go forward on the property, however, the PID allows us to do an A+ project to the point where it will be a destination point for Flower Mound. In addition, it will be a project that has a lot more success because of the PID, so that is our purpose. In addition, we're going to start construction on August 15th on the River Walk. We're committed to the project. By the time November comes around we're going to be 70 – 80% complete on the River Walk itself, and maybe even more, but that is our goal.

Stathatos: Noted if the Council does schedule a public hearing, staff will have a web site set up that will include the PID request and a lot of other information. Since it's such a unique instrument we want to make sure it's a good clearing house of information. He welcomed the public to submit questions they might want addressed and they could put it on the web site.

Moayed: It's going to be on us to make sure we prove up to the citizens as far as the liability of the bonds and the other intricacies that goes along with that. We're prepared to do that. We're going to get busy.

Walker: Just to reinforce the August 19th meeting, personally I would like to see the staff go through a full process to avoid any confusion. For example, there are contingencies that if the PID is not approved, it doesn't necessarily mean that the River Walk ceases to be, it's just with enhancements via the PID that it can do more. So if we could just go through and look at the existing development plan, because as Mr. Welch mentioned, there are some potential amendments. Let's put those up and why the applicant is requesting the change, as well as what is the thinking behind that request. That leads into why the PID would be voted up or down. There are different levels of review as well. We talked about an initial feasibility study at this level to see if it has merit. Then it's going to move on of course. Then when it goes to bond underwriting it has a much more detailed underwriting requirement, which is far beyond what we're going to be doing over the next couple of weeks. I'm not sure if the public understands all of the steps. It's very confusing and we want to make sure the public knows our eyes are open and we're trying to learn as much as we can. I have heard a couple people say we have to approve the PID because the River Walk won't be built. That is the kind of thing we have to clarify. It doesn't stop the project.

Stathatos: The web site will have a chronology of the steps and the justification.

Deputy Mayor Pro Tem Webb moved to approve a Resolution calling a public hearing for Monday, August 19, 2013, at 6:00 p.m. at Town Hall to receive public testimony and input relative to the creation of the proposed River Walk Public Improvement District, and provide appropriate notices of the public hearing. Councilmember Wise seconded the motion.

RESOLUTION NO. 16-13

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, SETTING A PUBLIC HEARING, PURSUANT TO SECTION 372.009 OF THE TEXAS LOCAL GOVERNMENT CODE, AS AMENDED, FOR THE CREATION OF A PUBLIC IMPROVEMENT DISTRICT WITHIN THE CORPORATE LIMITS OF THE TOWN OF FLOWER MOUND, TEXAS; MAKING FINDINGS RELATIVE THERETO; PROVIDING FOR NOTICE OF SAID PUBLIC HEARING; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON THE MOTION

AYES: Walker, Webb, Levenick, Dixon, Wise

NAYS: None

E./F. CLOSED/OPEN MEETING

The Town Council convened into a closed meeting at 6:34 p.m. on July, 29, 2013, pursuant to Texas Government Code Chapter 551, including, but not limited to, Sections 551.087, and 551.071 to discuss matters relating to consultation with Town Attorney, and economic development negotiations and reconvened into an open meeting at 7:32 p.m. on July, 29, 2013, to take action on the items as follows:

- a. Discuss and consider economic development incentives.

No action taken.

G. ADJOURN SPECIAL MEETING

Mayor Hayden adjourned the meeting at 7:32 p.m. on Monday, July 29, 2013, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS


THOMAS E. HAYDEN, MAYOR

ATTEST:


THERESA SCOTT, TOWN SECRETARY