

**THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 7TH DAY OF OCTOBER, 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
Debra Wallace	Assistant Town Manager/CFO
Gary Sims	Executive Director of Community Services
Doug Powell	Executive Director of Development Services

**A. CALL REGULAR MEETING TO ORDER**

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

**B. INVOCATION**

Chaplain Mike Liles gave the invocation.

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

Mayor Hayden led the pledges.

**D. PRESENTATIONS**

**1. Proclamation for The National Society of Colonial Dames**

Martha Canant and Paulette Lollar accepted the Proclamation.

**2. Certificate of Recognition, Lamar Middle School Archery Team, National Winner 2013**

Coach Ferris Bavousett and Principal Leigh Ann Lewis accepted the Certificate of Recognition.

**E. PUBLIC PARTICIPATION**

Mayor Hayden proposed, and there was consensus by Council, to have speakers related to item 14 (off leash dog park) come forward when that item is brought forward on the agenda.

Carol Kohankie, 4312 Lauren Way, Flower Mound, TX

Ms. Kohankie announced the Library Book sale is scheduled for Saturday and Sunday, October 11 and 12 and she offered highlights of the event.

She stated having an idea for the Town which involves getting flowers in Flower Mound. She would like to see wildflowers along every roadside in Flower Mound. She indicated it's also an educational opportunity for the community to identify the flowering process. She expressed interest in being the Chair. She mentioned she will reach out to the City of Richardson as they do a wildflower festival.

Mayor Hayden agreed with the idea and particularly for Town entrance points.

**F. ANNOUNCEMENTS**

Walker: Thanked the various HOAs for their participation during National Night Out.

Levenick: On October 10<sup>th</sup> at 12:30 p.m. there will be an unveiling of the design of the future senior center.

Hayden: Read a letter from the Mayor Ueckert of the City of Lewisville offering appreciation for the assistance of the Town's Fire Department in a recent fire they experienced.

**G. TOWN MANAGER'S REPORT**

1. Update and status report related to capital improvement projects

Mr. Stathatos reported on the following capital improvement projects:

- Intersection improvements at Old Settlers and Peters Colony are going great, however, the one section that has prompted the most questions is LISDs responsibility in that there is a sidewalk area that is not completed yet, and was slated for completion by LISD next year. At the request of Town staff LISD is going to expedite those improvements for a date in the near future (date to be determine).
- For Chinn Chapel and Dixon Road the contractor is working currently working on the southeast portion which includes a roundabout. The first roundabout is where you approach Dixon. The entire schedule is still on track for completion next March.

2. Update and discussion on economic development projects.

Mr. Stathatos reported on the following economic development projects:

- Results of the restaurant/retail recruitment survey are on the Town's website and the turnout was significant. He noted that list gives the Town additional targets for future business.
- Nature's Best is expanding in Flower Mound and they are adding about 50% extra space so they will be up to about 460,000 square feet. He noted they are the largest privately owned wholesale distributor of health products.
- Academy has moved their grand opening ahead a month and they will be opening on Friday.

Wise: For Chinn Chapel, you mentioned the first of two roundabouts. Is the second being at Waketon? Your completion date is just that first roundabout up to 407?

Stathatos: It's part of the second phase (at Waketon) and yes, up to 407.

Hayden: Along FM 1171 it's been brought to our attention that several residents have concerns about the expansion of 1171. He asked for an update as to what is happening with that.

Stathatos: If you look at what TxDOTs standard answer is for sound walls, they indicate it doesn't meet the requirement. Staff is currently working with TxDOT and Denton County to find another way to get there. There is a lot of common interest so we want to see if there is a way for us to accomplish that goal and not make them feel like they've set a precedent that they are going to have to implement in other communities. I feel confident we'll be able to come up with a better solution than what is currently in place.

Hayden: I visited with the TxDOT representative and at some point when we get further along he is going to come before Council and give us an update on FM 1171 to see what we can do to mitigate some of the problems, and also where we are in terms of the widening. So hopefully in the next month or two we will see them.

3. Update on the Master Plan Review Process.

Mr. Dalton provided a status update related to the Master Plan Review process to date which included:

- Timeline, including the next meeting is a joint work session with Town Council and Planning and Zoning
- Survey questions posted on line and available for community input
- Background information and engagement opportunities

Hayden: And staff isn't recommending any particular option – it's just for consideration.

Dalton: No. The hope is to have a discussion about these options during the work session and receive direction on how to proceed with the Commission and the Town Council.

**H. CONSENT ITEMS**

Deputy Mayor Pro Tem Webb moved to approve by consent Items 1 – 13. Councilmember Wise 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; Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District Special meeting; and Crime Control and Prevention District Special meeting held on August 19, 2013.**

**RECOMMENDATION:** Move to approve the minutes from a regular meeting of the Town Council; Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District Special meeting; and Crime Control and Prevention District Special meeting held on August 19, 2013.

2. **Consider approval of the minutes from a special meeting of the Town Council held on September 3, 2013.**

**RECOMMENDATION:** Move to approve the minutes from a special meeting of the Town Council held on September 3, 2013.

3. **Consider approval of the minutes from a special meeting of the Town Council held on September 14, 2013.**

**RECOMMENDATION:** Move to approve the minutes from a special meeting of the Town Council held on September 14, 2013.

4. **Consider approval of the award of Bid No. 2013-80-B, to CPS Civil, LLC., for the construction of the Flower Mound Road Turn Lanes at Native Oak Drive and Auburn Right Turn Lane at FM 1171 projects, in the amount of \$213,271.00; and authorization for the Mayor to execute same on behalf of the Town.**

**RECOMMENDATION:** Move to approve the award of Bid No. 2013-80-B, to CPS Civil, LLC., for the construction of the Flower Mound Road Turn Lanes at Native Oak Drive and Auburn Right Turn Lane at FM 1171 projects, in the amount of \$213,271.00; and authorization for the Mayor to execute same on behalf of the Town.

5. Consider approval of a second amendment to the interlocal agreement with the Town of Copper Canyon relative to the provision of sewer/wastewater treatment and disposal services to the proposed Town Center area in Copper Canyon, located in Copper Canyon's corporate limits along FM 407 generally between Jernigan Road and Copper Canyon Road; and authorization for the Mayor to execute same on behalf of the Town.

**RECOMMENDATION:** Move to approve a second amendment to the interlocal agreement with the Town of Copper Canyon relative to the provision of sewer/wastewater treatment and disposal services to the proposed Town Center area in Copper Canyon, located in Copper Canyon's corporate limits along FM 407 generally between Jernigan Road and Copper Canyon Road; and authorization for the Mayor to execute same on behalf of the Town.

6. Consider approval of Amendment No. 1 to the Professional Services Agreement for Construction Administrative Services with Freese and Nichols, Inc., for the Operations and Maintenance Facility project, for an increase of \$21,090.00; and authorization for the Mayor to execute same on behalf of the Town.

**RECOMMENDATION:** Move to approve an Amendment No. 1 to the Professional Services Agreement for Construction Administrative Services with Freese and Nichols, Inc., for the Operations and Maintenance Facility project, for an increase of \$21,090.00; and authorization for the Mayor to execute same on behalf of the Town.

7. Consider approval of an ordinance adopting the 2013 tax rolls for the Town of Flower Mound.

**RECOMMENDATION:** Move to approve an ordinance adopting the 2013 tax rolls for the Town of Flower Mound.

**ORDINANCE NO. 47-13**

**AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, APPROVING THE 2013 TAX ROLLS; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

8. Consider approval of a Contract for Services with Concentra Medical Centers to provide health assessments, fitness for duty assessments, alcohol and drug testing, injury medical treatment and case management, and authorization for the Mayor to execute same on behalf of the Town.

**RECOMMENDATION:** Move to approve a contract for Services with Concentra Medical Centers to provide health assessments, fitness for duty assessments, alcohol and drug testing, injury medical treatment and case management, and authorization for the Mayor to execute same on behalf of the Town.

9. Consider approval of a resolution adopting an Investment Policy for funds for the Town of Flower Mound as required annually by the Public Funds Investment Act.

**RECOMMENDATION:** Move to approve a resolution adopting an Investment Policy for funds for the Town of Flower Mound as required annually by the Public Funds Investment Act.

**RESOLUTION NO. 25-13**

**A RESOLUTION BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS ("TOWN"), ADOPTING AN INVESTMENT POLICY FOR FUNDS FOR THE TOWN AS REQUIRED ANNUALLY BY THE PUBLIC FUNDS INVESTMENT ACT; AND PROVIDING AN EFFECTIVE DATE.**

10. Consider approval of a Professional Services Agreement with Matrix Consulting Group to perform an operational assessment of the Code Enforcement division, not to exceed \$25,000; and authorization for the Mayor to execute the same on behalf of the Town.

**RECOMMENDATION:** Move to approve a Professional Services Agreement with Matrix Consulting Group to perform an operational assessment of the Code Enforcement division, not to exceed \$25,000; and authorization for the Mayor to execute the same on behalf of the Town.

11. Consider approval of a proposed change to the Town's Personnel and Administrative Regulations Manual (PARM), Title I, Personnel Regulations, Chapter 3 Classification and Salary Administration effective immediately.

**RECOMMENDATION:** Move to approve a proposed change to the Town's Personnel and Administrative Regulations Manual (PARM), Title I, Personnel Regulations, Chapter 3 Classification and Salary Administration effective immediately.

12. Consider approval of a Construction Manager at Risk Agreement with Dean Electric, Inc., dba Dean Construction, for the Twin Coves Park Boat Access Improvements project, at a not to exceed cost of \$93,687.60; and authorization for the Mayor to execute the same on behalf of the Town.

**RECOMMENDATION:** Move to approve a Construction Manager at Risk Agreement with Dean Electric, Inc., dba Dean Construction, for the Twin Coves Park Boat Access Improvements project, at a not to exceed cost of \$93,687.60; and authorization for the Mayor to execute the same on behalf of the Town.

13. Consider approval of the purchase of 95 desktop computers, 28 standard laptop computers, 21 ruggedized laptop computers, 4 CAD workstation computers and 10 LCD Monitors from Centre Technologies, through a Texas Department of Information Resources (DIR) contract, in the amount of \$183,634.33.

**RECOMMENDATION:** Move to approve the purchase of 95 desktop computers, 28 standard laptop computers, 21 ruggedized laptop computers, 4 CAD workstation computers and 10 LCD Monitors from Centre Technologies, through a Texas Department of Information Resources (DIR) contract, in the amount of \$183,634.33.

**VOTE ON MOTION**

**AYES:** Wise, Dixon, Levenick, Webb, Walker

**NAYS:** None

**I. REGULAR ITEMS**

**14. Consider and finalize a park location for the Town's Off Leash Dog Park.**

**Staff Presentation**

Mr. Sims gave a presentation identifying or noting:

- Three park options were presented for consideration
  - Gerault Park East
  - Heritage Park (West side)
  - Green Acres Farm
- He identified the specific location of all three sites and provided a 3-acre template overlay sample for each
- Gerault Park East:
  - Pros: convenient parking, minimizes the opportunity for contact between children and dogs, and it also has a greater distance from the picnic pavilion and the playground (which was an issue with some of the PALS Board members).
  - Cons: it's within 200 feet of residents (140 – 180 feet to the closest resident), there is no practical rest room facility at this site, approximate cost to construct is around \$600,000, and there is no natural shade, therefore shade structures would be needed
- Heritage Park West:
  - Pros: convenient parking, ample natural shade, utilities in place, and approximate cost of construction would be around \$450,000
  - Cons: concerns regarding contact between children and dogs due to the location of the Ft. Wildflower Playground, it is within 250 feet of residents, and there is no practical rest room facility at this location
- Green Acres Farm:
  - Pros: convenient parking (but would need to be upgraded), ample natural shade, already cleared and underbrush removed, larger park so there is more flexibility where the park can actually be located
  - Cons: Primary access is Hide-A-Way Lane, which is a narrow asphalt road, no practical rest room facility at this site, and the approximate cost for construction at this site is \$600,000, and a large portion of that is for adding the concrete parking lot

Hayden: As I look at the space available at Green Acres Farm in the orange shaded area is two acres and then for the smaller dogs, it's .8 acres – we have more room there.

Sims: If we do it at this location that could be considered. The reason the template is this shape is because it's based on the original shape that was done for Heritage Park West. Actually a 5-acre dog park would be a better fit.

Hayden: If it was to go at this location, what is the distance from the park to the homes in the front?

Sims: It's about 480 feet, and there is flexibility in the footprint.

Hayden: I'm guessing that the design elements will come at a later day as today we're just picking the location.

Sims: Correct.

Hayden: If it is to go at this location, over time, Hide-A-Way Lane might need to have some improvements and perhaps needs to be added to the capital improvement budget in the next three years or so.

Stathatos: Staff has gone back and forth on this decision and has done a lot of research and due diligence. While we'll wholeheartedly implement the Council selection for the location of the dog park and make it the best one ever, I can tell you staff's recommendation is Green Acres Farms. It has the most benefits for the Town and any negatives are not insurmountable.

### **Public Participation**

Jennifer Speer, 817 Rosemary Dr, Flower Mound, TX

Ms. Speer indicated her yard backs up to Heritage Park and was pleased the location has changed to Green Acres.

Melanie Carr, 1012 Big Canyon Dr, Flower Mound, TX 75028

Ms. Carr expressed her appreciation for the PALS Board and Town Council for listening to their concerns and responding to that by considering another location. She inquired if the \$600,000 includes a rest room facility.

David Robinson, 913 Rosemary, Flower Mound, TX

Mr. Robinson spoke in support of Green Acres as the location of choice for the dog park.

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

Mr. Stone spoke in support of the dog park and the location of Green Acres. He encouraged Council to do a pilot project and test it out. Simply provide a space to see if there is a practical demand for it. Designate a space and see what happens.



Hayden: How will the dog park be kept clean?

Sims: The park would be shut down one day per week for maintenance such as mowing and pet waste cleanup. There would also be pet waste containers distributed within the park, as well as signage informing the pet owners it is their responsibility to clean up after their pets.

Hayden: Is there the possibility of two times per week?

Sims: This will be funded as O & M through the 4B Corporation and if we need to step it up we would go before the Community Development Corporation and ask for additional funding, however, honestly, I think one day per week will be more than adequate.

Hayden: Is there a corporate sponsor that has expressed interest in sponsoring this?

Sims: Yes. Raising Cane's has expressed interest in being our first corporate sponsor of any of our parks, and we have an agenda item ready to bring forward to Council as soon as we know where the location will be.

Hayden: So they would contribute funding to go toward the operations and maintenance.

Hayden: With respect to timing, if we were to pick a location tonight, when would the first dog be there?

Sims: We would have to go back to the CDC to reallocate the funding, come up with a plan for the design, so probably it would be in the early Spring.

Hayden: Tell us why a dog park cost \$500,000 - \$600,00.

Sims: Sod and an irrigation system, concrete parking lot (approximately \$2,000 per parking space for a concrete parking lot), 6' tall chain fencing (with a concrete strip at the bottom so mowers don't get close to it), water fountains for the dogs and owners, and other amenities.

Hayden: When this comes back for design, can you come back with itemized cost.

Sims: Yes.

Levenick: Inquired about the Town's liability related to the dog park.

Sims: It would be the same as in our ball fields.

Hayden: If a dog bites another dog or a person gets bit and the Town is sued, what would happen?

Welch: It would be covered under our insurance policy; however, we don't have liability for something like that so presumably the claim would be denied. If two kids get in a fight in a public park we don't have liability for that if someone gets injured.

Levenick: For Hide-A-Way, she commented it's comparable to Sagebrush, which has much more traffic than what Hide-A-Way has. For that reason we don't need to look into fixing the road right away. She pointed out that a good amount of the money is for a concrete parking lot, and she pointed out that Jake's Hilltop Park went unpaved for many years. She commented being in favor of picking a location and to start talking about it, but maybe there are other ways to save some money, such as putting off a parking lot. Is there a way we can hold off on that? She mentioned being in favor of building up to it and not place all the amenities in at one time, as there are other areas in Town that need attention as well. She stated seeing it as a fence, some water, and port-a-potties out there until we get to the point where we can afford this grand dog park.

Sims: For new developments Town Ordinance requires paved parking.

Hayden: So for approximately 50 parking spaces it's going to cost \$100,000 in parking.

Stathatos: There will be an architectural agreement to come forward with a design, but in the meantime we'll check the requirements, because we recognize cost is a concern.

Levenick: Inquired about why the Town doesn't have access from Wichita Trail to Green Acres Park.

Stathatos: The property owner was not willing to sell and part of the will for this property stipulates the Town needs to buy the property. If the Town does select this location the plan is to go and meet with that property owner, because that was in 2006/07.

Hayden: If we go that route, we also need to consider the cost for the road to understand the financial ramifications.

Levenick: Do we have the staff to handle maintenance within the park on a weekly basis because based on what I hear from residents, there are things in the parks right now that aren't being kept up (bushes getting trimmed, slides getting fixed, etc.)

Sims: This would be contracted out and that cost would be based on the acreage.

Webb: Appreciated the comparisons of the three sites. He indicated it's his preference to remove the rest room component of the dog park. People can simply leave if they need to take a rest room break. That light bulb came up when somebody said "are you going to take the dog in the rest room with you". Also,

putting a dog in a parked car is not a good idea anytime of the year. In checking with survey cities, what were the major issues that came up with their dog parks?

Sims: The issues that came up were minimal with things such as barking or aggressive dogs, feces, etc. Most of them reported that if they had an aggressive dog it was about one instance per year. Also, people that come to the dog park are going to police themselves and there will be ample signage.

Webb: I think the residents will be responsible and not take their dog to the park if they are aggressive.

Webb: Council received an email from a resident that lives near Green Acres. He made reference to some assurances that the residents along Hide-A-Way in that neighborhood were given when the Town accepted the gift of Green Acres. Can you talk about those and what assurances were given?

Stathatos: Other than the stipulations that were set forth in the will, I am not aware of any requirements, either self-imposed or contractually mandated, that went with the property in terms of access development. I know at one time as the resident shared some of the articles they were looking at the senior center there, so obviously this wouldn't generate that volume of traffic.

Welch: I can get a copy of the deed, which basically stated the Town had to use it for park property, so there are restrictions on the use. Other than that there is nothing that would limit access to it.

Sims: I'll visit with Norma Krueger on the PALS Board as well to understand her knowledge on the topic.

Webb: The major concern I have is access to Green Acres and how it's going to impact those residents, as most of the concentrated use will be in the early evenings and weekends when they are home. He questioned the possibility of doing a small dog park right next to Town Hall with just fencing, and none of the amenities. We already have parking there, and I think the parking demand would work with what we have already, and then invest in the larger dog park later to mitigate the issues.

Stathatos: In reviewing the plans for this use with 50 cars and even if they churn every hour, it's minimal. And on the cost we want to cut every corner we can without looking like we cut every corner because we can come back to you with other projects based on that savings. For whatever location Council picks we're going to value engineer everything. We're very motivated to save money and know at the end of the day we're not coming in with a check and saying what can we buy for this. My concern is that we still have the issue of accommodating larger dogs, and I think with parking, he's correct in saying the peak times don't overlap, however, what if they do. If we're looking at 50 cars for the small and large dogs, let's say we need 25 spaces. What if there is an overlap. Also, there are concerns being this close to a hard retail corner. We can make it work, however, I don't know if long term that will work. Green Acres would meet both the medium and long term needs.

Sims: I think Green Acres would be a great location. It has a lot of flexibility, it's not being used right now and we're spending money on maintenance so this would be a good use.

Hayden: When you were talking about the parking area right there at the corner as you go around Hide-A-Way it seems like you ought to take the parking and move it to the east a little bit. Having the entrance for that parking right at that corner seems dangerous.

Stathatos: I agree. We have some flexibility there.

Walker: Are there any other uses anticipated for the Green Acres Park.

Sims: It does call for a Community Garden, based on the Parks Master Plan.

Walker: And that would be compatible with the dog park if that location is selected?

Levenick: Isn't the community garden master planned at Heritage Park?

Sims: No, we never changed the master plan. It's still Green Acres.

Walker: What is the number of homes in proximity to Green Acres?

Sims: It's about 5 – 6 homes.

Walker: Asked for clarification that off-leash is for the area once you've entered into the enclosed park area.

Sims: You have to transport your dog from your vehicle to the dog park on leash and back again.

There was consensus by the majority of Council to keep cost minimal and add to it based on use and interest by the community, in addition to making sure any traffic concerns are addressed in relation to Hide-A-Way Lane, which includes moving the driveway to the east.

Mayor Pro Tem Dixon was particularly interested in the culvert and the anticipated weight over time and recommended monitoring it regularly to make sure the road can handle the traffic. He also suggested the driveway and parking lot blend with the asphalt environment with no curbs to better match the rural neighborhood in that area. In addition, as the driveway is matched up with Hide-A-Way, I would like to make sure there is plenty of room for vehicles such as maintenance trucks to navigate the turn and not block traffic.

Hayden: What would be the hours of the dog park?

Sims: We can start out at sunrise and sundown or lighting might be needed if that time is extended in the winter months.

There was consensus of Council to not put in any lighting and set the hours as sunrise and sundown.

Hayden: If we're going to put a park on the site, let's not be penny wise and pound foolish. If it's going to cost \$450,000 to build a 2-acre dog park, and it cost \$500,000 to build a 4-acre dog park, let's make it a nice dog park and not come back later wishing we had spent that other \$50,000.

Levenick: We have a lot of parks right now that don't have the things they need.

Stathatos: Once a location is selected staff will come back with design options to meet Council's expectations.

Mayor Pro Tem Dixon moved to direct staff to proceed with Green Acres Farm Memorial Park as a location for the Town's off-leash dog park located at 4400 Hide-A-Way Lane. Councilmember Wise seconded the motion.

#### **VOTE ON THE MOTION**

**AYES: Walker, Webb, Levenick, Dixon, Wise**

**NAYS: None**

- 15. Public Hearing to consider approval of a Chapter 380 Incentive Agreement with Flour Mountain, Inc., d/b/a Mellow Mushroom, and authorization for the Mayor to execute same on behalf of the Town.**

#### **Staff Presentation**

Mr. Wood gave a presentation identifying or noting:

- Project details for Mellow Mushroom
  - They plan to locate a 5,500 sf restaurant within The River Walk Market (Market Street Shopping Center) so they would go on the end cap of the eastern most building facing 1171
  - They will invest more than \$1.6M in the restaurant
  - They are a unique destination pizza restaurant with upscale ingredients and it has the potential to draw customers from outside of Flower Mound
- Incentive summary
  - Includes impact and building permit fee waivers for Mellow Mushroom's location only within that shopping center
  - Includes a 3-year 25% business personal property tax rebate
  - In return Mellow Mushroom must obtain a building permit by October 1, 2014 to receive the incentive and they must remain in operation for a four year period to retain the incentive
- Cost-Benefit analysis
  - Over a 20-year period sales tax and fees are estimated to be \$1,142,712 and the cost of the fee waiver and the business personal property tax rebate would be \$18,245 so the net benefit to the Town would be \$1,124,367.

Walker: At what year of the 20 years does the Town start to recognize some sort of positive flow?

Woods: After year one. Estimated sales are \$2.5M so 2% sales tax would be \$50,000 per year and the fee waiver and the personal property tax total would be \$18,000.

Walker: So that's within the first 12 months?

Woods: The fee waiver portion is and the personal property tax would be over a 3-year period. We would exceed the money in the first year.

Walker: In the future could that information be provided to us as it would help everyone understand when we transition from a giveaway so to speak to recouping some benefits for the Town.

Hayden: A return on investment doesn't always mean just the dollars.

**Applicant Presentation:**

Martha Jenson, Mellow Mushroom

Ms. Jenson commented she was excited to bring Mellow Mushroom to Flower Mound. She provided background information about the company and the uniqueness they will offer.

Hayden: What is your timing?

Jenson: This summer.

Mayor Hayden opened the Public Hearing at 7:29 p.m.

**Public Participation**

No one spoke in support or opposition.

Mayor Hayden closed the Public Hearing at 7:29 p.m.

Mayor Pro Tem Dixon moved to approve a Chapter 380 Incentive Agreement with Flour Mountain, Inc., d/b/a Mellow Mushroom, and authorize the Mayor to execute same on behalf of the Town. Councilmember Wise seconded the motion.

**VOTE ON THE MOTION**

**AYES: Walker, Webb, Levenick, Dixon, Wise**

**NAYS: None**

*Mayor Hayden opened items 16 and 17 at the same time.*

- 16. Public Hearing to consider approval of an ordinance establishing a Tax Abatement Reinvestment Zone for commercial tax abatement at 1600 Lakeside Parkway.**

### Staff Presentation

Mr. Woods gave a presentation for items 16 and 17 identifying or noting:

- Project details for CustomInk
  - CustomInk is an on line custom apparel company based in Virginia
  - Lease 52,000 square feet at 1600 Lakeside Parkway
  - Will create 160 full time jobs
  - Ecommerce retailer and the Town will receive all the sales tax revenue from Texas sales, which is estimated to be about \$12M annually
- Incentive summary
  - Ten year agreement with two parts: 1) Ten year 100% business personal property tax abatement and 2) Ten year 54% sales tax rebate on the Town's 1% general fund portion.
  - Requirements for CustomInk is if they create less than 125 jobs by December 31, 2016, then they receive no incentive and they have to repay any incentive received as of that date. If they create 125 jobs, but less than 160 by December 31, 2016, then they will receive a proportionate share of sales tax rebate based on creating 160 jobs and that would be going forward and repaying back to the percentage they would receive. If they create 160 jobs by December 31, 2016 they will receive and retain all incentives.
- Cost Benefit Analysis
  - Over a 20-year period shows a sales tax and business personal property tax benefit to the Town of \$4.9M, and a cost to the Town over a 20-year period is a sales tax rebate and business personal property tax abatement of \$720,000 for a net benefit to the Town of \$4.2M.

Hayden: The benefit to the Town is 160 people coming to work in Flower Mound, dining in Flower Mound, and shopping at Lakeside. One of the things we've been told over and over is that we need more people working in Flower Mound to support our businesses.

Walker: When do we start to receive a net benefit to the Town?

Woods: In year one, we're receiving \$240,000 a year in sales tax and we're paying out about \$60,000.

Stathatos: Not only are we creating jobs in the Lakeside Business District, it is very rare for these large job centers to be Ecommerce centers as well equating to the Town getting sales tax from all over the country for orders. What is exciting is that if we are able to land a corporation with this name, and just with the jobs, it's a huge win for the Town. But when you look at the sales tax that's even more exciting.

Webb: And we're driving sales tax revenues from day one.

Levenick: Asked for clarification as to the type of jobs.

Woods: It would be 160 full time jobs, and it's not specifically spelled out in the agreement but I would think 40 hours or more.

Hayden: I think our policy has a definition of a full time job as having a minimum annual income of \$40,000.

Woods: Our policy has a provision that if the average salary is \$40,000 or more you can receive an additional abatement, but it doesn't define full time job.

**Applicant Presentation:**

Tim Vogds, CBRE, 2100 McKinney Ave, Ste 700, Dallas (representing CustomInk)

Mr. Vogds expressed appreciation for the work of staff and pointed out that CustomInk will be a great employer for the Town.

Mayor Hayden opened the Public Hearing at 7:41 p.m.

**Public Participation**

Dave Johnson Rd, 3617 San Paula Dr, Flower Mound, TX

Mr. Johnson spoke in support of the efforts for the Town with bringing in the employment and the sales tax revenue. He also stated that he believes Councilmember Walker's comments are very important to be part of the public information with respect to drilling down into the numbers. I realize that some of it may be private information related to payrolls that can be a little sticky, as far as what gets out to the public, but I really think it's important for the residents of the Town to have a really good understanding as to how we're making progress with these sorts of things. The level of detail that Mike is asking for could even be part of the press release to make sure that the residents are better informed so everyone realizes it was a fair and smart thing that we're doing.

Mayor Hayden closed the Public Hearing at 7:42 p.m.

Deputy Mayor Pro Tem Webb moved to approve an ordinance establishing a Tax Abatement Reinvestment Zone for commercial tax abatement at 1600 Lakeside Parkway. Councilmember Wise seconded the motion.

**ORDINANCE NO. 48-13**

**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:** Walker, Webb, Levenick, Dixon, Wise

**NAYS:** None

- 17. Public Hearing to consider approval of a Tax Abatement Agreement with Customlnk, LLC for the economic development of Flower Mound, and authorization for the Mayor to execute same on behalf of the Town.**

Councilmember Walker moved to approve a Tax Abatement Agreement with Customlnk, LLC for the economic development of Flower Mound, and authorize the Mayor to execute same on behalf of the Town. Mayor Pro Tem Dixon seconded the motion.

**VOTE ON THE MOTION**

**AYES:** Wise, Dixon, Levenick, Webb, Walker

**NAYS:** None

*Mayor Hayden opened items 18 and 19 at the same time.*

- 18. Public Hearing to consider an application for a tree removal permit for the removal of one (1) specimen tree on property proposed for development as Wellington North. The property is generally located east of Auburn Drive and north of Peters Colony Road. *(The Environmental Conservation Commission recommended approval by a vote of 5 – 0 at its October 1, 2013, meeting)***

**Staff Presentation**

Mr. Powell gave a presentation identifying or noting:

- Location
- Land use and zoning
- Photographs of the site
- Development plan
  - The development plan was originally tracking with the zoning request, but at P & Z the discussion of Monroe Drive was discussed and the property owner or the developer that has the property to the south under contract desired to have this street that is stubbing out to the south moved farther to the east (which is actually a better location for that). But to do that a couple things had to happen: 1) there was a tree removal permit that had to go through ECC and they did recommend approval; and 2) there was a discussion of the property owner to the south agreeing to take a little bit of storm water because when this street moves over there will be some storm water that they will need to take to make the grading work. All of those things have been worked out.
- There was some discussion at P & Z from surrounding property owners in the way of concerns and when this came to Council there were concerns

about Auburn and Peters Colony. The Town Manager has submitted information to Council about looking at improvements to that intersection which is impacted by this development, but it is really not the responsibility of this developer to make those improvements given the number of lots being proposed.

### **Applicant Presentation**

Mark Howe, Home/Wood & Company, 6617 Precinct Line Rd, Ste 200, North Richland Hills, TX

Mr. Howe gave a presentation identifying or noting:

- Background information about the project and what is being planned in the way of entry fencing
- Two properties have been combined to develop into a 16-lot project
- Photographs of the site
- They intend to take the property into the Wellington Homeowner's Association if they would accept it
- The builder on the property will be K. Hovnanian Homes
- Original development plan
- The neighbor to the south offered an alternative about relocating the road
- Revised development plan as approved by P & Z and ECC for the tree removal
- Noted the trees that will be saved that were previously not
- Current and future drainage plans and the property owner to the south has agreed to accept their storm sheet flow off of the back of these lots and where the water goes onto Monroe Court which will be a little concentrated with rain flow. We're not going to put any water down there because it's all going to go to the detention pond from this particular area (noted on map as area A1).
- Tree planting and fountain areas
- It will be \$600,000 - \$800,000 product that they plan to build
- Attempts they made to try and save the tree and conflicts that arose

Levenick: Inquired if the individual that wrote Council about being in agreement with the plan is represented this evening.

Howe: Yes, he is.

Dixon: Asked Mr. Rembert to confirm that he is in agreement to taking the sheet flow on that southeast corner and to confirm the email as well.

Reginald Rembert, 3625 Bonanza Lane, Flower Mound, TX

Mr. Rembert confirmed that he is the property owner to the south. He indicated he did not like the location of the existing road because it was basically not a good location, however, in order to get the road moved he had to agree to accept some drainage. He stated having agreed to limiting the drainage to sheet flow drainage and that he is willing to accept some sheet flow drainage coming his way because

he needed to have them move the road. He clarified that the email does say that he is willing to accept sheet flow drainage from the street and from the south of the back yards of those lots as indicated on the map on the screen.

Levenick: Is your property able to handle that as well as what will be done on your property in the future?

Rembert: At this point I'm a little uncomfortable with it, but I don't know because we haven't done any studies or surveys. The water has to go from my property on down so I can't answer that.

Levenick: What happens if you do a study and it comes back stating you can't do what you want on your property because you have all of this extra drainage?

Rembert: I can't answer that today.

Walker: Are you going to go through the request for the exception to the access policy with the existing drive?

Powell: The new street doesn't meet spacing requirements from existing driveways and so it really is one of those situations where it's technically a requirement, but at the same time there is no place that you could put the street and meet those spacing requirements because there are existing driveways along Auburn. The proposal for that intersection involves looking at a roundabout so it would be hard to have a 3-legged roundabout and another roadway coming in.

Walker: Requested to see the alignment on an aerial map.

Stathatos: For the roundabout at Auburn and Peters Colony it was recommended by Matt Hotelling, the Town's Traffic Engineer, and staff will be coming forward with a CIP amendment to accommodate that request.

Mayor Hayden opened the Public Hearing at 8:06 p.m.

### **Public Participation**

Reginald Rembert, 3625 Bonanza Lane, Flower Mound, TX

I do own the property to the south and I want to go on record in saying I have two driveways currently on Peters Colony, and depending on what happens, I don't want us to get in a position where I'm forced to close those and then forced to go through that community. I have two driveways entering my property now and I'm not sure about what's going to happen to my property frontage with the roundabouts mentioned.

Hayden: As an adjacent property owner how do you feel about the development?

Rembert: I would like to see something different there but I don't own those two tracts.

Dave Johnson, 3617 San Paula Dr, Flower Mound, TX

Mr. Johnson indicated he doesn't have issues with the development; however, he's concerned about putting in a roundabout at that intersection. He suggested studying teenage driving habits and that we already have two roundabouts going in that will impact Marcus at Waketon and Chinn Chapel. He noted his kids drive that every day and he's really concerned as to how teenage drivers are going to handle that. He suggested spending a lot of time researching that prior to doing it.

Mayor Hayden closed the Public Hearing at 8:08 p.m.

Hayden: Asked if there is anything being proposed that would cause Mr. Rembert's drives to be closed?

Stathatos: The roundabout is something at the staff level. We're going to vet it out. We're not in a position currently to talk about the impact on current land owners. In a vacuum transportation wise it's going to be a positive addition, but there is a long way to go internally before it gets to an agenda, so I can't answer that.

Hayden: Hopefully in looking at future plans we wouldn't do anything that would cause those drives to close.

Webb: I still have concerns how all of this is going to work together. And since we have multiple property owners we don't have the opportunity to see what this is going to look like in 7 or 10 years. It's a piece of infill development with some size to it and it's all cut up. For the one road that got shifted from the original to the new plan, I would like to see it a little further to the east. It would save the tree and it would line up with the court in coming out. But then I don't know what Mr. Rembert has planned for the southern portion.

Dixon: Requested Mr. Powell to outline Mr. Rembert's property on the aerial map. He pointed out the location of his property to the south. Over the years there have been many discussions about infill in Flower Mound. I have a concern about the intersection of Peters Colony and Auburn, and also when I see this I understand we have two different property owners for all of the undeveloped. Several years ago we had a similar situation with a long narrow piece of property that sat undeveloped for years. The Town finally purchased it and created West Windsor Drive. My concern is that if this development to the north (the subject property of this case) is approved, we're creating a long skinny piece of property that is going to be fairly difficult to develop unless the southern pieces of property are somehow acquired. One of those pieces of property has been developed nicely backing up to Mr. Rembert's development to the east of his vacant land. Then you have the church on the corner and then the two pieces of property just south. The one driveway (Monroe) would be stubbed out adjacent to Mr. Rembert's property and would probably sit there for several years and we would be talking at a future Master Plan review session of an infill there on Peters Colony. That's where I struggle. If it were fully incorporated into this property and we were looking to remove one tree and it would fit in, and I could have my comfort level reached for

the intersection of Auburn and Quail Run. I still have concerns about this. I don't want to move forward on approving a development and a tree removal when I'm not convinced it's the best thing for Flower Mound.

Walker: I have similar concerns and not related to the applicant directly, however, if the applicant's proposal goes forward there would be an impact. My concern has to do with the future design of Peters Colony, Quail, and Auburn. I wish I had some idea as to how that flow would work for those four areas, and we have an undeveloped piece to the south. I share the same concerns expressed by Mr. Dixon. I have a certain amount of discomfort going forward with something that at some point we may be wishing we had tweaked more.

Levenick: Suggested having the item postponed in order for Council to get answers related to the Quail Run and Peters Colony area.

Mayor Pro Tem Dixon moved to **postpone** the requested permit for the removal of for the removal of one (1) specimen tree on property proposed for development as Wellington North to October 21, 2013. Councilmember Levenick seconded the motion.

**VOTE ON THE MOTION**

**AYES:** Walker, Webb, Levenick, Dixon, Wise

**NAYS:** None

19. **Consider a request for a Development Plan (DP 13-0006 – Wellington North) to develop a residential subdivision, with an exception to the access management policy and criteria, regarding driveway spacing, contained in the Town's Engineering Design Criteria and Construction Standards adopted through Chapter 32 of the Code of Ordinances. The property is generally located east of Auburn Drive and north of Peters Colony Road. (*The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its September 9, 2013, meeting.*)**

Mayor Pro Tem Dixon moved to **postpone** a Development Plan (DP 13-0006 – Wellington North) to develop a residential subdivision, with an exception to the access management policy and criteria, regarding driveway spacing, contained in the Town's Engineering Design Criteria and Construction Standards adopted through Chapter 32 of the Code of Ordinances, and acceptance of cash in lieu of land in the amount of \$36,557 in place of the otherwise required Parkland Dedication and Park Development Fees in the amount of \$22,208 to satisfy the requirements of the Park Land Dedication Ordinance to October 21, 2013. Councilmember Levenick seconded the motion.

**VOTE ON THE MOTION**

**AYES:** Walker, Webb, Levenick, Dixon, Wise

**NAYS:** None

Mayor Hayden opened items 20, 21, 22, and 23 at the same time.

20. **Public Hearing to consider a request for a Master Plan Amendment to amend Section 1.0, Land Use Plan (MPA 13-0003 - Edgewood), to change the current land use designation from Low Density Residential and Medium Density Residential uses to Medium Density Residential uses on approximately 28.995 acres of land, and to consider adopting an ordinance providing for said amendment. The property is generally located south of FM 3040 (Flower Mound Road) and east of Gerault Road. (The Planning and Zoning Commission recommended approval by a vote of 4 to 1 at its September 23, 2013, meeting.)**

#### **Staff Presentation**

Mr. Powell gave a presentation identifying or noting:

- Site location
- Land use and zoning
- Photographs of the site
- Development plan
- Trees that were reviewed by ECC, and pointed out the area near the trail that received the most discussion
- Existing and future trails map, and area parks
- Highlighted discussion points at the P & Z meeting
- Specimen trees
- Surrounding dynamic of lot sizes
- It is an infill piece so there are some challenges as noted in the packet

#### **Applicant Presentation**

Kyle Hogue, G & A Consultants, 111 Hillside Dr, Lewisville, TX

Mr. Hogue gave a presentation identifying or noting:

- Concept plan
- Plan Details:
  - 51 residential lots
  - 28.995 acres
- Parks and Trails Map, and trail concept in which they have designed around the actual floodway
- ESA Map (from their environmental consultant) in response to the Town's EPP, which will include working with the Corp and the natural features of the property during the design phase
- Ashton Woods is the proposed builder

Walker: On the proposed trail drainage, are you still studying that with the Corp?

Hogue: Pointed out the exhibit that was presented to staff today and noted since the last presentation they have defined the actual floodway. He pointed out that area on a map and noted the proposed alignment will fit.

Hayden: There is a telephone pole that runs along the eastern border and two fences equating to about five yards. Which fence line defines your property?

Hogue: From what we understand the barb wire fence is the property line (directly underneath the telephone poles).

Hayden: The Fallbrook residents want to understand how the natural buffer will be protected. What type of buffer would Ashton build as a buffer?

Hogue: Wooden cedar board on board fence is standard; however, if they want to keep the natural buffer perhaps there would be no fence at all, or it could be wrought iron. We don't have a problem keeping the underbrush.

Hayden: So where the tank is I understand you are going to doze that and you have a creek running through there. There is quite a bit of runoff there. How is that going to impact the drainage and you're changing the direction of a creek.

Hogue: Pointed out the location on the map and various turns the creek takes and there is a large headwall there today with what I believe is a 60 inch pipe. There is a lot of water going in it. That is our outfall where we're going to have to honor that. We don't plan on making any kind of enclosed system. We don't plan on bringing that 60 inch pipe across it. We intend to try and maintain that ravine as much as we can. We will have to shape it up a little to meet today's standards once we quantify the water that is going through there and consider the velocity of the water.

Hayden: What happens if you make these changes and years go by, would you come back and fix it if there is an issue?

Hogue: Engineers will look at it and technical details will be worked out. It will all be in a drainage easement and it's typical practice where the HOA maintains those private drainage easements.

Hayden: I'm guessing that the exit on Flower Mound Road will be right turn only?

Hogue: It would be right in and right out.

Hayden: What are the traffic challenges with that?

Hogue: The trends will be different in the morning and evening where drivers will have choices as to where to exit out of the subdivision depending on the time of day.

Webb: What is the average lot size?

Hogue: A little over 12,000 square feet.

Webb: For the trail concept that is about eight feet wide, what has yet to be done is to merge that with the rest of that green space to see what it would look like.

Hogue: Yes, at this point it's just about getting it from one end to the other.

Webb: What's the vertical drop between the northern floodway line where the trail is sketched in? It's significant, isn't it?

Hogue: I would say that is not the steepest portion. He pointed out the floodway area.

Webb: I'm just trying to get an idea as to how much flat space is up along the trail.

Hogue: Pointed out the areas of relief.

Webb: As you continue to work through that I would ask you to take a look at it in terms of not only getting an 8-foot trail in, but also getting some elbow room on either side of it. You might even be able to get 30 feet in there at some areas. I think it needs to be looked at because putting a trail right up next to a vertical drop off where you have to have a rail, etc. doesn't accomplish the end result as to what everyone hoped it would be.

Hayden: When will we know when there is or will not be a trail there?

Powell: The PALS Board has made a recommendation to take money in lieu of land. This is not on our trails Master Plan so you could send it back to the PALS Board and request they look at that to see if it should be part of the trails plan. In that way the developer could accept the land in place of the money, which I think is one of the things that make it interesting. I think the applicant will want to build the trail; however, they don't want to build a trail and get charged the park dedication fee. The recommendation from PALS is money in lieu of land so Council has the ability to do something else.

Hayden: What is the amount of money?

Powell: \$217,000.

Hayden: So if Council decided they could amend the motion to build the trail instead of accepting the \$217,000.

Powell: Yes.

Hayden: If we were to do that, how can we make sure the trail is up to the standards that it will be connecting to.

Powell: The Town has specifications and standards for trails that would need to be met.



Hayden: How would the developer feel about requiring the trail instead of the money?

Hogue: He would rather do that because the residents would get the benefit.

Mayor Hayden opened the Public Hearing for items 20, 21, 22, and 23 at 8:54 p.m.

### **Public Participation**

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

Mr. Stone requested the development plan on this item be postponed. He had no issues with the master plan amendment or zoning, etc. The issue is not really a matter of putting in a trail, it's about a park dedication and this would call for a 1.7 acre dedication based on the number of lots. That interrupts into \$217,000. Sometimes you have to stop taking the money. This is an opportunity to pursue something like a linear park with a trail on it that meets the needs of this neighborhood. I'm not looking for it to be put in a floodplain and I would argue a 30 foot section going east and west at about 800 feet is only somewhere around half an acre, and the additional work that could be done would be in benches and other amenities. I would argue that if they lost one or two lots that it comes out in the wash based on the money. I love the single loaded road – it can be pushed up a little bit. You then have a nice linear park with a trail on it. I agree with having the PALS Board taking a closer look. Then the developer can come back with something that meets our expectations. It would be a win/win for everyone.

He later pointed out that the gas easement goes up into the Bank of America area and I think part of it was intended that, at some point, this could be a path that gives access for that community into the retail center. So again, it's not just the eroding away path as mentioned, but it continues on a greenbelt that brings people into the retail.

Scott Plumley, 1809 Crooked Creek Ct, Flower Mound, TX

Mr. Plumley identified various concerns he has with the proposed development project:

- Potential of loss of natural buffer
- Drainage issues that might occur as the property gets developed
- The potential of elevating the homes on a higher plain that would extend above the tree line
- Based on an agreement with the developer, he noted it's his understanding that the trees and underbrush would be left as is
- For the tree removal we're not necessarily opposed and our concerns deal with the eastern property line
- He is fine with the development itself as long as they don't have responsibility for any future drainage problems as the property develops

Hayden: Asked for clarification as to the understanding that was reached with respect to the buffer.

Plumley: Our understanding is that the trees and the underbrush be maintained between the fences. There is a series of power poles that run between the back of our properties and the proposed new development in Edgewood. I don't know what the easement rules are as to what can be developed into those easements, but we would like to see that easement maintained (that distance between the two fences now). That was our understanding in talking to Mr. Dawson.

Hayden: Did you talk about any pruning or was it agreed to being left as is.

Prumley: Just as is.

Webb: It's difficult to see the undergrowth and the actual property lines, so I'm probably stating the obvious, but if this goes forward, the undergrowth and trees are on a new property owner's back yard, correct?

Prumley: They couldn't define the property line.

Webb: At some point in time that property line will be decided, there will be a house built behind your back yard, and if that undergrowth is in their back yard and they want it gone, it will go away, right?

Prumley: I don't know.

Webb: I think the developer and consultants are approaching this with open minds, but the reality is when you have a neighbor behind you they will have a say about what their back yard looks like once it's transferred.

Prumley: We have a back-up plan.

Dave Johnson, 3617 San Paula Dr, Flower Mound, TX

Mr. Johnson commented that big picture wise I don't have a problem with the development. You've talked about easements and power lines. We all know that Oncor has the ability to cut down trees and whatever they want along an easement so when underbrush is being defined you are going to need to clarify exactly what that is. Often the Town has Ordinances that require burying of power lines when a development is going on. I'm just trying to raise some issues for consideration. It was mentioned earlier that part of the creek is being eroded. I suppose the Town accepts the liability of keeping the trail in tack if the creek erodes it during a flood period, just as we think about what the liability looks like and the long term maintenance of putting a trail along a creek bed that we know erodes easily.

Mayor Hayden closed the Public Hearing at 9:12 p.m.

### **Council Deliberation**

Hayden: Isn't it unusual to approve a plan with the drainage not finalized?

Powell: No. This is the development plan. It's the start of the planning process and we have enough detail to know that it can work. It can be engineered, however, the details of that have not been submitted.

Powell: For the issue about the fences, there is no provision to have a fence. There are provisions along thoroughfares and they will have a masonry wall on the thoroughfares, but on the back of the lots there is no provision – you do not have to have a fence. You have to have a tubular steel wrought iron fence adjacent to the park, so if it is a park that is what you would see. By practice back yards are usually privacy fences, but there is not a requirement to do that, so perhaps that needs to be clarified.

Hayden: Asked the developer to explain how he will make the residents feel comfortable that the living barrier will be maintained.

Hogue: Our suggestion is that we put it in a landscape easement and it would be referenced in the CC&R's that it maintains the vegetation, and we would have to define those limits.

Webb: As you work through those, try to respect the neighbors in Fallbrook, but also respect those future homeowners. They also have a right to enjoy their back yards. I think there is enough room there in most cases where that can be accomplished. I would hate to create an easement that would prohibit a new homeowner from putting in a pool or a back yard deck because of setbacks, etc.

Hogue: Our rear setback on these lots is 25 feet and we're talking about 15 feet.

Hayden: You have four items here. How would you feel if three of the items went forward and one item (23) went back to the PALS Board for consideration relative to the trail?

Hogue: We have already been to PALS and it didn't come up. This isn't on the Parks map. The flood study is a requirement here at the development plan stage, and what we have asked to do is to keep it moving forward. We're still looking at a few months design time before we have a submittal to go to staff for review. We still have lots of field work before we start our in-house design. If that is a requirement to go back to the PALS Board to amend their initial recommendation, then we could.

Hayden: Having three of the items approved is about keeping it moving forward.

Town Council recessed at 9:20 p.m. and reconvened at 9:35 p.m.

Town Council convened into a closed meeting at 9:35 p.m. for consultation with the Town Attorney for legal advice regarding the item and reconvened into an open meeting at 9:36 p.m.

Deputy Mayor Pro Tem Webb moved to approve a request for a Master Plan Amendment to amend Section 1.0, Land Use Plan (MPA 13-0003 - Edgewood), to change the current land use designation from Low Density Residential and Medium Density Residential uses to Medium Density Residential uses on approximately 28.995 acres of land, and adopt an ordinance providing for said amendment. Councilmember Walker seconded the motion.

**ORDINANCE NO. 49-13**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING SECTION 1.0 LAND USE PLAN OF THE MASTER PLAN BY AMENDING ORDINANCE NO. 24-01, IN PART, WHICH ADOPTED THE MASTER PLAN, SPECIFICALLY TO CHANGE THE CURRENT LAND USES REFLECTED ON THE LAND USE PLAN MAP FROM LOW DENSITY RESIDENTIAL AND MEDIUM DENSITY RESIDENTIAL USES TO MEDIUM DENSITY RESIDENTIAL USES ON APPROXIMATELY 28.995 ACRES OF LAND SITUATED IN THE ROSANNA BAKER SURVEY, ABSTRACT NO. 49, AND THE M. L. COWAN SURVEY, ABSTRACT NO. 1637; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

**VOTE ON THE MOTION**

**AYES:** Wise, Dixon, Levenick, Webb, Walker

**NAYS:** None

21. **Public Hearing to consider a request for rezoning (Z 13-0006 - Edgewood) from Agricultural District (A) uses to Single-Family District-10 (SF-10) uses, and to consider adopting an ordinance providing for said amendment. The property is generally located south of FM 3040 (Flower Mound Road) and east of Gerault Road. *(The Planning and Zoning Commission recommended approval by a vote of 4 to 1 at its September 23, 2013, meeting.)***

Mayor Pro Tem Dixon moved to approve a request for rezoning (Z 13-0006 - Edgewood) from Agricultural District (A) uses to Single-Family District-10 (SF-10) uses, and adopt an ordinance providing for said amendment. Councilmember Wise seconded the motion.

**ORDINANCE NO. 50-13**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE OFFICIAL ZONING MAP, EXHIBIT "A" OF SUBPART B, LAND DEVELOPMENT REGULATIONS, OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY CHANGING THE ZONING ON APPROXIMATELY 28.995 ACRES OF LAND SITUATED IN THE ROSANNA BAKER SURVEY, ABSTRACT NO. 49, AND THE M. L. COWAN SURVEY, ABSTRACT NO. 1637, FROM AGRICULTURAL DISTRICT (A) USES TO SINGLE-FAMILY DISTRICT-10 (SF-10) USES IN ACCORDANCE WITH THE TOWN'S MASTER PLAN AND IN ACCORDANCE WITH CHAPTER 98 OF THE TOWN'S CODE OF ORDINANCES, ENTITLED "ZONING"; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

**VOTE ON THE MOTION**

**AYES:** Walker, Webb, Levenick, Dixon, Wise

**NAYS:** None

22. Public Hearing to consider an application for a tree removal permit for the removal of seven (7) specimen trees on property proposed for development as Edgewood. The property is generally located south of FM 3040 (Flower Mound Road) and east of Gerault Road. *(The Environmental Conservation Commission recommended approval by a vote of 4 - 0 at its September 4, 2013, meeting).*

Councilmember Walker moved to postpone the requested permit for the removal of for the removal of seven (7) specimen trees on property proposed for development as Edgewood to October 21, 2013. Councilmember Levenick seconded the motion.

**VOTE ON THE MOTION**

**AYES:** Wise, Dixon, Levenick, Webb, Walker

**NAYS:** None

23. Consider a request for a Development Plan (DP 13-0005 - Edgewood) to develop a residential subdivision. The property is generally located south of FM 3040 (Flower Mound Road) and east of Gerault Road. *(The Planning and Zoning Commission recommended approval by a vote of 3 to 2 at its September 23, 2013, meeting.)*

Councilmember Levenick moved to postpone a request for a Development Plan (DP 13-0005 - Edgewood) to develop a residential subdivision, and acceptance of cash in lieu of land in the amount of \$211,347 in place of the otherwise required Parkland Dedication and Park Development Fees in the amount of \$70,788 to satisfy the requirements of the Park Land Dedication Ordinance to October 21, 2013. Deputy Mayor Pro Tem Webb seconded the motion.

**VOTE ON THE MOTION**

**AYES:** Walker, Webb, Levenick, Dixon, Wise

**NAYS:** None

24. A Resolution of the Town Council of the Town of Flower Mound Texas, creating a Charter Review Commission approving a charge for the Charter Review Commission, providing that the Town Council shall appoint members to the Charter Review Commission; making findings relative thereto; and providing for an effective date.

**Staff Presentation**

Ms. Scott gave a presentation identifying or noting:

- Background information related to the Charter
- Summarized the process thus far and noted important dates in conjunction with having items come forward for a May 2014 Election
- Summary of the charge items for the Charter Review Commission
- Timeline involved

Councilmember Levenick moved to approve a resolution of the Town Council of the Town of Flower Mound Texas, creating a Charter Review Commission approving a charge for the Charter Review Commission, providing that the Town Council shall appoint members to the Charter Review Commission; making findings relative thereto; and providing for an effective date, with the following individuals serving as members:

- Paul Stone, Voting Chair
- Patti Fennessey
- Brian Fox
- Ray Loehr
- Gail Scheepers
- Sandeep Sharma
- Jeffrey Smith

Deputy Mayor Pro Tem Webb seconded the motion.

**RESOLUTION NO. 26-13**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, CREATING A CHARTER REVIEW COMMISSION; APPROVING A CHARGE FOR THE CHARTER REVIEW COMMISSION; PROVIDING THAT THE TOWN COUNCIL SHALL APPOINT MEMBERS TO THE CHARTER REVIEW COMMISSION; MAKING FINDINGS RELATIVE THERETO; AND PROVIDING FOR AN EFFECTIVE DATE.**

There was discussion about the chair serving as a voting chair given there are seven members, including a chair, followed by a consensus of Council for that individual to serve as a voting chair.

**VOTE ON THE MOTION**

**AYES: Wise, Dixon, Levenick, Webb, Walker**

**NAYS: None**

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

Mayor Hayden announced there will be a work session on the 17<sup>th</sup>.

**K./L. CLOSED/OPEN MEETING**

The Town Council convened into a closed meeting at 9:55 p.m. on Monday, October 7, 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 11:30 p.m. on Monday, October 7, 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.

No action taken.

- c. Consultation with Town Attorney regarding Rembert Enterprises, Inc. v. Town of Flower Mound, Cause No. 2010-50164-367.

Mayor Pro Tem Dixon moved to authorize the Town Manager to execute an impact fee reimbursement agreement and all related documentation incident and related thereto. Councilmember Wise seconded the motion.

**VOTE ON THE MOTION**

**AYES:** Walker, Webb, Levenick, Dixon, Wise

**NAYS:** None

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

No action taken.

- e. 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.

M. ADJOURN REGULAR MEETING

Mayor Hayden adjourned the meeting at 11:31 p.m. on October 7, 2013, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS



THOMAS E. HAYDEN, MAYOR

ATTEST:



~~THERESA SCOTT, TOWN SECRETARY~~

ANNE CARNES, ADMIN. ASSIST.