

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 8TH DAY OF SEPTEMBER 2015, 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 (arrived at 6:05 p.m.)
Steve Dixon	Mayor Pro Tem
Brian Rountree	Councilmember Place 1
Bryan Webb	Councilmember Place 2
Kevin Bryant	Councilmember Place 3

With the following members absent:

Itamar Gelbman	Deputy Mayor Pro Tem
----------------	----------------------

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

Theresa Scott	Town Secretary
Bryn Meredith	Town Attorney
Jimmy Stathatos	Town Manager
Debra Wallace	Assistant Town Manager/CFO
Doug Powell	Director of Development Services
Gary Sims	Executive Director of Community Services
Ken Parr	Executive Director of Public Works
Tiffany Bruce	CIP Engineering Manager
Tammy Wilson	Executive Director of Financial Services
Clayton Riggs	Floodplain Manager

A. CALL REGULAR MEETING TO ORDER

Mayor Pro Tem Dixon called the regular meeting to order at 6:01 p.m.

B./C. INVOCATION/PLEDGE OF ALLEGIANCE TO THE AMERICAN FLAG AND THE TEXAS FLAG

Chaplain Mark Sherill gave the invocation and Mayor Pro Tem Dixon led the pledges.

D. PRESENTATIONS

1. National Library Card Sign-Up Month Proclamation

Sue Ridnour, Director of Library Services accepted the proclamation.

E. PUBLIC PARTICIPATION

Names listed below don't necessarily reflect the order in which each person spoke and all addresses are located in Flower Mound unless otherwise indicated.

	Speaker names and address	Subject (as noted on speaker form)	Donated Time (as applicable)
1.	Angie Cox, 7616 Emerson Ln	Library	
2.	Bill Marquis, 6621 FM 2622, Ponder, TX	Cabin	
3.	Diane Wright, 1821 Armstrong Dr	Wilkerson pond park dredging	Alissa Butler, 2513 Potomac Dr
4.	Ann Martin, 4700 Oak Springs	Library	
5.	Carol Kohankie, 4312 Lauren Way	Library; Cabin	
6.	Carol Ritchie, 1817 Armstrong Dr	Wilkerson pond	
7.	Lori Walker, 700 Parker Square	Chamber update	
8.	Paul Stone, 709 Lake Bluff Dr	Item 6	
9.	Marsha Gavitt 6501 Meadowcrest Ln	Town Ethics	
10.	Jim Engel, 5110 Bayberry St	Investigation, Highland Court	
11.	Emily Strittmatter, 4816 Mesquite	CIP Amendment, Highland Court floodplain	
12.	Katie Lowe, 3113 Springwood Rd	Fiscal responsibility	
13.	Sherillyn Flick, 3220 Miracle Ln	Spending	
14.	Sandy Fambrough, 4105 Spring Meadow Ln	Item 6; Investigation	
15.	Gregory Harper, 2129 Newport Dr	Rountree support; stop spending money on ethics investigation	
16.	Jason Hitt, 912 Wood Duck Way	Reasons	Char Harris, 2200 Becket Dr
17.	Eddie Wynne, 4841 Rippy Rd	Items 11, 6	
19.	Linda Martin, 2849 Sagebrush	Item 6	
20.	Patsy Mizeur, 1821 Castle Ct	Investigation	
21.	James Vogel, 2201 Shumard Ln	Wilkerson Pond	
22.	George D'Bar, 2108 Shumard	Wilkerson Pond	
23.	Albert Picardi, 1525 Lindby	Library	
24.	John Shenko, 5001 Rippy Rd	Investigation/Highland Court Floodplain	
25.	Renee Doyle, 920 Drake Tr	Investigation	
26.	Shyron Shenko, 5001 Rippy Rd	Investigation, Highland Court Floodplain	
27.	Father William Blewett, 6512 Country Oaks	Item 6	
28.	Katy Grote, 165 Double Oaks Dr, Double Oak (for Judy Collins – 1537 Simmons Rd)	Investigation	Kathleen Banes, 2132 Longfellow Ln
29.	Janvier Scott, 2829 Bob White Ln	Public Participation	

F. ANNOUNCEMENTS

Councilmember Rountree provided an announcement related to the investigation.

G. TOWN MANAGER'S REPORT

1. Report related to capital improvement projects

Mr. Stathatos gave CIP updates on the following projects:

- Twin Coves Park
- Bruton Orand elevated storage tank
- Dog Park

2. Economic Development projects

Mr. Stathatos gave economic development updates on the following projects:

- New tenants in Parker Square
- New restaurants opening in Lakeside DFW & a drive thru Starbucks is coming in near the Movie House

3. Update and discussion on water usage.

Mr. Stathatos provided a report on the recent concerns related to water bills and either he or Ms. Wallace responded to questions from Council.

H. FUTURE AGENDA ITEMS

Councilmember Rountree expressed interest in having the Heritage Oak tree item on the agenda.

Mr. Stathatos and/or Ms. Scott noted it's scheduled for the Sept. 17th Work Session.

I. COORDINATION OF CALENDARS

The next Town Council meeting is a scheduled for September 17th.

Mayor Hayden confirmed that everyone would be present.

J. CONSENT ITEMS

1. Consider approval of rescheduling the Monday, January 4, 2016, regular meeting to Thursday, January 21, 2016 of the Town Council.

RECOMMENDATION: Move to approve rescheduling the Monday, January 4, 2016, Town Council regular meeting to Thursday, January 21, 2016.

2. Consider approval of canceling the January 18, 2016, regular meeting of the Town Council.

RECOMMENDATION: Move to approve canceling the January 18, 2016, regular meeting of the Town Council.

3. Consider approval of the Professional Services Agreement with Kimley-Horn and Associates, Inc., to provide professional engineering services, for section two of the FM 2499 12-inch Water Line Phase III project in the amount of \$73,950.00; and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Move to approve the Professional Services Agreement with Kimley-Horn and Associates, Inc., to provide professional engineering services for Section two of the FM 2499 12-inch Water Line Phase III project for \$73,950.00; and authorize the Mayor to execute same on behalf of the Town.

4. Consider approval of a Professional Service Agreement with Kimley-Horn and Associates, Inc., to provide construction contract administration phase services, associated with the Lakeside Lift Station and Force Main project, in the amount of \$76,500.00; and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Move to approve the Professional Service Agreement with Kimley-Horn and Associates, Inc., to provide construction contract administration phase services, associated with the Lakeside Lift Station and Force Main project, in the amount of \$76,500.00; and authorize the Mayor to execute same on behalf of the Town.

5. Consider approval of a Professional Service Agreement with Kleinfelder Central, Inc., for the construction materials testing, associated with the Lakeside Lift Station and Force Main project, in the amount of \$24,368.00; and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Move to approve the Professional Service Agreement with Kleinfelder Central, Inc., for the construction materials testing, associated with the Lakeside Lift Station and Force Main project, in the amount of \$24,368.00; and authorize the Mayor to execute same on behalf of the Town.

Councilmember Webb moved to approve by consent Items 1 – 5. Mayor Pro Tem Dixon seconded the motion. Each item, as approved by consent, is restated above along with the approved recommendation, and if applicable, the Ordinance or Resolution caption for each, for the record.

VOTE ON MOTION

AYES: DIXON, BRYANT, WEBB, ROUNTREE

NAYS: NONE

ABSENT: GELBMAN

Motion passed.

K. REGULAR ITEMS

6. Consider approval and ratification of an investigation of council members pursuant to Section 3.12 of the Town Charter, involving possible violations of local and/or state law, including, but not limited to, the Town Charter, ethics ordinance and state open government laws; defining the scope of the investigation; defining the time parameters of the investigation; ratifying and authorizing the continued engagement of a consultant investigator to conduct the investigation; ratifying any initial expenditure and authorizing the expenditure of funds in excess of \$15,000 in relation thereto.

Mayor Hayden provided background information as to how the Town got to this point.

There was Council discussion relative to the scope, timing, allegations, costs, and other legalities associated with the investigation.

Council Discussion:

- Consequences associated with the investigation and the community impact
- Interest in having a report to include what has been discovered to date and cost expended
- Interest in postponing the item until Deputy Mayor Pro Tem Gelbman is present
- Concerns that the investigation in of itself could be a Charter violation
- Concerns about various accusations made
- Concerns about the contract authorization
- Concerns about the overall handling of the investigation
- Concerns about the cost
- What initiated the investigation
- Concerns that if the investigation doesn't continue it will be perceived as a cover-up
- Concerns about the scope starting back to May
- Comments regarding the scope going back to the beginning of each councilmember's time when first elected for fairness purposes, otherwise lends the appearance of targeting new members
- Concerns that a vote of Council was not made on July 20th
- How the item came forward on the agenda

Mr. Meredith or Mr. Stathatos responded to questions from Council as follows:

- Update on cost expended to date
- Investigation update and have any allegations of wrong-doing been presented to date

- Clarification that the engagement letter is limited to \$15,000 and that any additional expenditures would require council approval
- Clarification regarding the date range of May 20 – July 20th.

There was consensus of Council to make the attorney engagement letter relative to the investigation a public record.

Original motion:

Councilmember Webb moved to continue the investigation as originally scoped covering all councilmembers, covering the period of May 20, 2015 to July 20, 2015, and addressing the following items: violations of Texas Open Meetings laws, Flower Mound's ethics ordinance, and violations of the Town Charter, and to authorize a total expenditure not to exceed \$35,000 to pay for it. Mayor Pro Tem Dixon seconded the motion.

VOTE ON THE ORIGINAL MOTION

AYES: WEBB, DIXON, HAYDEN

NAYS: ROUNTREE, BRYANT

ABSENT: GELBMAN

Motion passed.

First amendment to the motion:

Councilmember Bryant moved to amend the motion for the purpose of requesting clarification until a report from the firm conducting the investigation is brought forward for the purpose of gaining an understanding as to if additional monies are warranted, and prior to allocating any additional funds.

Motion failed due to lack of a second.

Second amendment to the motion:

Councilmember Rountree moved to amend the motion to postpone this item to a date when the full Council can be present, which would also include amending the scope at that time. Councilmember Bryant seconded the motion.

VOTE ON THE AMENDED MOTION

AYES: ROUNTREE, BRYANT

NAYS: WEBB, DIXON, HAYDEN

ABSENT: GELBMAN

Motion failed.

7. Consider approval of Amendment No. 6 to the Fiscal Year 2014-2015 Capital Improvement Program.

Staff Presentation

Ms. Wallace provided background information and the purpose of the item; including a preliminary estimate related to the Wilkerson Ponds in the amount of \$750,000, should there be Council interest to amend the proposed CIP.

There was Council discussion or questions regarding:

- Additional cost to include the Wilkerson Ponds
- If a vote could be made this evening based on an estimate alone
- Funding source for the Wilkerson Ponds
- What is the balance in 4B
- Is there a cost savings in doing Rheudasil and Wilkerson Ponds at the same time
- Status update on Cortadara pond
- How the cost for the Rheudasil pond dredging and improvements has multiplied since first discussed in 2004

Councilmember Bryant moved to approve Amendment No. 6 to the Fiscal Year 2014-2015 Capital Improvement Program, including the addition of the Wilkerson Pond projects, and with a not to exceed amount of \$750,000. Councilmember Webb seconded the motion.

Council Discussion:

There was Council discussion regarding:

- Concern about the \$750,000 figure being subject to change and requiring future authorization by Council.

VOTE ON THE MOTION

AYES: DIXON, BRYANT, WEBB, ROUNTREE

NAYS: NONE

ABSENT: GELBMAN

Motion passed.

8. Discuss and consider modifying the Town Council rules of procedure that would establish an agenda setting policy (*Discussion item only*).

Staff Presentation

Ms. Scott indicated there is not a specific presentation for this item, however it's for discussion purposes to provided direction to staff as to if there is interest in pursuing further.

Mayor Hayden summarized the current process used to get items placed on the agenda.

Ms. Scott or Mr. Meredith responded to questions from Council regarding:

- If directing staff to put something on the agenda is considered a violation of the open meetings act
- Number of Councilmembers required to put an item on the agenda
- How can three members come up with an item for a special meeting without there being deliberation about the merits of the meeting versus simply placing it on the agenda
- It would be in extreme circumstances where there would be a need to have a special meeting called by three members of Council as defined in the Charter

Council Discussion:

There was Council discussion regarding:

- What happened historically that requesting an item be placed on the agenda in advance of the meeting was a problem
- A request for copies of sample agenda setting policies from other cities

There was consensus of Council to continue the discussion to the next Town Council Work Session.

9. Consider the approval of an ordinance adopting updated land use assumptions and updated capital improvements plans, and to update and amend certain provisions of Chapter 42, "Impact Fees," regarding the imposition of impact fees and amending Appendix A, "Fee Schedule", accordingly. *(The CIAC recommended approval by a vote of 10 to 0 at its August 10, 2015, meeting.)*

Staff Presentation

Ms. Bruce provided background information and summarized the purpose of the item, and options for Council consideration.

Consultant Presentation

Jeff Whitacre, Kimley-Horn, Transportation Engineer

Mr. Whitacre gave a presentation identifying or noting:

- Objectives
- Possible fee options
- Impact fee examples

Mr. Whittaker responded to the following questions from Council:

- How impact fees fluctuate in other cities based on economic development projects

Council Discussion:

- Appreciation for the third option

Councilmember Webb moved to approve an ordinance adopting updated land use assumptions and updated capital improvements plans, and to update and amend certain provisions of Chapter 42, "Impact Fees", regarding the imposition of impact fees and amend Appendix A, "Fee Schedule," accordingly. Mayor Pro Tem Dixon seconded the motion.

ORDINANCE NO. 50-15

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY AMENDING CHAPTER 42, "IMPACT FEES," TO ADOPT UPDATED LAND USE ASSUMPTIONS AND UPDATED CAPITAL IMPROVEMENTS PLANS; PROVIDING AN UPDATE TO CERTAIN PROVISIONS REGARDING THE IMPOSITION OF IMPACT FEES; AMENDING APPENDIX A "FEE SCHEDULE" OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS RELATIVE TO CHAPTER 42 IMPACT FEES; MAKING FINDINGS; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON THE MOTION

AYES: WEBB, BRYANT, DIXON

NAYS: ROUNTREE

ABSENT: GELBMAN

Motion passed.

10. Public Hearing to consider a tax rate of \$0.4390 per \$100 assessed valuation.

Staff Presentation

Ms. Wilson gave a presentation identifying or noting:

- 2015 Debt service and tax rates
- Required budget and tax rate adoption language
- How Flower Mound compares – 2014 tax rate

Mayor Hayden opened the Public Hearing at 10:00 p.m.

The following individuals either spoke in support or opposition, or had questions / comments related to the item: *Names listed below don't necessarily reflect the order in which each person spoke and all addresses are located in Flower Mound unless otherwise indicated.*

Support: Comments/Questions	Opposition: Comments/Questions	Question(s)/Comments Only
-	-	Carol Kohankie, 4312 Lauren Way
		Paul Stone, 709 Lake Bluff Dr

Mayor Hayden closed the Public Hearing at 10:14 p.m.

No Council action was taken, however, Mayor Hayden made the following announcement:

"The Town of Flower Mound's tax rate is scheduled for adoption on Monday, September 21, 2015, at 6:00 p.m., at a regular Town Council meeting, to be held in the Town of Flower Mound Council Chambers, located at 2121 Cross Timbers Road, Flower Mound, Texas 75028."

11. Consider a request for an exception to Section 90-403, "Fully developed FEMA floodplain," and an exception to Section 90-404, "Special flood hazard area (FEMA floodplain)," of the Code of Ordinances (MISC15-0003 – Highland Court) to allow construction-related activity, placement of fill material, and reclamation of the floodplain within the Fully Developed and FEMA floodplain areas. The property is generally located west of Long Prairie Road and north and east of Rippy Road.

Staff Presentation

Mr. Powell gave a presentation identifying or noting:

- Site location
- Photos of the site
- Development plan
- Existing FEMA floodplain
- Corrected FEMA floodplain (fully developed floodplain)
- The Town’s requirements as it relates to floodplain
- What is proposed
- Next steps with FEMA that would be taken by the applicant if approved by Council
- The model shows that with the changes the water surface elevation is not changing, nor a velocity increase

Mr. Powell, Mr. Riggs, or Mr. Meredith responded to questions from Council regarding:

- Are there any negative impacts for the adjacent property owners
- When was the original FEMA line drawn
- How did homes get built in the floodplain in the first place & what is the impact if changes are made
- Why is the Town Council in the position of being a hydrologist and why isn’t this done by Town staff
- Approval means the developer will submit the model to FEMA
- Clarification regarding the specific area of impact

At 10:14 p.m. Mayor Hayden announced that per Section 551.071 of the Texas Open Meeting Act the Town Council is convening into closed session for consultation with the Town Attorney on the item, and reconvened into open session at 10:28 p.m.

Councilmember Webb moved to approve an exception to Section 90-403, "Fully developed FEMA floodplain," and an exception to Section 90-404, "Special flood hazard area (FEMA floodplain)," of the Code of Ordinances to allow construction-related activity, placement of fill material, and reclamation of the floodplain within the Fully Developed and FEMA floodplain areas. Mayor Pro Tem Dixon seconded the motion.

VOTE ON THE MOTION

AYES: DIXON, BRYANT, WEBB

NAYS: ROUNTREE

ABSENT: GELBMAN

Motion passed.

L. BOARDS/COMMISSIONS

Discuss and consider resignations, appointments, or evaluations for the following boards or commissions: Animal Services Board, Cultural Arts Commission, Environmental Conservation Commission, Parks, Arts and Library Services Board, SMARTGrowth Commission, Tax Increment Reinvestment Zone Number One (TIRZ #1), and the Transportation Commission.

No action taken.

M./N. CLOSED/OPEN MEETING

The Town Council convened into a closed meeting at 10:31 p.m. on Tuesday, September 8, 2015, 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 economic development negotiations, real property, personnel, and consultation with attorney, and reconvened into an open meeting at 10:58 p.m. on Tuesday, September 8, 2015, to take action on the items as follows:

- a. Discuss and consider resignations, appointments, evaluations, reassignments, discipline, or dismissals for the following boards or commissions: Board of Adjustment/Oil & Gas Board of Appeals, Community Development Corporation, and Planning and Zoning Commission.

No action taken.

- b. Discuss and consider economic development incentives, including retail centers, corporate relocation/expansion/retention, hospitality projects, and performance related to certain incentive agreements.

No action taken.

- c. Discuss and consider purchase, exchange, lease or value of real property for parks, public rights of way, and/or other municipal purposes and all matters incident and related thereto.

Councilmember Webb moved to approve the purchase of approximately 22.8 acres of property, known as the Sam W. Lee property, for the purchase price of \$2,000,000.00, plus closing costs, and authorize the Town Manager to execute all documents at closing on behalf of the Town. Councilmember Bryant seconded the motion.

VOTE ON THE MOTION

AYES: DIXON, BRYANT, WEBB

NAYS: ROUNTREE

ABSENT: GELBMAN

Motion passed.

- d. Deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the Municipal Court Judge.

No action taken.

- e. Consultation with Attorney as follows:

1. Oriental Building Services, Inc. vs Town of Flower Mound

Mayor Pro Tem Dixon moved to approve the settlement with Oriental Building Services as discussed in closed session. Councilmember Webb seconded the motion.

VOTE ON THE MOTION

AYES: ROUNTREE, WEBB, BRYANT, DIXON

NAYS: NONE

ABSENT: GELBMAN

Motion passed.

O. ADJOURN REGULAR MEETING

Mayor Hayden adjourned the meeting at 10:59 p.m. on Tuesday, September 8, 2015, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

THOMAS E. HAYDEN, MAYOR

ATTEST:

THERESA SCOTT, TOWN SECRETARY

THIS PAGE WAS INTENTIONALLY LEFT BLANK